

Applying Precedents Activity—Answer Key

Comparison case: *Obergefell v. Hodges* (and consolidated cases) (2015)

Precedent cases: *Loving v. Virginia* (1967); *Baker v. Nelson* (1972);
Romer v. Evans (1996); and *Windsor v. United States* (2013)

What you need to know before you begin: When the Supreme Court decides a case, it clarifies the law and serves as guidance for how future cases should be decided. Before the Supreme Court makes a decision, it always looks to precedents—past Supreme Court decisions about the same topic—to help make the decision. A principle called *stare decisis* (literally “let the decision stand”) requires that the precedent be followed. If the case being decided is legally identical to a past decision, then the precedent is considered binding and the Supreme Court must decide the matter the same way. However, cases that make it to the Supreme Court are typically not completely identical to past cases, and justices must consider the similarities and differences when deciding a case.

The process of comparing past decisions to new cases is called applying precedent. Lawyers often argue for their side by showing how previous decisions would support the Supreme Court deciding in their favor. This might mean showing how a previous decision that supports their side is analogous (similar) to the case at hand. It can also involve showing that a previous decision that does not support their side is distinguishable (different) from the case they are arguing.

How it’s done: In this exercise, you will analyze precedents and compare them to *Obergefell v. Hodges*. You have been provided with information about five cases: **1)** the facts, issue, and constitutional provisions/precedents of the comparison case (*Obergefell v. Hodges*.) and **2)** a brief summary of four precedent cases (*Loving v. Virginia*, *Baker v. Nelson*, *Romer v. Evans*, and *Windsor v. United States*), which can be found within the *Obergefell v. Hodges* case materials.

After reading about the cases, you will look for evidence that *Obergefell v. Hodges* is **analogous** (similar) to the precedent cases and evidence that the cases are **distinguished** (different) from each other. After considering all the precedents, you must decide whether the precedents are analogous enough to command the same outcome in the comparison case, or whether the comparison case is different enough to distinguish itself from the precedents.

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1. Using factual and legal similarities, show how *Obergefell v. Hodges* is **analogous** (similar) to the precedent case *Loving v. Virginia*:

Factually, the cases are similar in that they both involve a law that forbids marriage solely based on the identities of the people seeking marriage. Legally, both cases involve a state law, not a federal law, and therefore both involved a federalism question of whether the federal government could compel a state action on the matter. Also, because both cases dealt with a

fundamental right (to marry), both were subject to strict scrutiny. The Supreme Court in both cases ultimately ruled in favor of greater marriage equality.

- Using factual and legal similarities, show how *Obergefell v. Hodges* is **distinguished** (different) from the precedent case *Loving v. Virginia*:

Obergefell had to do with discriminatory laws based on sexual orientation while *Loving* dealt with a discriminatory law based on race. Also, the law in *Loving* made marriage between a white person and a person of color a crime that was punishable with prison time, while states banning same-sex marriage in *Obergefell* did not actively punish same-sex married couples with prison time. What was at stake in *Obergefell* was rather what the states *did not* do – they did not recognize same-sex marriages that were legal in other states, and therefore same-sex couples in states where same-sex marriage was banned were not allowed to claim any of the important legal benefits that married straight couples have.

- We found that *Obergefell v. Hodges* is _____ (analogous to or **distinguished from**) the precedent case *Loving v. Virginia* because:

Student answers will vary but should be based on answers to #1 and #2.

- Using factual and legal similarities, show how *Obergefell v. Hodges* is **analogous** (similar) to the precedent case *Baker v. Nelson*:

The cases are similar in that both involved situations where a government refused to acknowledge same-sex marriage, but did not necessarily punish the existence of the relationship. Both involved the 14th Amendment's Equal Protection Clause and the idea of marriage being a fundamental right.

- Using factual and legal similarities, show how *Obergefell v. Hodges* is **distinguished** (different) from the precedent case *Baker v. Nelson* by pointing out factual and legal differences

Factually, *Baker* began with a single act by a town clerk refusing to grant a marriage license to a same-sex couple in Minnesota, where the law did not explicitly forbid same-sex marriage. *Obergefell* was a collection of cases from different states, including states where same-sex marriage was expressly forbidden by statute. *Obergefell* also involved couples who were considered legally married in some states, but not in other states. Legally, the Supreme Court's ruling in *Baker* never addressed the underlying arguments, giving only a one-line response (which makes it difficult to know what *Baker* really means as precedent).

- We found that *Obergefell v. Hodges* is _____ (analogous to or **distinguished from**) the precedent case *Baker v. Nelson* because:

Student answers will vary but should be based on answers to #4 and #5.

- Using factual and legal similarities, show how *Obergefell v. Hodges* is **analogous** (similar) to the precedent case *Romer v. Evans*:

Factually, both involved discrimination against members of the LGBTQ community.

8. Using factual and legal similarities, show how *Obergefell v. Hodges* is **distinguished** (different) from the precedent case *Romer v. Evans* by pointing out factual and legal differences:

In *Romer*, the law in question was more general and forbid any other laws protecting the LGBTQ community from discrimination. The laws in *Obergefell* were specifically focused on marriage between same-sex couples.

9. We found that *Obergefell v. Hodges* is _____ (**analogous to** or **distinguished from**) the precedent case *Romer v. Evans* because:

Student answers will vary but should be based on answers to #7 and #8.

10. Using factual and legal similarities, show how *Obergefell v. Hodges* is **analogous** (similar) to the precedent case *Windsor v. United States*:

In both cases, states in the U.S. had different approaches to same-sex marriage, with some fully recognizing it and others completely rejecting it. They also both involved the benefits of government-recognized marriage.

11. Using factual and legal similarities, show how *Obergefell v. Hodges* is **distinguished** (different) from the precedent case *Windsor v. United States* by pointing out factual and legal differences:

Windsor involved a federal statute not recognizing the couple's marriage, whereas *Obergefell* dealt with state laws.

12. We found that *Obergefell v. Hodges* is _____ (**analogous to** or **distinguished from**) the precedent case *Windsor v. United States* because:

Student answers will vary but should be based on answers to #10 and #11.

13. Based on the application of the precedents, how should *Obergefell v. Hodges* be decided?

_____ Decision for Obergefell (to declare state bans on same-sex marriage unconstitutional)

_____ Decision for Hodges (to allow state bans on same-sex marriage)

Student answers will vary but should be based on application of the precedents.

In a 5-4 decision, the Court ruled in favor of Obergefell.

14. Which precedents did you feel were the most important in reaching your decision? Why?

Student answers will vary but should come from the strongest arguments from earlier answers.

After students complete the Applying Precedents Activity, consider sharing the complete case summary of *Obergefell v. Hodges* (2015), the [Summary of the Decision](#), the [Excerpts from the Majority Opinion](#), and the [Excerpts from the Dissenting Opinion](#).

Comparison Case: *Obergefell v. Hodges* (and consolidated cases) (2015)

Argued: April 28, 2015

Decided: June 26, 2015

History

In 2013, the Supreme Court ruled that the federal Defense of Marriage Act, which had defined marriage as being only between a man and woman, was unconstitutional. The justices said that the federal government must recognize, for purposes of federal law, same-sex marriages from the states where they were legal. In the wake of that decision, same-sex couples all over the country filed lawsuits in states where same-sex marriage was banned. Many district courts ruled that state laws and constitutional amendments that prohibit same-sex marriage violate the U.S. Constitution—often citing the Supreme Court’s 2013 decision. Other judges ruled exactly the opposite. They said that these bans, imposed through democratic processes, were valid.

The U.S. Supreme Court decided to hear four of the cases and consolidated them into a single oral argument. The cases raised two issues for the Court to decide: 1) whether states must themselves license same-sex marriages and 2) whether states must recognize valid same-sex marriages performed in other states. Those issues invoke many legal concepts—chief among them are federalism and the 14th Amendment.

Background

Federalism is the principle that the national government and state governments share powers. Some powers are delegated to the national government, some are reserved for state governments, and some powers are shared. This means that states generally can choose different policies about many issues, such as which activities are crimes, how to license drivers, what to teach in public schools, and more provided they are within the limits of the Constitution and federal statutes.

The 14th Amendment to the U.S. Constitution was adopted in the wake of the Civil War and says that states must give people equal protection under law. This means that state laws must apply equally to all people who are in similar situations, unless the state has a reason for making the distinction. When deciding whether or not a law violates the guarantee of equal protection, courts must examine who is affected by that law. Due to the United States’ history of discrimination, the courts are more suspicious of laws that affect people based on their race or gender than laws that discriminate based on certain other classifications, like wealth or age.

The Supreme Court has described three categories for reviewing laws that treat people unequally:

- **Strict scrutiny**

This standard is used primarily for laws that classify people based on race, national origin, or citizenship status. The Court has placed these classifications together because they are based

on characteristics that people cannot change, and because America has a long history of discriminating against people based on these traits. Laws that treat people differently based on these classifications must:

- a. serve a compelling government interest;
- b. be “narrowly tailored,” meaning that achieving the compelling government interest is the main purpose of the law, and not just a side effect; and
- c. be the least restrictive way to serve the government’s interest, meaning that it meets the goal in a way that limits peoples’ rights the least.

– **Intermediate scrutiny**

This standard has been used for laws that treat people differently based on their gender. For these laws, the government must show that having the law is closely connected to an important government interest.

– **Rational basis**

This standard has been used for classifications like age and wealth. Under this standard, all that is required is a rational relationship between the law and a *legitimate* government interest. Most laws are upheld under this standard.

Facts

In all four cases, the petitioners were same-sex couples who either wanted to get married in their state but were prohibited from doing so by a state law or constitutional amendment, or they were same-sex couples who were married lawfully in another state and wanted their home state to recognize that marriage as valid. In one case, the petitioners included a married same-sex couple from New York who adopted a child from Ohio. Since Ohio would not recognize their marriage, the state refused to amend the child’s birth certificate to list both parents, as it would for a married opposite-sex couple.

Kentucky, Michigan, Ohio, and Tennessee were the four states defending their bans on same-sex marriage and bans on recognizing same-sex marriages performed in other states. Between 1996 and 2005, those states and many others enacted laws and passed constitutional amendments defining marriage as a union of one man and one woman. Each of the four states had a law passed by its state legislature and a state constitutional amendment approved directly by the voters. The same-sex couples who were not allowed to marry argued that they were prevented from receiving state benefits for married couples (and their children), including access to a spouse or parent’s health insurance; the power to make decisions for each other or visit each other in a medical emergency; eligibility for social security benefits, survivor benefits, and tax benefits; and the ability to claim alimony or child support should a marriage end.

The petitioners won in the district courts in their various states. On appeal, however, the U.S. Court of Appeals for the Sixth Circuit reversed and upheld the state laws. The petitioners asked the Supreme Court of the United States to hear the case, and the Court agreed.

Issues

Does the 14th Amendment require a state to license same-sex marriages?

Does the 14th Amendment require a state to recognize a same-sex marriage that was lawfully licensed out-of-state?

Constitutional Provisions and Supreme Court Precedents

– **10th Amendment to the U.S. Constitution**

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

– **Equal Protection Clause, 14th Amendment to the U.S. Constitution**

“No state shall ... deny to any person within its jurisdiction the equal protection of the laws.”

– **Due Process Clause, 14th Amendment to the U.S. Constitution**

“nor shall any state deprive any person of life, liberty, or property, without due process of law”

– **Full Faith and Credit Clause, Article IV of the U.S. Constitution**

“Full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may...prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.”

– ***Loving v. Virginia* (1967)**

Virginia had a law that made it a crime for any “white person [to] intermarry with a colored person.” Violating that law was punishable by one to five years in prison. The Supreme Court decided that the law violated the Equal Protection Clause. The Court said any law that contains racial classifications must be subjected to strict scrutiny. The Court decided that this law was not trying to achieve an important or reasonable objective, as its only purpose was to divide people by race and maintain white supremacy. The Court also said that marriage is a “fundamental right.”

– ***Baker v. Nelson* (1972)**

A gay couple was denied a marriage license by a Minneapolis town clerk. The Minnesota Supreme Court ruled that the Constitution does not protect a fundamental right to same-sex marriage. The U.S. Supreme Court upheld the decision with a one-line ruling: “dismissed for want of a substantial federal question,” meaning that the Court at that time did not think

that there was even a serious argument to be made that the 14th Amendment protects same-sex marriage.

– ***Romer v. Evans* (1996)**

In 1992, the citizens of Colorado amended their state constitution to forbid any law or government action that would protect people who are gay and lesbian from discrimination. The Supreme Court decided that this amendment violated the Equal Protection Clause. They said that the law failed even the lowest of standards—the rational basis test—because it did not have a rational relationship to a legitimate state interest. The Court decided that the only interest in passing this amendment was a desire to harm an unpopular group, and that is not a legitimate governmental interest.

– ***Windsor v. United States* (2013)**

The Court ruled that the Defense of Marriage Act (DOMA) was unconstitutional because it discriminated against same-sex couples by preventing the federal government from recognizing their marriages, even though some states had expressly chosen to license those marriages. Moreover, the basic intent of DOMA was to express disapproval of state sanctioned same-sex marriage. This was not a legitimate purpose. The Court did not decide which level of scrutiny should be used to evaluate laws that discriminate based on sexual orientation.