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137 S.Ct. 2075

Supreme Court of the United States

Marisa N. PAVAN, et al.

v.

Nathaniel SMITH.

No. 16–992

|

June 26, 2017.

Synopsis

Background: Two married same-sex couples, who conceived children through anonymous sperm donation, brought action against director of the Arkansas Department of Health, seeking declaration that provision of Arkansas statute, which generally required the name of mother's male spouse to appear on child's **birth certificate** when mother conceived child by means of artificial insemination but allowed omission of mother's female spouse from her child's **birth certificate**, violated the Constitution. The Circuit Court, Pulaski County, [Timothy Davis Fox, J.](#), [2015 WL 12990015](#), granted summary judgment to couples and ordered Department to amend **birth certificates**. Department appealed. The Supreme Court of Arkansas, [Josephine Linker Hart, J.](#), [505 S.W.3d 169](#), reversed.

[Holding:] Upon granting certiorari, the Supreme Court held that Arkansas statute denied married same-sex couples access to the constellation of benefits that Arkansas linked to marriage, and thus was unconstitutional to the extent that the statute treated same-sex couples differently from opposite-sex couples.

Certiorari granted; reversed and remanded.

Justice [Gorsuch](#), with whom Justice [Thomas](#) and Justice [Alito](#) joined, filed dissenting opinion.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (3)

[1] Constitutional Law 🔑 Sex or gender; sexual orientation

The Constitution entitles same-sex couples to civil marriage on the same terms and conditions as opposite-sex couples.

[27 Cases that cite this headnote](#)

[2] Constitutional Law 🔑 Sex or gender; sexual orientation**Health** 🔑 Validity

Arkansas statute, which generally required the name of mother's male spouse to appear on child's **birth certificate** when mother conceived child by means of artificial insemination but allowed omission of mother's female spouse from child's **birth certificate**, denied married same-sex couples access to the constellation of benefits that Arkansas linked to marriage, and thus was unconstitutional to the extent that the statute treated same-sex couples differently from opposite-sex couples; same-sex parents lacked same right as opposite-sex parents to be listed on child's **birth certificate**, and Arkansas chose to make its **birth certificates** more than mere marker of biological relationships by giving married parents form of legal recognition that was not available to unmarried parents. West's A.C.A. §§ 9–10–201(a), 20–18–401(f)(1).

[32 Cases that cite this headnote](#)

[3] Marriage and Cohabitation 🔑 Sex or Gender; Same-Sex Marriage

A State may not exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

[27 Cases that cite this headnote](#)

West Codenotes

Unconstitutional as Applied

West's  A.C.A. § 20–18–401(f)(1)




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Opinion



PER CURIAM.




564** [1] As this Court explained in  *Obergefell v. Hodges*, 576 U.S. —, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015), the Constitution entitles same-sex couples to civil marriage “on the same terms and conditions as opposite-sex couples.”  *Id.*, at —, 135 S.Ct., at 2605. In the decision below, the Arkansas Supreme Court considered the *2077** effect of that holding on the State's rules governing the issuance of **birth certificates**. When a married woman gives **birth** in Arkansas, state law generally requires the name of the mother's male spouse to appear on the child's **birth certificate**—regardless of his biological relationship to the child. According to the court below, however, Arkansas need not extend that rule to similarly situated same-sex couples: The State need not, in other words, issue **birth certificates** including the female spouses of women who give **birth** in the State. Because that differential treatment infringes *Obergefell*'s commitment to provide same-sex couples “the constellation of benefits that the States have linked to marriage,”  *id.*, at —, 135 S.Ct., at 2601, we reverse the state court's judgment.




The petitioners here are two married same-sex couples who conceived children through anonymous sperm donation. Leigh and Jana Jacobs were married in Iowa in 2010, and Terrah and Marisa Pavan were married in New Hampshire in






2011. Leigh and Terrah each gave **birth** to a child in Arkansas in 2015. When it came time to secure **birth certificates** for the newborns, each couple filled out paperwork listing both spouses as parents—Leigh and Jana in one case, Terrah and Marisa in the other. Both times, however, the Arkansas Department of Health issued **certificates** bearing only the **birth** mother's name.

The department's decision rested on a provision of Arkansas law,  Ark.Code § 20–18–401 (2014), that specifies which individuals will appear as parents on a child's state-issued **birth certificate**. “For the purposes of **birth** registration,” that statute says, “the mother is deemed to be the woman who gives **birth** to the child.”  § 20–18–401(e). And “[i]f the mother was married at the time of either conception or ***565 birth**,” the statute instructs that “the name of [her] husband shall be entered on the **certificate** as the father of the child.”  § 20–18–401(f)(1). There are some limited exceptions to the latter rule—for example, another man may appear on the **birth certificate** if the “mother” and “husband” and “putative father” all file affidavits vouching for the putative father's paternity. *Ibid.* But as all parties agree, the requirement that a married woman's husband appear on her child's **birth certificate** applies in cases where the couple conceived by means of artificial insemination with the help of an anonymous sperm donor. See Pet. for Cert. 4; Brief in Opposition 3–4; see also Ark.Code § 9–10–201(a) (2015) (“Any child born to a married woman by means of artificial insemination shall be deemed the legitimate natural child of the woman and the woman's husband if the husband consents in writing to the artificial insemination”).

The Jacobses and Pavans brought this suit in Arkansas state court against the director of the Arkansas Department of Health—seeking, among other things, a declaration that the State's **birth-certificate** law violates the Constitution. The trial court agreed, holding that the relevant portions of  § 20–18–401 are inconsistent with *Obergefell* because they “categorically prohibi[t] every same-sex married couple ... from enjoying the same spousal benefits which are available to every opposite-sex married couple.” App. to Pet. for Cert. 59a. But a divided Arkansas Supreme Court reversed that judgment, concluding that the statute “pass[es] constitutional muster.”  2016 Ark. 437, 505 S.W.3d 169, 177. In that court's view, “the statute centers on the relationship of the biological mother and the biological father to the child, not on the marital relationship of husband and wife,” and so it

“does not run afoul of *Obergefell*.”  *Id.*, at 178. Two justices dissented from that view, maintaining that under *Obergefell* “a same-sex **2078 married couple is entitled to a **birth certificate** on the same basis as an opposite-sex married couple.”  505 S.W.3d, at 184 (Brill, C.J., concurring in part and dissenting in part); accord,  *id.*, at 190 (Danielson, J., dissenting).

*566 [2] The Arkansas Supreme Court's decision, we conclude, denied married same-sex couples access to the “constellation of benefits that the Stat[e] ha[s] linked to marriage.”  *Obergefell*, 576 U.S., at —, 135 S.Ct., at 2601. As already explained, when a married woman in Arkansas conceives a child by means of artificial insemination, the State will—indeed, *must*—list the name of her male spouse on the child's **birth certificate**. See  § 20–18–401(f)(1); see also § 9–10–201; *supra*, at 2077. And yet state law, as interpreted by the court below, allows Arkansas officials in those very same circumstances to omit a married woman's female spouse from her child's **birth certificate**. See  505 S.W.3d, at 177–178. As a result, same-sex parents in Arkansas lack the same right as opposite-sex parents to be listed on a child's **birth certificate**, a document often used for important transactions like making medical decisions for a child or enrolling a child in school. See Pet. for Cert. 5–7 (listing situations in which a parent might be required to present a child's **birth certificate**).


[3] *Obergefell* proscribes such disparate treatment. As we explained there, a State may not “exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.”  576 U.S., at —, 135 S.Ct., at 2605. Indeed, in listing those terms and conditions—the “rights, benefits, and responsibilities” to which same-sex couples, no less than opposite-sex couples, must have access—we expressly identified “**birth** and death **certificates**.”  *Id.*, at —, 135 S.Ct., at 2601. That was no accident: Several of the plaintiffs in *Obergefell* challenged a State's refusal to recognize their same-sex spouses on their children's **birth certificates**. See  *DeBoer v. Snyder*, 772 F.3d 388, 398–399 (C.A.6 2014). In considering those challenges, we held the relevant state laws unconstitutional to the extent they treated same-sex couples differently from opposite-sex couples. See  576 U.S., at —, 135 S.Ct., at 2605. That holding applies with equal force to  § 20–18–401.


Echoing the court below, the State defends its **birth-certificate** law on the ground that being named on a child's *567 **birth certificate** is not a benefit that attends marriage. Instead, the State insists, a **birth certificate** is simply a device for recording biological **parentage**—regardless of whether the child's parents are married. But Arkansas law makes **birth certificates** about more than just genetics. As already discussed, when an opposite-sex couple conceives a child by way of anonymous sperm donation—just as the petitioners did here—state law requires the placement of the **birth** mother's husband on the child's **birth certificate**. See *supra*, at 2077. And that is so even though (as the State concedes) the husband “is definitively not the biological father” in those circumstances. Brief in Opposition 4.* Arkansas has thus chosen to make its **birth certificates** more than a mere marker of biological relationships: The State uses those **certificates** to give married parents a **2079 form of legal recognition that is not available to unmarried parents. Having made that choice, Arkansas may not, consistent with *Obergefell*, deny married same-sex couples that recognition.



The petition for a writ of certiorari and the pending motions for leave to file briefs as *amici curiae* are granted. The judgment of the Arkansas Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice GORSUCH, with whom Justice THOMAS and Justice ALITO join, dissenting.

Summary reversal is usually reserved for cases where “the law is settled and stable, the facts are not in dispute, and the *568 decision below is clearly in error.”  *Schweiker v. Hansen*, 450 U.S. 785, 791, 101 S.Ct. 1468, 67 L.Ed.2d 685 (1981) (Marshall, J., dissenting). Respectfully, I don't believe this case meets that standard.


To be sure, *Obergefell* addressed the question whether a State must recognize same-sex marriages. But nothing in *Obergefell* spoke (let alone clearly) to the question whether  § 20–18–401 of the Arkansas Code, or a state supreme court decision upholding it, must go. The statute in question establishes a set of rules designed to ensure that the biological parents of a child are listed on the child's **birth certificate**. Before the state supreme court, the

State argued that rational reasons exist for a biology based **birth** registration regime, reasons that in no way offend *Obergefell*—like ensuring government officials can identify public health trends and helping individuals determine their biological lineage, citizenship, or susceptibility to genetic disorders. In an opinion that did not in any way seek to defy but rather earnestly engage *Obergefell*, the state supreme court agreed. And it is very hard to see what is wrong with this conclusion for, just as the state court recognized, nothing in *Obergefell* indicates that a **birth** registration regime based on biology, one no doubt with many analogues across the country and throughout history, offends the Constitution. To the contrary, to the extent they speak to the question at all, this Court's precedents suggest just the opposite conclusion. See, e.g.,  *Michael H. v. Gerald D.*, 491 U.S. 110, 124–125, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989);  *Tuan Anh Nguyen v. INS*, 533 U.S. 53, 73, 121 S.Ct. 2053, 150 L.Ed.2d 115 (2001). Neither does anything in today's opinion purport to identify any constitutional problem with a biology based **birth** registration regime. So whatever else we might do with this case, summary reversal would not exactly seem the obvious course.

What, then, is at work here? If there isn't a problem with a biology based **birth** registration regime, perhaps the concern lies in this particular regime's exceptions. For it turns out that Arkansas's general rule of registration based on biology *569 does admit of certain more specific exceptions. Most importantly for our purposes, the State acknowledges that § 9–10–201 of the Arkansas Code controls how **birth certificates** are completed in cases of artificial insemination like the one before us. The State acknowledges, too, that this provision, written some time ago, indicates that the mother's husband generally shall be treated as the father—and in this way seemingly anticipates only opposite-sex marital unions.

But if the artificial insemination statute is the concern, it's still hard to see how summary reversal should follow for at least a few reasons. First, petitioners didn't actually

challenge § 9–10–201 in their lawsuit. Instead, petitioners sought and the trial court granted relief eliminating **2080

the State's authority under  § 20–18–401 to enforce a **birth** registration regime generally based on biology. On appeal, the state supreme court simply held that this overbroad remedy wasn't commanded by *Obergefell* or the Constitution. And, again, nothing in today's opinion for the Court identifies anything wrong, let alone clearly wrong, in that conclusion. Second, though petitioners' lawsuit didn't challenge § 9–10–201, the State has repeatedly conceded that the benefits afforded nonbiological parents under § 9–10–201 must be afforded equally to both same-sex and opposite-sex couples. So that in this particular case and all others of its kind, the State agrees, the female spouse of the **birth** mother must be listed on **birth certificates** too. Third, further proof still of the state of the law in Arkansas today is the fact that, when it comes to adoption (a situation not present in this case but another one in which Arkansas departs from biology based registration), the State tells us that adopting parents are eligible for placement on **birth certificates** without respect to sexual orientation.

Given all this, it seems far from clear what here warrants the strong medicine of summary reversal. Indeed, it is not even clear what the Court expects to happen on remand that hasn't happened already. The Court does not offer any remedial *570 suggestion, and none leaps to mind. Perhaps the state supreme court could memorialize the State's concession on § 9–10–201, even though that law wasn't fairly challenged and such a chore is hardly the usual reward for seeking faithfully to apply, not evade, this Court's mandates.

I respectfully dissent.

All Citations

582 U.S. 563, 137 S.Ct. 2075, 198 L.Ed.2d 636, 85 USLW 3595, 85 USLW 4475, 17 Cal. Daily Op. Serv. 6112, 2017 Daily Journal D.A.R. 6257, 26 Fla. L. Weekly Fed. S 767

Footnotes

- * As the petitioners point out, other factual scenarios (beyond those present in this case) similarly show that the State's **birth certificates** are about more than genetic **parentage**. For example, when an Arkansas child is adopted, the State places the child's original **birth certificate** under seal and issues a new **birth certificate**—

unidentifiable as an amended version—listing the child's (nonbiological) adoptive parents. See [Ark.Code §§ 20–18–406\(a\)\(1\), \(b\) \(2014\)](#); [Ark. Admin. Code 007.12.1–5.5\(a\) \(Apr. 2016\)](#).