

從同性婚姻反思平等保護權

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摘 要

溫莎案（United States v. Windsor）是美國有關同性婚姻最具指標性的案件，該案中美國最高法院宣告《捍衛婚姻法案》（DOMA：Defense of Marriage Act）第 3 章中將「婚姻」定義為「一男和一女在法律上結合的夫妻關係」，並將「配偶」定義為「異性結合的一方」之規定，違背實質正當程序與美國憲法增修條文第 5 條之平等保護。大法官 Kennedy 於意見書中重申：「反對同性婚姻的聯邦法律無效，蓋其欠缺合法目的外，亦貶低和傷害了欲透過婚姻法尋求保護人格和尊嚴的人¹。」溫莎案的裁判作成，正式揭開了美國同性伴侶結婚將與異性伴侶一樣受到平等對待的序幕。固然平等保護與正當程序為美國憲法上保障的個人權利，人民普遍對該項權利之認識似有不足，究其概念意涵和實務上適用的範疇為何，殊值探討。而我國對於多元成家草案的反應熱烈，支持與反對的意見莫衷一是，本文爰擬從憲法上保障個人權利之法理面切入，並引介美國新近裁判，冀供關心此議題的國人參考。

From Same-Sex Marriage to Reflect on the Equal Protect Right

Chang, Wei-Hsin

Abstract

United States v. Windsor, is a landmark case about same-sex marriage in which the United States Supreme Court held that restricting U.S. federal interpretation of "marriage" and "spouse" to apply only to a man with a woman's relationship, and to heterosexual unions by Section 3 of the Defense of Marriage Act (DOMA), is unconstitutional under the Due Process Clause of the Fifth Amendment; Justice Kennedy wrote: "The federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity." The decision made in the case of Windsor, officially unveiled the United States same-sex couples to marry would be a prelude to be treated equally as same as heterosexual couples. Although the equal protection and due process are constitutional guarantee of individual rights, people seem lacking enough knowledge of these, to what extent the rights' concepts can cover and apply worth exploring. On the other hand, the proposition for multiple families in our country has incurred broad debates in which consents and dissents do not concede for each other. Therefore, this paper intends to introduce the newest U.S. Supreme Court case from the jurisprudent aspect of the constitutional protection to individual rights, for reference of those who concern about the subject.

¹ United States v. Windsor, Docket No. 12-307 (2013). Justice Kennedy: "The federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity."