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## Supreme Court, Tompkins County, Seymour v. Holcomb

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**SUPREME COURT OF NEW YORK  
TOMPKINS COUNTY**

Seymour v. Holcomb<sup>1</sup>  
(decided February 23, 2005)

Twenty-five same-sex individuals sought to obtain marriage licenses and were denied.<sup>2</sup> These individuals brought an action claiming that the limitation of the marriage licenses renders the Domestic Relations Law<sup>3</sup> unconstitutional under both the federal and state constitutions.<sup>4</sup> The court held that the denial of marriage licenses to same-sex couples does not violate the plaintiffs' equal protection rights under article I, section 11 of the New York State Constitution, or the due process clause of the Fourteenth Amendment of the United States Constitution or article I, section 6 of the New York State Constitution.<sup>5</sup>

The plaintiffs in this case were twenty-five same-sex-couples

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<sup>1</sup> 790 N.Y.S.2d 858 (N.Y. Sup. Ct. 2005).

<sup>2</sup> *Id.* at 861.

<sup>3</sup> N.Y. DOM. REL. LAW § 14 providing in pertinent part:

The town or city clerk of each and every town or city in this state is hereby empowered to issue marriage licenses to any parties applying for the same who may be entitled under the laws of this state to apply therefore and to contract matrimony, authorizing the marriage of such parties . . . .

<sup>4</sup> *Seymour*, 790 N.Y.S.2d at 861.

<sup>5</sup> *Id.*; U.S. CONST. amend. XIV states in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ."; N.Y. CONST. art. I, § 6 provides: "No person shall be deprived of life, liberty or property without due process of law."; N.Y. CONST. art. I, § 11 provides: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof."

from the city of Ithaca who sought marriage licenses from the City Clerk.<sup>6</sup> The licenses were denied because the City Clerk received an “advisory letter” from the Department of Health stating that same-sex marriage licenses were not authorized by law.<sup>7</sup>

The plaintiffs claimed that the limitation of marriage licenses in the Domestic Relations Law established a classification based on gender, which violated their equal protection rights under the state’s constitution.<sup>8</sup> Basing the decision on the fact that neither males nor females are advantaged or disadvantaged when applying for a marriage license,<sup>9</sup> the court held that the classification was based on sexual orientation, not gender.<sup>10</sup> Both sexes are “equally prohibited from precisely the same conduct . . . .”<sup>11</sup> Therefore, the plaintiffs were not considered to be a suspect class that would trigger strict scrutiny.<sup>12</sup> Instead, the classification was based on sexual orientation, subject to a rational basis analysis.<sup>13</sup> Relying on Supreme Court precedent, the court stated that it “remains valid authority for the principle that classifications purportedly based on sexual orientation are subject to the rational basis test.”<sup>14</sup> Realizing that there was no precedent in its own Appellate Department, the

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<sup>6</sup> *Seymour*, 790 N.Y.S.2d at 861.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 863.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Seymour*, 790 N.Y.S.2d at 863.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* 863.

<sup>14</sup> *Id.* at 864 (citing *Lawrence v. Texas*, 539 U.S. 558 (2003), where the Court used a rational relation test to strike down a Texas law prohibiting sodomy).

court relied on that of the Second Department;<sup>15</sup> it established that the Domestic Relations Law limitation on same-sex marriages is rationally related to a legitimate state interest,<sup>16</sup> “the preservation of the historic institution of marriage as a union of man and woman, which in turn, uniquely fosters procreation.”<sup>17</sup>

The plaintiffs also contended that their due process rights under both the Fourteenth Amendment of the United States Constitution and article I, section 6 of the New York State Constitution were violated.<sup>18</sup> The plaintiffs reasoned that marriage is a fundamental right, which is entitled to due process protection.<sup>19</sup> The court makes it clear that the plaintiffs do have a fundamental right to marry, but only to enter into opposite-sex marriages.<sup>20</sup> Reasoning that, in order to be deemed a fundamental right, the right must be “ ‘deeply rooted in this Nation’s history and tradition’ and

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<sup>15</sup> *Id.* at 863. The court went on to state: “sound judicial practice suggests that a judge at the *nisi prius* level should follow the holding of the Appellate Division of another Department where neither that court’s own Department’s Appellate Division or the Court of Appeals have pronounced a contrary rule.” *Id.* at 863-64.

<sup>16</sup> *Seymour*, 790 N.Y.S.2d at 865.

<sup>17</sup> *Id.* at 863. The Court also adopts the reasoning in *Standhardt v. Superior Court of the State of Arizona*, 77 P.3d 451 (Ariz. 2003) in which that court noted:

[T]he only sexual relationship capable of producing children is one between a man and a woman. The State could reasonably decide that by encouraging opposite-sex couples to marry, thereby assuming legal and financial obligations, the children born from such relationships will have better opportunities to be nurtured and raised by two parents within long-term, committed relationships, which society has traditionally viewed as advantageous for children. Because same-sex couples cannot by themselves procreate, the State could also reasonably decide that sanctioning same-sex marriages would do little to advance the State’s interest in ensuring responsible procreation within committed, long-term relationships.

*Id.* at 865 n.1.

<sup>18</sup> *Id.* at 865.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed.’ ”<sup>21</sup> The court concluded that same-sex marriages are not such a right.<sup>22</sup>

Distinguishing this case from *Loving v. Virginia*,<sup>23</sup> the court noted that *Loving* did establish a fundamental right to marry based on the concept that marriage is between a man and a woman.<sup>24</sup> However, *Loving* did not establish a fundamental right to same-sex marriages.<sup>25</sup> Since the right in question is not a fundamental right, the law must be constitutional if there is a rational relation to a legitimate governmental interest.<sup>26</sup> The plaintiffs were unable to establish that the legislature acted irrationally when it determined that there are societal benefits to heterosexual marriages, such as natural procreation and child rearing.<sup>27</sup>

The United States Supreme Court has not directly dealt with the issue of same-sex marriage. Rather, it has dealt with the right to marry<sup>28</sup> and issues that involve same-sex conduct.<sup>29</sup> Of importance is how the Court has dealt with due process claims under the Fourteenth

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<sup>21</sup> *Seymour*, 790 N.Y.S.2d at 865 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997)).

<sup>22</sup> *Id.*

<sup>23</sup> 388 U.S. 1, 12 (1967) (holding that marriage is a fundamental right).

<sup>24</sup> *Seymour*, 790 N.Y.S.2d at 865 (citing *Standhardt*, 77 P.3d 451).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 864. The Court relied on the same analysis in the Equal Protection Claim to determine that there was a rational relationship to a legitimate state interest. *Id.* at 865.

<sup>28</sup> See *Zablocki v. Redhail* 434 U.S. 374, 384 (1978) (“[A]lthough *Loving* arose in the context of racial discrimination, prior and subsequent decisions of this Court confirm that the right to marry is of fundamental importance for all individuals.”) and *Griswold v. Connecticut* 381 U.S. 479, 486 (1965) (stating the right to marry is “older than the Bill of Rights”).

<sup>29</sup> See *Lawrence v. Texas*, 539 U.S. 558, 578 (stating that same-sex couples enjoy the right to engage in personal conduct and that the right is protected).

Amendment of the United States Constitution with regard to marriage and homosexual activity.

In *Loving v. Virginia*,<sup>30</sup> the Supreme Court held that the right to marry is a fundamental right under the Due Process Clause of the Fourteenth Amendment.<sup>31</sup> The Supreme Court recognized that freedom to marry is “one of the vital personal rights essential to the orderly pursuit of happiness by free men.”<sup>32</sup> Without marriage, man would neither survive nor would he exist.<sup>33</sup> Notably, in its holding, the Supreme Court did indicate that freedom of choice to marry could not be restricted by race.<sup>34</sup> However, subsequent holdings of the Court have confirmed that the right to marry is a liberty interest under the Fourteenth Amendment’s Due Process Clause.<sup>35</sup>

In *Lawrence v. Texas*,<sup>36</sup> the Supreme Court held that a statute that made it a crime for persons of the same-sex to engage in certain sexual activity violates the Due Process Clause.<sup>37</sup> Just seventeen years earlier, the Supreme Court, in *Bowers v. Hardwick*<sup>38</sup> held that same-sex sodomy was not a fundamental right protected by the Due Process Clause.<sup>39</sup> The *Lawrence* Court stated the *Bowers* holding

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<sup>30</sup> 388 U.S. 1 (1967).

<sup>31</sup> *Id.* at 12.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Zablocki v. Redhail* 434 U.S. 374, 384 (1978) (holding that the right to marry is a fundamental right); *Griswold v. Connecticut* 381 U.S. 479, 486 (1965) (stating that the right to marry is “older than the Bill of Rights.”).

<sup>36</sup> 539 U.S. 558 (2003).

<sup>37</sup> *Id.* at 567, 578.

<sup>38</sup> 478 U.S. 186 (1986), *overruled by* *Lawrence v. Texas*, 539 U.S. 558 (2003).

<sup>39</sup> *Bowers*, 478 U.S. at 191.

had “misapprehended the liberty claim presented to it.”<sup>40</sup> Further, the issue in same sex sodomy cases was not whether homosexual conduct was a liberty interest protected by the Constitution as the Court in *Bowers* phrased it, rather, the issue was whether or not the right to engage in private, intimate sexual conduct with a person of one’s choice, is protected.<sup>41</sup> The answer was in the affirmative.<sup>42</sup> Relying on its own jurisprudence, the Court found that there is an “emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex.”<sup>43</sup> Constitutional protection extends to marriage, procreation, contraception, family relationships, child rearing, and education.<sup>44</sup>

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.<sup>45</sup>

Further, the Supreme Court stated that morality would no longer be considered a legitimate state interest.<sup>46</sup> Although, the Court struck down the statute, the Court nevertheless, avoided declaring that

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<sup>40</sup> *Lawrence*, 539 U.S. at 567.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 578.

<sup>43</sup> *Id.* at 572.

<sup>44</sup> *Id.* at 574 (citing *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992)).

<sup>45</sup> *Lawrence*, 539 U.S. at 574 (quoting *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992)).

<sup>46</sup> *Id.* at 583.

homosexual sodomy is a fundamental right or that homosexuals are a protected class.<sup>47</sup>

In New York, the courts have dealt with the issue of same-sex marriage and due process. However, the courts are divided as to whether same-sex marriage is a fundamental right protected under the New York State Constitution's Due Process Clause. There has been no decision from the court of appeals to guide the lower courts in their findings.

In *Shields v. Madigan*<sup>48</sup> the court held that same-sex marriage is not a fundamental right protected by the due process clause of the New York State Constitution.<sup>49</sup> Interpreting marriage as only “a fundamental right founded on the ‘distinction of sex and the potential for procreation,’ ”<sup>50</sup> the court found that homosexual marriages do not fall within that definition.<sup>51</sup> The court was unwilling to recognize the argument that “ ‘tradition’ is an invalid basis to uphold the ban on homosexual marriage,”<sup>52</sup> reasoning that, courts still look to history and tradition in order to define and establish a fundamental right.<sup>53</sup> This court, like the court in *Seymour*, found that homosexual marriage is not one that “is deeply rooted in this Nation’s history and

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<sup>47</sup> *Id.* at 578 (“[T]he Texas statute furthers no legitimate state interest . . . .”); *see also id.* at 586 (“[N]owhere does the Court’s opinion declare that homosexual sodomy is a ‘fundamental right’ under the Due Process Clause.”) (Scalia, J., dissenting). The Court does not define what standard it is using thereby avoiding declaring a fundamental right has been established.

<sup>48</sup> 783 N.Y.S.2d 270 (N.Y. Sup. Ct. 2004).

<sup>49</sup> *Id.* at 276.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Shields*, 783 N.Y.S.2d at 276.



traditions.”<sup>54</sup>

Similarly, the court in *Storrs v. Holcomb*<sup>55</sup> found that same-sex marriage is not a fundamental right. However, the court found merit in the plaintiff’s claim that he had a privacy right to be free from government interference in his domestic relationship and that the state does not have a legitimate reason to prohibit an exchange of personal commitments.<sup>56</sup> Yet, the court decided “it would be a very long inferential leap, from this narrow premise, to the conclusion that a denial of a marriage license to a same-sex couple destroys a fundamental right so implicit in our understanding of ordered liberty that neither justice nor liberty would exist if it were sacrificed.”<sup>57</sup>

In *Hernandez v. Robles*<sup>58</sup> a different conclusion was reached. The court did not hold that same-sex marriage is a fundamental right, but that exclusion of same-sex couples from marrying infringes on the fundamental right to chose one’s own spouse.<sup>59</sup> The issue is not

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<sup>54</sup> *Id.* at 276-77 (quoting *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1976)).

<sup>55</sup> 645 N.Y.S.2d 286 (N.Y. Sup. Ct. 1996).

<sup>56</sup> *Id.* at 287.

<sup>57</sup> *Id.* The court also explained that the political, cultural, religious understanding of marriage is that between a male and female. *Id.* It is up to the legislatures to authorize same-sex marriages; the court will not identify a new fundamental right. *Id.*

<sup>58</sup> 794 N.Y.S.2d 579 (N.Y. Sup. Ct. 2005), *appeal transferred*, 829 N.E.2d 670 (N.Y. 2005).

<sup>59</sup> *Id.* at 596, 600-01. The court derived its holding from a Court of Appeals case. That court held:

[W]hile ‘precise contours’ of the right to privacy have yet to be defined, it is clear that it has application in two primary areas of personal autonomy: the individual interest in avoiding disclosure of personal matters and the interest in independence in making certain kinds of important decisions . . . . The cases according constitutional protection to such individual decision-making interests indicate that this aspect of the right of privacy is limited to the most personal and intimate matters of individual choice of conduct. Thus, clearly falling within its scope are matters relating to the decision of whom one will marry.

*Crosby v. State Workers’ Comp. Bd.* 442 N.E.2d 1191, 1194 (N.Y. 1982).

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one that the court needs to recognize as deeply rooted in our nation's history and traditions.<sup>60</sup> If the court framed the issue this way, it would be making the same mistake for which the *Lawrence* Court criticized *Bowers*.<sup>61</sup> To present the issue as whether same-sex marriage is a fundamental right ignores the liberty at stake.<sup>62</sup> Further, the court reasoned that to deny a person the freedom to choose his own spouse is to deny his fundamental right to marry.<sup>63</sup>

The *Seymour* court did not discuss the *Lawrence* holding. In the short opinion that the *Seymour* court wrote, the court was reluctant to establish a fundamental right for an individual to enter into a same-sex marriage. Without much analysis, the court dismisses the plaintiff's equal protection claim and established that the plaintiff's due process claim would only be upheld if they could establish that the statute was not rationally related to any legitimate state interest. The plaintiffs were unable to meet this burden. Most of the state court decisions are congruent with each other in refusing to find a fundamental right for individuals to enter into same-sex marriage. One court has, however, found that the issue should not be narrowly construed and has found that plaintiffs seeking to enter same-sex marriage are afforded constitutional protection and that the state was unable to meet its burden.<sup>64</sup> Thus, what is dispositive in the

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<sup>60</sup> *Hernandez*, 794 N.Y.S.2d at 601.

<sup>61</sup> *Id.* The court states that the issue in *Bowers* of whether the Constitution confers a fundamental right to engage in homosexual sodomy was corrected in *Lawrence* when the *Lawrence* Court rephrased the issue as being the right to engage in intimate sexual conduct with a person of one's choice.

<sup>62</sup> *Id.* at 601.

<sup>63</sup> *Id.*

<sup>64</sup> See *Hernandez*, 794 N.Y.S.2d 579.

New York courts is how the issue of same-sex marriages is framed.

In conclusion, although federal and state law have declared that the right to marry is a fundamental right under both the federal and state constitutions, the courts are still at odds as to whether same-sex couples who wish to marry are also protected by this fundamental right. In *Lawrence*, the Supreme Court left that question open.<sup>65</sup> Yet, the language of the decision is broad enough for courts to either hold that same-sex marriage is or is not included as a protected fundamental right under the federal and state due process clauses. Until the United States Supreme Court or the New York Court of Appeals renders a decision on point, it is unclear whether federal law or state law will offer protection, under the respective constitutions, to same-sex couples wishing to legally marry.

*Jessica Goodwin*

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<sup>65</sup> *Lawrence*, 539 U.S. at 578. The Court states that this is not a case about whether or not the “government must give formal recognition to any relationship that homosexual persons seek to enter.” *Id.*