

The US Supreme Court's landmark rulings of June 2015

The founding fathers drafting the US Constitution designed the government so that each branch had a check on the others, in order that no single branch would have absolute power. The Supreme Court's main method of controlling the power of the legislative branch is judicial review. Under this principle, it has the power to examine laws and declare them unconstitutional. While the US Constitution holds that democracy is the appropriate process for change, the Court has now ruled, in *Obergefell v. Hodges*, that 'individuals who are harmed need not await legislative action before asserting a fundamental right'. In the closing days of June, the Court issued three rulings which have made, and will continue to have a major impact not only on US citizens but also on the broader US political landscape.

Legality of same-sex marriage in the United States

On 26 June, the US [Supreme Court's opinion in *Obergefell v. Hodges*](#) affirmed the legality of same-sex marriage in the United States. The Court followed through on the promise of the Constitution, ruling that the [14th Amendment](#) does not allow states to condemn same-sex couples to unjustified second-class status solely because of their sexual orientation. This reasoning is fully consistent with the Court's longstanding recognition that the main objective of the 14th amendment is to protect minority groups and to ensure appropriate safeguards to those unable to protect themselves. Indeed, the fundamental liberties protected by this amendment include most of the rights enumerated in the [Bill of Rights](#). Moreover, the Court maintains that the Constitution is an evolving text which requires a reasoned interpretation according to current thinking, because 'the nature of injustice is that we may not always see it in our own times'.

The Court set out four main arguments supporting its opinion in the case of same-sex marriage:

- Firstly, decisions about marriage are among the most intimate that an individual can make.
- Secondly, marriage is a distinctive institution because 'it supports a two-person union unlike any other in its importance to the committed individuals'.
- Thirdly, the Court referred to the links between marriage, children and families. The Court pointed out that not all married opposite-sex couples have children, and they are certainly not required to do so by law. The same rule should apply to same-sex married couples. But, most importantly, for those same-sex couples that do want to have children – including the many couples who adopt or have children using the genetic material from one or both parents – should their unions be considered less than marriage under the law creates a 'more difficult and uncertain family life. The marriage laws at issue thus harm and humiliate the children'.
- Finally, the Court affirmed that marriage is 'a keystone of the U.S.'s social order'. It is, according to the Court, the legal institution at the centre of the United States from an educational and a social point of view and, because of this, 'it is demeaning to lock same-sex couples out of a central institution of the Nation's society, for they too may aspire to the transcendent purposes of marriage'.

The Affordable Care Act (commonly known as Obamacare)

On 25 June, the Court upheld a key provision of Obamacare. [Some argue](#) that this is a huge victory for President Obama because it ensures that about 6.4 million people purchasing health insurance on the

federal exchange in around 34 states will continue to be able to do so. Indeed, the *King v. Burwell* case represented the biggest legal threat to Obamacare since the Court ruled the law was constitutional three years ago.

In its [opinion](#), the Court argued that a ruling which killed off subsidies would set the state markets into a 'death spiral', and that this could not have been the intention of Congress. Beyond the political implications of such a judgment, it is worth noting the Court's position on how a federal statute should be interpreted. The Court reaffirmed that federal statutes cannot be interpreted to negate their own purposes.

In this specific case, the Court noticed that the Affordable Care Act contains more than a few examples of ill-phrased drafting because Congress passed much of the Act behind closed doors and through a complicated budgetary procedure which limited opportunities for debate and amendments. As a result, provisions are ambiguous and the text suffers from 'inartful drafting'. It is precisely when this happens that writings should be considered in context and with a 'view to their part in the overall statutory scheme'. According to the Court, in a democracy, the power to make legislation remains with those chosen by the people, the role of the judiciary is limited to saying what the law is. Therefore, the role of the judiciary is to take care not to undo what the legislator has done.

The Clean Air Act

Finally, on 29 June, the Supreme Court dealt a blow to the Obama administration's landmark air quality rule, [ruling](#) that the Environmental Protection Agency (EPA) did not properly consider the costs of the regulation. The Court considered that EPA should have taken into account the costs of utilities and others in the power sector before even deciding whether to set limits for the toxic air pollutants it regulated in 2011.

The Clean Air Act directs the EPA to regulate emissions of hazardous air pollutants from certain stationary sources (e.g. oil refineries). However, EPA may regulate power plants only if it concludes that 'regulation is appropriate and necessary', after having studied if and to what extent emissions from power plants represent a risk for public health.

The agency had found that power-plant regulation was both appropriate and necessary and estimated that the rule, which took effect in April 2015, would cost US\$9.6 billion per year but produce only between US\$4 million and US\$6 million in benefits per year. The cost to power plants was thus between 1 600 and 2 400 times greater than the quantifiable benefits. However, in addition to that, the agency had considered ancillary benefits of the regulation, which it calculated increased the estimated quantifiable benefits to between US\$37 billion and US\$90 billion per year.

'Appropriate and necessary' is, in the Court's interpretation, a capacious phrase. In particular, the Court wrote that 'appropriate is the classic broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors'. In the Court's opinion, this gives agencies a certain margin of manoeuvre but also requires them to consider all the relevant information, and cost, in the Court's opinion, is one relevant point. Some would even argue that 'imposing billions of dollars in economic costs in returns for a few dollars in health or environmental benefits' is neither rational nor appropriate.

Nevertheless, by deciding that costs had made no difference to the initial decision to regulate, the Supreme Court considered that the EPA went beyond the reasonable interpretation of the Clean Air Act, judging that a reasonable regulation should be built not only upon consideration of both advantages and disadvantages but also upon careful consideration of its economic implications. It is obvious that too high an expenditure devoted to one single problem reduces the possibility 'to effectively deal with other (perhaps more serious) problems'.

While the agency is afforded a certain level of freedom in interpreting law (it remains indeed up to the agency to decide how to account for cost), the Court wrote, 'the EPA strayed well beyond the bounds of reasonable interpretation in concluding that cost is not a factor relevant to the appropriateness of regulating power plants'.