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Recommended Citation

After finding that the Court had jurisdiction, Justice Kennedy announced the majority opinion. Justice Scalia, writing for the Court, concluded that the民政局 (DOMA) was in violation of the Fifth Amendment. In his dissent, Justice Scalia attacked the majority’s doctrinal reasoning on the merits as “unsound.” He wrote, however, “I write separately to set forth in the name of equal protection grounds, maybe on substantive due process grounds, and perhaps with some amorphous federalism component playing a role.” Id. at 2707 (Scalia, J., dissenting).

This map responds to Justice Scalia’s dissent by illustrating the majority opinion’s doctrinal reasoning on the merits as “unsound.” Justice Kennedy’s majority opinion would be equally impermissible at 2707 (quoting Washington v. Glucksberg, 512 U.S. 272 (1995)), and failed to articulate a “tier of scrutiny” when considering whether DOMA violated equal protection at 2306. As demonstrated in the map, however, the Court has long applied tests other than Justice Kennedy’s when conducting due process and equal protection review. Indeed, Justice Kennedy’s test is sui generis. It is not to be mistaken for any other test the Court has ever applied.

This Map counts as a substantive due process inquiry, deeply rooted in this Nation’s history and tradition, finding the law not only to be unconstitutional on so unsupportable a basis. Justice Brennan: This right of privacy, a basic constitutional right, has its roots in the Fourteenth Amendment... At 331. The majority in this case did not include even the slightest hint of an equal protection rationale. Justice Kennedy also cited 208 U.S. 479 (1913) (Harlan, J., dissenting) and of the proposition that a bare desire to harm unpopular groups is a constitutional right of privacy. Id. at 208. In Windsor, Justice Kennedy cited 381 U.S. 479 (1965) (Harlan, J., dissenting).

In the majority’s opinion, Justice Kennedy directly cited 381 U.S. 479 (1965) (Harlan, J., dissenting). In Windsor, Justice Kennedy cited 381 U.S. 479 (1965) (Harlan, J., dissenting).

In 2003, the Court struck down a Massachusetts law that excluded same-sex couples from the protections and benefits enjoyed by opposite-sex married couples. This right of privacy, a basic constitutional right, has its roots in the Fourteenth Amendment... At 331. The majority in this case did not include even the slightest hint of an equal protection rationale. Justice Kennedy also cited 208 U.S. 479 (1913) (Harlan, J., dissenting) and of the proposition that a bare desire to harm unpopular groups is a constitutional right of privacy. Id. at 208. In Windsor, Justice Kennedy cited 381 U.S. 479 (1965) (Harlan, J., dissenting).