

# The Supreme Court's same-sex marriage ruling: What you need to know now

*In Obergefell v. Hodges, the U.S. Supreme Court declared that same-sex couples have the legal right to marry nationwide. Religious arguments are made on both sides of the same-sex marriage debate, and conversations are now turning to the decision's effect on religious liberty. Here are important things to keep in mind about the landmark ruling and what it means for you and your church.*

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## **The word “marriage” can refer to two distinct concepts: civil marriage and religious marriage.**

Marriage is a religious act that occurs in the context of a religious community consistent with religious texts, traditions and understandings. Marriage is also a civil institution that affords certain legal privileges and protections. The law treats these concepts differently.

## ***Obergefell v. Hodges* is about civil marriage.**

The ruling will have religious liberty implications, but it is not a First Amendment case and is not based on religious liberty. It is grounded in due process and equal protection under the Fourteenth Amendment. The Court held that civil marriage is a fundamental right demonstrated through principles about individual autonomy, the singular importance of the marriage union, protection of children and families, and the preservation of social order. The Court held that exclusion of same-sex couples from civil marriage could not be supported in light of these principles.

## **The way your church does marriage does not need to change.**

The Court's decision does not remove the separation of church and state. Churches will continue to make their own decisions about the marriage ceremonies they conduct. This was true before the decision and continues to be true. The Court's ruling can be an occasion for houses of worship and ministers to reflect on and educate members about the relationship between the civil and religious aspects of marriage.

## **The ruling does not decide religious questions about marriage.**

While religious liberty rights were not at issue in the case, the Court's decision in *Obergefell* respectfully acknowledged that some deeply held and long-standing religious beliefs oppose same-sex marriage. This kind of respectful treatment of dissenting views is important in continuing to protect religious liberty without harming the rights the Court affirmed. The conversations will continue, and legal conflicts will not be worked out overnight. Harder questions, particularly about religiously affiliated institutions and religious objectors in the marketplace, will depend on the circumstances of each situation and the interplay of a variety of laws.

## **Threats of losing 501(c)(3) tax-exempt status have been highly exaggerated.**

After *Obergefell*, some have asserted that churches and other religious organizations will lose their tax-exempt status if they oppose same-sex marriage. Churches have long followed their own rules for performing marriages without such threat. *Obergefell* does not change this. Any threat to the tax-exempt status of religious entities would require an

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expansion of the U.S. Supreme Court's decision in *Bob Jones University v. United States* (1983). That case — which upheld the revocation of tax-exempt status based on the university's racially discriminatory admission policies — by its own terms does not apply to churches and has not been applied beyond racial discrimination in education. It is unlikely that the Court's decision in favor of same-sex marriage will have any effect on the 501(c)(3) status of religious organizations that oppose same-sex marriage. During a Congressional hearing in July 2015, the IRS confirmed there is no immediate threat to the tax-exempt status of religious colleges and universities who oppose same-sex marriage.

### ***Obergefell* does not create automatic access to facilities owned by religious entities.**

Laws that prohibit discrimination in public accommodations, housing and employment vary widely. Where such laws exist and prohibit discrimination based on sexual orientation, many have exemptions for religious organizations. Whether buildings — including sanctuaries — owned by churches or other religious organizations are affected by the Court's ruling in *Obergefell* depends on how such buildings are used and marketed as well as the specific nondiscrimination laws of the jurisdiction. Churches may limit the use of their sanctuaries to weddings consistent with their religious teachings.

### **Religious liberty is a foundational concept that requires more than sound bite attention.**

America protects religious freedom in a distinct way — a way that allows people with vastly different beliefs to live peaceably with each other. We start with the first 16 words in the Bill of Rights: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” These words make clear that the role of government in religious matters is limited. Additional protections exist in various federal, state and local laws. While religious liberty is not absolute, robust religious liberty protects the freedom to believe and the right to exercise or act upon one's religious convictions. People with very little in common often want the same things when it comes to religion, such as the ability to believe and act in accordance with their conscience, equal rights under the law, and a government that does not take sides in religious disputes. Courts, legislatures, churches and informed citizens all share the responsibility to uphold America's legacy of religious freedom.

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