

The Supreme Court of Iowa, on April 3, 2009, ruled that the “state statute [of Iowa] limiting civil marriage to a union between a man and a woman [is] unconstitutional.”

Summary, opening paragraph:

In this case, we must decide if our state statute limiting civil marriage to a union between a man and a woman violates the Iowa Constitution, as the district court ruled. On our review, we hold Iowa marriage statute violates the equal protection clause of the Iowa Constitution. Therefore, we affirm the decision of the district court.

## 1. Background Facts and Proceedings

### a. Paragraph 1 under heading 1, p. 7

#### *The Plaintiffs – Their traits and occupations*

- i. This lawsuit is a civil rights action by twelve individuals who reside in six communities across Iowa.
- ii. Like most Iowans, they are responsible, caring, and productive individuals. They maintain important jobs, or are retired, and are contributing, benevolent members of their communities.
- iii. They include a nurse, business manager, insurance analyst, bank agent, stay-at-home parent, church organist and piano teacher, museum director, federal employee, social worker, teacher, and two retired teachers.
- iv. Some are foster parents.
- v. Like all Iowans, they prize their liberties and live within the borders of this state with the expectation that their rights will be maintained and protected – a belief embraced by our state motto (*Our liberties we prize and our rights we will maintain*).

### b. Paragraph 2 under heading 1, p. 7

#### *The Plaintiffs – Their Sexual/“Marital” Status*

- i. ... the twelve plaintiffs are different from most in one way. They are sexually and romantically attracted to members of their own sex.
- ii. The twelve plaintiffs comprise six same-sex couples who live in committed relationships
- iii. Each maintains a hope of getting married one day, an aspiration shared by many throughout Iowa.

### c. Paragraph 4 under heading 1, p. 8

#### *The Plaintiffs – They seek marriage equality*

- i. They seek to declare the marriage statute [that defines marriage as a union between a man and a woman; paragraph 3, p. 8] unconstitutional so they can obtain the array of benefits of marriage enjoyed by heterosexual couples, protect themselves and their children, and demonstrate to one another and to society their mutual commitment.

### d. Paragraph 5 and 6 under heading 1, p. 8, 9

#### *The disadvantages faced by the Plaintiffs under Iowa Code section 595.2*

- i. The individual rights claimed by the plaintiffs to be adversely affected include[]:
  1. The fundamental right to marry

2. The rights to privacy and familial association
- ii. Plaintiffs claimed the legislative and the actions unconstitutionally discriminated against them on several bases, including sexual orientation
- iii. Explanation by some of the plaintiffs of the disadvantages and fears they face each day due to the inability to obtain a civil marriage
  1. The legal inability to make many life and death decisions affecting their partner, including decisions related to
    - a. health care
    - b. burial arrangements
    - c. autopsy
    - d. disposition of remains following death
- iv. Various plaintiffs told of
  1. The inability to share in their partners'
    - a. state-provided health insurance
    - b. public-employee pension benefits
    - c. the many private-employer-provided benefits and protections
  2. How several tax benefits are denied
  3. How adoption proceedings are also more cumbersome and expensive for unmarried partners
  4. How numerous nongovernmental benefits of marriage that are so common in daily life go unnoticed, such as something so simple as spousal health club memberships.
- v. Perhaps the ultimate disadvantage expressed in the testimony of the plaintiffs is the inability to obtain for themselves and for their children
  1. the personal and public affirmation that accompanies marriage
- e. Paragraph 7 under heading 1, p. 9
 

*In support of marriage discrimination - Five primary interests offered*

  - i. The County offered five primary interests of society in support of the legislature's exclusion definition of marriage
    1. The first three interests are broadly related to the advancement of child rearing. Specifically, the objectives centered on
      - a. Promoting procreation
      - b. Promoting child rearing by a mother and a father within a marriage
      - c. Promoting stability in an opposite-sex relationship to raise and nurture children
    2. The fourth interest raised by the County addressed
      - a. The conservation of state resources
    3. The final (fifth) reason concerned the governmental interest in
      - a. Promoting the concept and integrity of the traditional notion of marriage
- f. Paragraph 8 under heading 1, p. 10
 

*In support of marriage discrimination - Testimonies given in the form of opinions*

  - i. Much of the testimony presented by the County was in the form of opinions by various individuals that same-sex marriage would harm the institution of marriage and also harm children raised in same-sex marriages.
- g. Paragraph 9 under heading 1, p. 10

*Evidence that same-sex couples can raise children as well as opposite-sex couples*

- i. The plaintiffs produced evidence to demonstrate sexual orientation and gender have no effect on children raised by same-sex couples, and same-sex couples can raise children as well as opposite-sex couples.
  - ii. They also submitted evidence to show that most scientific research has repudiated the commonly assumed notion that children need opposite-sex parents or biological parents to grow into well-adjusted adults. [The following] leading organizations [have] weighed the available research and support[] the conclusion that gay and lesbian parents are as effective as heterosexual parents in raising children:
    1. The American Academy of Pediatrics
    2. The American Psychiatric Association
    3. The American Psychological Association
      - a. The official policy of the American Psychological Association declares, "There is no scientific evidence that parenting effectiveness is related to parental sexual orientation: Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for children."
        - i. This statement is the official policy of the Am. Psych. Assoc. regarding sexual orientation, parents and children.
        - ii. See Am. Psychological Ass'n Council of Representatives, Am. Psychological Ass'n, *Resolution on Sexual Orientation, Parents, and Children* (2004), in Ruth Ullmann Paige, *Proceedings of the Am Pscyhological Aoss for the Legislative Year 2004: Minutes of the Annual Meetingof the Council of Representatives July 28 & 30, 2004, Honolulu, HI*, 60 Am. Psychologist 436-511 (July-August 2005), available at <http://www.apa.org/pi/lgbc/policy/parents.html> (reporting adoption or resolution).
    4. The National Association of Social Workers
    5. The Child Welfare League of America
  - iii. Almost every professional group that has studied the issue indicates children are not harmed when raised by same-sex couples, but to the contrary, benefit from them.
  - iv. In Iowa
    1. Agencies that license foster parents have found same-sex couples to be good and acceptable parents.
    2. It is estimated that more than 5,800 same-sex couples live throughout Iowa, and over one-third of these couples [about 2000 couples or so] are raising children
- h. Paragraph 10 under heading 1, p. 11  
*The district court rules in favor of the plaintiffs*
- i. The district court concluded the statute was unconstitutional under the due process and equal protection clauses of the Iowa Constitution . . .
2. **Standard of Review** (Summary Review)
  3. **Constitutional Separation of Powers** (Legislative, Executive, Judicial)
    - a. Paragraph 2 under heading 3, p. 12

*Equal protection of the law an individual right*

- i. The [Iowa] constitution defines certain individual rights upon which the government may not infringe. Equal protection of the law is one of the guaranteed rights.
- b. Paragraph 3 under heading 3, p. 13

*This court's obligation*

- i. This court, consistent with its role to interpret the law and resolve disputes, now has the responsibility to determine if the law enacted by the legislative branch and enforced by the executive branch violates the Iowa Constitution.
- c. Paragraph 4 under heading 3, p. 13

*Constitutional authority over traditional beliefs and popular opinion*

- i. A statute inconsistent with the Iowa Constitution must be declared void, even though it may be supported by strong and deep-seated traditional beliefs and popular opinion.
- d. Paragraph 8 under heading 3, p. 15

*Constitutional authority over traditional beliefs and popular opinion revisited*

*Constitutional authority over traditional beliefs and popular opinion revisited*

- i. Our responsibility, however, is to protect constitutional rights of individuals from legislative enactments that have denied those rights, even when the rights have not yet been broadly accepted, were at one time unimagined, or challenge a deeply ingrained practice or law viewed to be impervious [not allowing entrance or passage] to the passage of time.
- ii. The framers of the Iowa Constitution knew, as did the drafters of the United States Constitution, that 'times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress,' and as our constitution 'endures, persons in every generation can invoke its principles in their own search for great freedom' and equality. *See Lawrence v. Texas*, 2003.

**4. Equal Protection.**

**A. Background Principles, p. 16**

- i. Paragraph 1 under heading 4A, p. 16  
*Equal protection is at the heart of this case*
  1. The primary constitutional principle at the heart of this case is the doctrine of equal protection. The concept of equal protection is deeply rooted in our national and state history . . .
- ii. Paragraph 2 under heading 4A, p. 16  
*Equal protection begins by classifying people*
  1. The process of defining equal protection . . . begins by classifying people into groups.
- iii. Paragraph 3 under heading 4A, p. 16  
*Iowa's history – landmark case of the past*
  1. [In 1839], the Supreme Court of the Territory of Iowa . . . refused to treat a human being as property to enforce a contract for slavery and held our laws must extend equal protection to persons of all races and conditions. This decision was seventeen years before the United States Supreme Court famously decided *Dred Scott v. Sandford* (1856) which upheld the rights of a slave owner to treat a person as property.

2. [In 1868], the Supreme Court of Iowa struck blows to the concept of segregation long before the United States Supreme Court's decision in *Brown v. Board of Education* (1954).
  3. [In 1869], Iowa was the first state in the nation to admit a woman to the practice of law. Her admission occurred three years before the United States Supreme Court affirmed the State of Illinois' decision to *deny* women admission to the practice of law, and twenty-five years before the United States Supreme Court affirmed the refusal of the Commonwealth of Virginia to admit women into the practice of law.
  4. In each of those instances, our state approached a fork in the road toward fulfillment of our constitution's ideals and reaffirmed the 'absolute equality of all' persons before the law as 'the very foundation principle of our government.'
- iv. Paragraph 4 under heading 4A, p. 18  
*There can be no exclusion of any class of people under equal protection*
1. This issue comes to us with the same importance as our landmark cases of the past. The same-sex-marriage debate waged in this case is part of a strong national dialogue centered on a fundamental, deep-seated, traditional institution that has excluded, by state action, a particular class of Iowans. This class of people asks a simple and direct question: How can a state premised on the constitutional principle of equal protection justify exclusion of a class of Iowans from civil marriage?
- B. Legal Tests to Gauge Equal Protection, p. 19**
- i. Paragraph 1 under heading 4B, p. 19  
*Equal protection defined/ explained*
    1. The foundational principle of equal protection is expressed in article I, section 6 of the Iowa Constitution, which provides: "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."
  - ii. Paragraph 2 under heading 4B, p. 20  
*Deference to legislative policy-making indicated by level of scrutiny*
    1. When evaluating challenges based on the equal protection clause, our deference to legislative policy-making is primarily manifested in the level of scrutiny we apply to review legislative action.
  - iii. Paragraph 3 under heading 4B, p. 20  
*The rational basis test*
    1. In most cases, we apply a very deferential standard known as the "rational basis test" [by which is meant] "the plaintiff has the heavy burden of showing the statute unconstitutional and must negate every reasonable basis upon which the classification may be sustained."
  - iv. Paragraph 4 under heading 4B, p. 21  
*Closer scrutiny required when prejudice against minorities is suspected*
    1. Certain types of statutory classifications must be subjected to closer scrutiny. Thus, courts apply a heightened level of scrutiny under equal protection analysis when reasons exist to suspect "prejudice against

discrete and insular minorities . . . which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities.

- v. Paragraph 6 under heading 4B, p. 22

*Intermediate scrutiny requires the defense to show how governmental objectives are served*

- 1. A middle tier of analysis [called “intermediate scrutiny”] exists between rational basis and strict scrutiny. It requires the party seeking to uphold the statute to demonstrate [that] the challenged classification is substantially related to the achievement of an important governmental objective.

**C. Determination of Constitutional Facts, p. 22**

- i. Paragraph 2 under heading 4C, p. 16

*Constitutional facts (also called legislative facts) are social, scientific, etc. facts relevant to the case*

- 1. Social, economic, political or scientific facts . . . have been denominated as “legislative” facts and become relevant to judicial decision-making when courts are required to decide the constitutionality of a statute . . .
- 2. The common role of legislative facts in constitutional cases has led to an alternative designation of legislative facts called “constitutional facts” to better describe those facts “which assist a court in forming a judgment on a question of constitutional law.”

- ii. Paragraph 3 under heading 4C, p. 24

*Constitutional facts are introduced through research, briefs, testimonies*

- 1. Constitutional [or legislative] facts are introduced into judicial decisions through independent research by judges and written briefs of the parties, as well as testimony of witnesses.

- iii. Paragraph 4 under heading 4C, p. 24

*The court’s ruling must show intellectual legitimacy*

- 1. Courts must rely on the most compelling data in order to give needed intellectual legitimacy to the law or rule crafted by the court.

**D. Similarly Situated People, p. 25**

- i. Paragraph 1 under heading 4D, p. 25

*First, the “threshold argument” must be considered*

- 1. The County seeks to undercut the plaintiffs’ equal protection claim by asserting the plaintiffs are not similarly situated to homosexuals. We consider this threshold argument before proceeding to the application of our equal protection text.

- ii. Paragraph 2 under heading 4D, p. 25

*Equal protection - for those similarly situated with respect to the legitimate purposes of the law*

- 1. The equal protection clause does not require all laws to apply uniformly to all people.
- 2. Instead, equal protection demands that laws treat alike all people who are “similarly situated with respect to the legitimate purposes of the law.’ “

- iii. Paragraph 4 under heading 4D

1. The County . . . asserts the plaintiffs are not similarly situated to opposite-sex couple . . . because the plaintiffs cannot “procreate naturally.”
- iv. Paragraph 5 under heading 4D
    1. No two people or groups of people are the same in every way, and nearly every equal protection claim could be run aground onto the shoals of a threshold analysis if the two groups needed to be a mirror image of one another. Such a threshold analysis would hollow out the constitution’s promise of equal protection.
  - v. Paragraph 6 under heading 4D
    1. To truly ensure equality before the law, the equal protection guarantee requires that laws treat all those who are similarly situated with respect to the purposes of the law alike.
    2. The purposes of the law must be referenced in order to meaningfully evaluate whether the law equally protects all people similarly situated with respect to those purposes.
    3. For these reasons, the trait [to be able to procreate naturally] asserted by the County is insufficient to support its threshold argument.
  - vi. Paragraph 7 under heading 4D
    1. We have said our marriage laws “are rooted in the necessity of providing an institutional basis for defining the fundamental relational rights and responsibilities of persons in organized society.”
    2. Civil marriage is “a partnership to which both partners bring their financial resources as well as their individual energies and efforts”
    3. Marriage laws also serve to recognize the status of the parties’ committed relationship. “The marriage state is not one entered into for the purpose of labor and support alone” but also includes “the comfort and happiness of the parties to the marriage contract
    4. “The marriage to be dissolved is not a mere contract, but is a status.”
    5. Marriage changes the parties’ “legal and social status.”
  - vii. Paragraphs 8 and 9 under heading 4D
    1. With respect to *the purposes of Iowa’s marriage laws*, we find the plaintiffs are similarly situated compared to heterosexual persons.
      - a. Plaintiffs are in committed and loving relationships . . . just like heterosexual couples.
      - b. Many are raising families, just like heterosexual couples.
      - c. Official recognition of their status provides an institutional basis for defining their fundamental relational rights and responsibilities, just as it does for heterosexual couples.
      - d. Society benefits, for example, from providing same-sex couples a stable framework within which to raise their children and the power to make health care and end-of-life decisions for loved ones, just as it does when that framework is provided for opposite-sex couples.
    2. With respect to the government’s purpose of “providing an institutional basis for defining the fundamental relational rights and responsibilities of persons,” same-sex couples are similarly situated to opposite-sex couples.

- E. **Classification Undertaken in Iowa Code Section 595.2** (that “only a marriage between a male and a female is valid”), p. 29
- i. Paragraphs 1 and 2 under heading 4E, p. 29
    - 1. [The Iowa Supreme Court] believe[s] the ban on civil marriages between two people of the same sex classifies [discriminates] on the basis of sexual orientation.
      - a. The district court held section 595.2 classifies [discriminates] according to gender.
      - b. The County argues that same-sex marriage ban does not discriminate on either the bases of gender nor the basis of sexual orientation.
        - i. The same-sex civil marriage ban does not grant or withhold the benefits flowing from the statute based on sexual preference. Instead, the County argues, section 595.2 only incidentally impacts disparately upon gay and lesbian people.
  - ii. Paragraphs 4 and 5 under heading 4E, p. 30
    - 1. Viewed in the complete context of marriage, including intimacy, civil marriage with a person of the opposite sex is as unappealing to a gay or lesbian person as civil marriage with a person of the same sex is to a heterosexual. Thus, the right of a gay or lesbian person under the marriage statute to enter into a civil marriage only with a person of the opposite sex is no right at all.
    - 2. A gay or lesbian person can only gain the same rights under the statue as a heterosexual person by negating the very trait that defines gay and lesbian people as a class – their sexual orientation.
    - 3. The benefit denied [to same-sex couples] by the marriage statute . . . is so “closely correlated with being homosexual” as to make it apparent the law is targeted at gay and lesbian people as a class.
    - 4. By purposefully placing civil marriage outside the realistic reach of gay and lesbian individuals, the ban on same-sex civil marriages differentiates implicitly on the basis of sexual orientation.
      - a. Thus, we proceed to analyze the constitutionality of the statute based on sexual orientation discrimination.
- F. **Framework for Determining Appropriate Level of Judicial Scrutiny**, p. 31
- i. Paragraph 1 under heading 4E, p. 31
    - 1. To determine if this particular classification [sexual-orientation-based classification] violates constitutional principles of equal protection, we must next ask what level of scrutiny applies to classifications of this type.
      - a. The County argues the more deferential *rational basis* test should apply
      - b. The plaintiffs argue *closer scrutiny* is appropriate
  - ii. Paragraph 2 and 3 under heading 4E p. 32
    - 1. The Supreme Court has expressed a number of general principles to assist in identifying the appropriate level of scrutiny.



- a. Laws based on these types of classifications [like race, alienage, national origin, sex, or illegitimacy] must withstand more intense judicial scrutiny than other types of classifications.
    - iii. Paragraph 4 under heading 4E, p. 33
      - 1. The Supreme Court has looked to four factors to determine whether certain legislative classifications warrant more demanding constitutional analysis (p. 33) . . . to discern whether a need for heightened scrutiny exists (p. 37):
        - a. The history of invidious discrimination against the class burdened by the legislation
        - b. Whether the characteristics that distinguish the class indicate a typical class member’s ability to contribute to society
        - c. Whether the distinguishing characteristic is “immutable” or beyond the class members’ control
        - d. The political power of the subject class
- G. Determination of Appropriate Level of Scrutiny, p. 37**
- i. Paragraph 1 under heading 4E, p. 37
    - 1. We next consider each of the four traditional factors and assess how each bears on the question of whether . . . a more searching scrutiny be applied.

**G1. History of discrimination against gay and lesbian people, p. 37**

Paragraphs 1 – 3 under G1, p. 37-39

- 1. The County does not, and could not in good faith, dispute the historical reality that gay and lesbian people as a group have long been the victim of purposeful and invidious discrimination because of their sexual orientation.
- 2. The long and painful history of discrimination against gay and lesbian persons is epitomized by the criminalization of homosexual conduct in many parts of this country until very recently. *See Lawrence*, 539 U.S., 2003.
- 3. Only a few years ago persons identified as homosexual were dismissed from military service regardless of past dedication and demonstrated valor.
- 4. Public employees identified as gay or lesbian have been thought to pose security risks due to a perceived risk of extortion resulting from a threat of public exposure.
- 5. School-yard bullies have psychologically ground children with apparently gay or lesbian sexual orientation in the cruel mortar and pestle of school-yard prejudice.
- 6. Lesbian and gay people continue to be frequent victims of hate crimes.
- 7. The Iowa General Assembly has recognized the need to address sexual-orientation-based discrimination by
  - a. including sexual orientation as a characteristic protected in the Iowa Civil Rights Act
  - b. defining hate crimes to include certain offenses committed because of the victim’s sexual orientation, and by
  - c. prohibiting ‘harassing or bullying’ behavior in schools based on sexual orientation.

- d. These statutory enactments demonstrate a legislative recognition of the need to remedy historical sexual-orientation-based discrimination.

*In sum, this history of discrimination suggests any legislative burdens placed on lesbian and gay people as a class “are more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective.*

*This observation favors an elevated scrutiny to uncover any such prejudice.*

**G2. Sexual orientation and the ability to contribute to society, p. 39**

Paragraphs 1 – 2 under G2, p. 39-41

1. Heightened scrutiny is applied when the classification [sexual orientation] bears no relationship to a person’s ability to contribute to society. The existence of this factor indicates the classification is likely based on irrelevant stereotypes and prejudice.
  - a. A classification unrelated to a person’s ability to perform or contribute to society typically reflects “prejudice and antipathy – a view that those in the burdened class are not as worthy or deserving as others” or “reflect[s] outmoded notions of the relative capabilities of persons with the characteristic.”
2. None of the same-sex marriage decisions from other state courts around the nation have found a person’s sexual orientation to be indicative of the person’s general ability to contribute to society.
3. Based on Iowa statutes and regulations [cited here], it is clear sexual orientation is no longer viewed in Iowa as an impediment to the ability of a person to contribute to society.

**G3. Immutability of sexual orientation, p. 41**

Paragraphs 1 – 4 under G3, p. 41-45

1. The County . . . argue[s] the summary judgment granted by the district . . . was improper because plaintiffs could not prove, as a matter of fact, that sexuality is immutable. . . . To evaluate this argument, we must first consider the rationale for using immutability as a factor.
  - a. “Legal burdens should bear some relationship to individual responsibility”
  - b. When a characteristic is immutable, different treatment based on this characteristic seems “all the more invidious and unfair.”
2. The County acknowledges sexual orientation is highly resistant to change.
3. Additionally, “sexuality orientation ‘forms a significant part of a person’s identity.’ ”
4. [S]exual orientation is central to personal identity and “ ‘may be altered [if at all] only at the expense of significant damage to the individual’s sense of self.’ ”

*Sexual orientation is not the type of human trait that allows courts to relax their standard of review . . .*

**G4. Political powerlessness of lesbian and gay people, p. 45**

Paragraphs 1 – 6 under G4, p. 45-48

1. [T]he specific right [of same-sex marriage] sought in this case has largely lacked any extensive political support and has actually experienced an affirmative backlash, p. 48.
  - a. [Legislative] bodies have taken affirmative steps to shore up the concept of traditional marriage by specifically excluding gays and lesbians. Like Iowa, over forty other states have passed statutes or constitutional amendments to ban same-sex marriages, p. 47.

*[T]he political-power factor does not weigh against heightened judicial scrutiny of sexual-orientation based legislation.*

**G5. Classifications based on sexual orientation demand closer scrutiny, p. 48**

Paragraph 1 under G4, p. 48-49

*In summarizing the rationale supporting heightened scrutiny of legislation classifying on the basis of sexual orientation, it would be difficult to improve upon the words of the Supreme Court of Connecticut:*

*Gay persons have been subjected to and stigmatized by a long history of purposeful and invidious [i.e. hateful] discrimination that continues to manifest itself in society. The characteristic that defines the members of this group – attraction to persons of the same sex – bears no logical relationship to their ability to perform in society, either in familial relations or otherwise as productive citizens. Because sexual orientation is such an essential component of personhood, even if there is some possibility that a person's sexual preference can be altered, it would be wholly unacceptable for the state to require anyone to do so. Gay persons also represent a distinct minority of the population. It is true, of course, that gay persons recently have made significant advances in obtaining equal treatment under the law. Nonetheless, we conclude that, as a minority group that continues to suffer the enduring effects of centuries of legally sanctioned discrimination, laws singling them out for disparate treatment are subject to heightened judicial scrutiny to ensure that those laws are not the product of such historical prejudice and stereotyping.*

*Accordingly, we hold that legislative classifications based on sexual orientation must be examined under a heightened level of scrutiny under the Iowa Constitution.*

**H. Application of Heightened Scrutiny, p. 49**

- i. Paragraph 1 under heading H, p 49

*Because we conclude Iowa's same-sex marriage statute cannot withstand intermediate scrutiny, we need not decide whether classifications based on sexual orientation are subject to a higher lever of scrutiny. Thus, we turn to a discussion of the intermediate scrutiny standard. [Footnote 23: The "rigidified" tiered approach has long had its detractors. ...we decline to adopt a new approach in this case.]*

**H1. Intermediate scrutiny standard, p. 50**

Paragraph 1 under heading H1, p. 50

1. To withstand intermediate scrutiny, a statutory classification must be substantially related to an important governmental objective
2. To this end, courts evaluate whether the proffered governmental objectives are important and whether the statutory classification is " 'substantially related to the achievement of those objectives.' "

**H2. Statutory classification: exclusion of gay and lesbian people from civil marriage, p. 50**

Paragraph 1 under heading H2, p. 50

1. Because the relevant focal point is the opportunity sought by the plaintiffs [their exclusion from the institution of civil marriage], the issue presented by this lawsuit is whether the state has "exceedingly persuasive" reasons for denying civil marriage to same-sex couples, not whether state-sanctioned, heterosexual marriage is constitutional.
2. Thus, the question we must answer is whether excluding gay and lesbian people from civil marriage is substantially related to any important governmental objective.

**H3. Governmental objectives, p. 51**

Paragraphs 1 and 2 under heading H3, p. 51

1. The County has proffered a number of objectives supporting the marriage statute
2. "The burden of justification is demanding and it rests entirely on the State."

**H3a. Maintaining traditional marriage, p. 52**

Paragraph 1 under heading H3a, p. 52

1. [T]he County argues the same-sex marriage ban promotes the "integrity of traditional marriage" by "maintaining the historical and traditional marriage norm ([as] one between a man and a woman)."

Paragraph 3 under heading H3a, p. 53

1. This approach is, of course, an empty analysis. It permits a classification to be maintained " 'for its own sake.' "
2. Moverover, it can allow discrimination to become acceptable as tradition and helps to explain how discrimination can exist for such a long time. If a simple showing that discrimination is traditional satisfies equal protection, previous successful equal protection challenges of invidious racial and gender classifications would have failed.
3. Consequently, equal protection demands that " 'the classification ([that is], the exclusion of gay [persons] from civil marriage) must

advance a state interest that is separate from the classification itself.' ”

Paragraph 5 under heading H3a, footnote 25, p. 54

1. The County has simply failed to explain how the traditional institution of *civil* marriage would suffer if same-sex civil marriage were allowed. There is no legitimate notion that a more inclusive definition of marriage will transform civil marriage into something less than it presently is for heterosexuals.

**H3b. Promotion of optimal environment to raise children, p. 54**

Paragraph 1 under the heading H3b, p. 54

1. Another governmental objective proffered by the County is the promotion of “child rearing by a father and a mother in a marital relationship which social scientists say with confidence is the optimal milieu for child rearing.” This objective implicates the broader governmental interest to promote the best interest of children.
2. We first examine the underlying premise proffered by the County that the optimal environment for children is to be raised within a marriage of both a mother and a father.

Paragraph 2 under heading H3b, p. 54

1. Plaintiffs presented an abundance of evidence and research, confirmed by our independent research, supporting the proposition that the interests of children are served equally by same-sex parents and opposite-sex parents.
2. On the other hand, we acknowledge the existence of reasoned opinions that dual-gender parenting is the optimal environment for children. These opinions, while thoughtful and sincere, were largely unsupported by reliable scientific studies.
3. (Footnote 26) The research appears to strongly support the conclusion that same-sex couples foster the same wholesome environment as opposite-sex couples and suggests that the traditional notion that children need a mother and a father to be raised into healthy, well-adjusted adults is based more on stereotype than anything else.

Paragraph 5 under heading H3b, p. 56

1. [Under-inclusive.] If the marriage statute was truly focused on optimal parenting, many classifications of people would be excluded [such as child abusers, sexual predators, parents neglecting to provide child support, and violent felons – that are undeniably less than optimal], not merely gay and lesbian people.

Paragraph 8 under heading H3b, p. 57

1. [Over-inclusive.] The ban on same-sex marriage is substantially over-inclusive because not all same-sex couples choose to raise children.

Paragraph 9 under heading H3b, p. 57

1. Quite obviously, the statute does not prohibit same-sex couples from raising children. Same-sex couples currently raise children in Iowa, even while being excluded from civil marriage, and such couples will undoubtedly continue to do so.
  - a. Recognition of this under-inclusion puts in perspective just how minimally the same-sex marriage ban actually advances the purported legislative goal.
2. A law so simultaneously over-inclusive and under-inclusive is not substantially related to the government's objective.
3. In the end, a careful analysis of the over- and under-inclusiveness of the statute reveals it is less about using marriage to achieve an optimal environment for children and more about merely precluding gay and lesbian people from civil marriage.

Paragraph 11 under heading H3b, p. 59

1. This conclusion suggests stereotype and prejudice, or some other unarticulated reason, could be present to explain the real objectives of the statute.

**H3c. Promotion of procreation, p. 59**

Paragraph 1 and 2 under heading H3c, p. 59

1. [T]he County fails to address the real issue in our required analysis of the objective: whether exclusion of gay and lesbian individuals from the institution of civil marriage will result in more procreation?
2. Specifically, the statute under-inclusive with respect to the objective of increasing procreation because it does not include a variety of groups that do not procreate for reasons such as age, physical disability, or choice.
3. In other words, the classification is not substantially related to the asserted legislative purpose.

**H3d. Promoting stability in opposite-sex relationships, p. 60**

Paragraph 1 under heading H3d, p. 60

1. The stability of opposite-sex relationships is an important governmental interest, but the exclusion of same-sex couples from marriage is not substantially related to that objective.

**H3e. Conservation of resources, p. 60**

Paragraph 1 under heading H3d, p. 60

1. By way of example, the County hypothesizes that, due to our laws granting tax benefits to married couples, the State of Iowa would reap less tax revenue if individual taxpaying gay and lesbian people were allowed to obtain a civil marriage.
2. Excluding any group from civil marriage – African-Americans, illegitimates, aliens, even red-haired individuals – would conserve state resources in an equally “rational” way. Yet, such classifications so obviously offend our society's collective sense of equality that courts have not hesitated to provide added protection against such inequalities.

3. [Footnote 28] Plaintiffs identify over two hundred Iowa statutes affected by civil-marriage status. [The footnote enumerates some of these marriage/spousal benefits.] The Government Accounting Office, as of 2005, had identified more than 1000 federal legal rights and responsibilities derived from marriage.

Paragraph 4 under heading H3d, p. 62

1. Indeed, under the County's logic, more state resources would be conserved by excluding groups more numerous than Iowa's estimated 5800 same-sex couples (for example, persons marrying for a second or subsequent time).

#### H4. **Conclusion**, p. 63

1. While the objectives asserted may be important (and many undoubtedly are important), none are furthered in a substantial way by the exclusion of same-sex couples from civil marriage.
2. Our equal protection clause requires more than has been offered to justify the continued existence of the same-sex marriage ban under the statute.

#### I. **Religious Opposition to Same-sex Marriage**, p. 63

##### i. Paragraphs 1-3 and under heading I, p. 63

1. Now that we have addressed and rejected each specific interest advanced by the County to justify the classification drawn under the statute, we consider the reason for the expulsion of gay and lesbian couples from civil marriage left unspoken by the County: religious opposition to same-sex marriage.
  - a. The County's silence reflects, we believe, its understanding this reason cannot, under our Iowa Constitution, be used to justify a ban on same-sex marriage.
2. While unexpressed, religious sentiment most likely motivates many, if not most, opponents of same-sex civil marriage and perhaps even shapes the views of those people who may accept gay and lesbian unions but find the notion of same-sex marriage unsettling.
  - a. Consequently, we address the religious undercurrent propelling the same-sex marriage debate as a means to fully explain our rational for rejecting the dual-gender requirement of the marriage statute.
3. Whether expressly or impliedly, much of society rejects same-sex marriage due to sincere, deeply ingrained – even fundamental – religious belief.

##### ii. Paragraph 4 under heading I, p. 64

1. Yet, such views are not the only religious views of marriage.
2. [O]ther equally sincere groups and people in Iowa and around the nation have strong religious views that yield the opposite conclusion

##### iii. Paragraphs 5 and 6 under heading I, p. 65

1. Our constitution does not permit any branch of government to resolve these types of religious debates and entrusts to courts the task of ensuring government *avoids* them.

2. The statute at issue in this case does not prescribe a definition of marriage for religious institutions. Instead, the statute declares, “Marriage is a civil contract” and then regulates that civil contract.
  3. Thus, in pursuing our task in this case, we proceed as civil judges, far removed from the theological debate of religious clerics, and focus only on the concept of civil marriage and the state licensing system that identifies a limited class of person entitled to secular rights and benefits associated with civil marriage.
  4. We, of course, have a constitutional mandate to protect the free exercise of religion in Iowa, which includes the freedom of a religious organization to define marriages it solemnizes as unions between a man and a woman.
    - a. This mission to protect religious freedom is consistent with our task to prevent government from endorsing any religious view.
    - b. State government can have no religious views, either directly or indirectly, expressed through its legislation.
    - c. This proposition is the essence of the separation of church and state.
- iv. Paragraph 7 under heading I, p. 66
1. As a result, civil marriage must be judged under our constitutional standards of equal protection and not under religious doctrines or the religious views of individuals.
    - a. This approach does not disrespect or denigrate the religious views of many Iowans who may strongly believe in marriage as a dual-gender union, but considers, as we must, only the constitutional rights of all people, as expressed by the promise of equal protection for all.
  2. We are not permitted to do less and would damage our constitution immeasurably by trying to do more.
    - a. The only legitimate inquiry we can make is whether [the statute] is constitutional. If it is not, its virtues . . . cannot save it; if it is, its faults cannot be invoked to accomplish its destruction.
    - b. If the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be abandoned.
- v. Paragraph 8 under heading I, p. 67
1. In the final analysis, we give respect to the views of all Iowans on the issue of same-sex marriage – religious or otherwise – by giving respect to our constitutional principles.
    - a. These principles require that the state recognize both opposite-sex and same-sex civil marriage.
    - b. Religious doctrine and views contrary to this principle of law are unaffected, and
      - i. [P]eople can continue to associate with the religion that best reflects their views.
      - ii. A religious denomination can still define marriage as a union between a man and a woman, and



- iii. [A] minister, priest, rabbi, or other person ordained or designated as a leader of the person's religious faith does not lose its meaning as a sacrament or other religious institution.
        - iv. The sanctity of all religious marriages celebrated in the future will have the same meaning as those celebrated in the past.
      - 2. The only difference is *civil* marriage will now take on a new meaning that reflects a more complete understanding of equal protection of the law. This result is what our constitution requires.
- J. Constitutional Infirmary, p. 67**
- i. Paragraphs 1 and 2 under heading J, p. 67
    - 1. The legislature has excluded a historically disfavored class of persons from a supremely important civil institution without a constitutionally sufficient justification.
    - 2. We have a constitutional duty to ensure equal protection of the law. Iowa's marriage statute, Iowa Code section 595.2, violates the Iowa Constitution.
- V. Remedy**
- i. Paragraphs 1 and 2 under heading V., p. 67
    - 1. [W]e must decide how to best remedy the constitutional violation.
    - 2. The high courts of other jurisdictions have remedied constitutionally invalid bans on same-sex marriage in two ways.
      - a. Some courts have ordered gay and lesbian people to be allowed to access the institution of civil marriage
      - b. Other courts have allowed their state legislatures to create parallel civil institutions for same-sex couples
        - i. A new distinction [like civil unions] based on sexual orientation would be equally suspect and difficult to square with the fundamental principles of equal protection embodied in our constitution
        - ii. This record, our independent research, and the appropriate equal protection analysis do not suggest the existence of a justification for such a legislative classification that substantially furthers any governmental objective.
    - 3. Consequently, the language in Iowa Code section 595.2 limiting civil marriage to a man and a woman must be stricken from the statute, and the remaining statutory language must be interpreted and applied in a manner allowing gay and lesbian people full access to the institution of civil marriage.

**VI. Conclusion**

Iowa Code section 595.2 violates the equal protection provision of the Iowa Constitution.

**AFFIRMED**

All justices concur