

POLICY BRIEF

Understanding the U.S. Supreme Court's Same-Sex Marriage Ruling

Summary: On June 26, 2015, the U.S. Supreme Court handed down a 5-4 decision in *Obergefell v. Hodges* effectively nullifying marriage laws across more than three-fifths of America and legalizing same-sex marriage nationwide. Each of the four justices who disagreed with the court's decision—Chief Justice Roberts and Associate Justices Scalia, Thomas, and Alito—offered dissenting opinions highlighting the flaws of the ruling. Below is an overview of the ruling and its consequences.

The Ruling's Effect on State Marriage Laws

By interpreting the fifth and fourteenth amendments to the U.S. Constitution to create a right to fundamental same-sex marriage, the U.S. Supreme Court invalidated all state laws related to same-sex marriage.

- ❖ The ruling invalidated all state marriage laws defining marriage as the union of a man and a woman.
- ❖ The ruling invalidated all state marriage laws defining marriage to include same-sex marriage.
- ❖ Because the ruling reinterprets the fifth and fourteenth amendments to give adults the fundamental right to marry whomever they wish, the ruling threatens state laws against polygamy.

The Ruling's Effect on Religious Freedom

The ruling fails to include any meaningful protections for the free exercise of religion.

- ❖ It recognizes that people of faith may object to same-sex marriage, and that they may want to teach same-sex marriage is wrong; it deliberately fails to protect their right to act on those beliefs.
- ❖ This means the ruling fails to protect a minister who does not wish to perform a same-sex ceremony; a church that does not wish to host a same-sex ceremony; and a photographer, florist, or similar person who does not wish to take part in a same-sex ceremony.
- ❖ The ruling leaves justices of the peace and similar state officials with religious objections to same-sex marriage vulnerable to litigation if they decline to solemnize same-sex unions.
- ❖ Under this ruling, nonprofits, faith-based adoption agencies, Christian universities, and others may lose accreditation and tax-exempt status if they fail to recognize same-sex marriage.

The Ruling's Unintended Consequences

- ❖ **Undermining Democracy:** The ruling disenfranchises millions of voters who took part in elections defining marriage. As Justice Scalia noted in his dissenting opinion, the ruling sends the clear message that the court believes it—not the American people—are the final authority.
- ❖ **Changing the Face of Constitutional Law:** To make same-sex marriage a “fundamental right,” the court broadened its interpretations of the fifth and fourteenth amendments; this will affect how those amendments are applied in the future. As Chief Justice Roberts noted, when past courts interpreted the Constitution and the court's power more broadly, the result was greater judicial activism.
- ❖ **Government Control of Personhood:** The court justified its decision in part by claiming state laws against same-sex marriage “diminish [same-sex couples'] personhood.” As Justice Thomas pointed out, human dignity and personhood do not come from the state. A state may honor or violate human dignity; a state cannot bestow, increase, or diminish it. Saying state marriage laws diminish personhood is like saying personhood comes from the government. That is a very bold claim.



Questions and Answers

1. What did the U.S. Supreme Court do, exactly?

Answer: The court ruled same-sex couples have a fundamental right to marriage, nationwide. To create this fundamental right, the court gave a broader interpretation to the fifth and fourteenth amendments to the U.S. Constitution than many believe appropriate, and it dismissed state marriage laws as demeaning and stigmatizing for homosexuals. The court failed to include any protections for people of faith with deeply-held religious convictions against same-sex marriage in its ruling.

2. Does the ruling impact churches and other religious organizations?

Answer: Yes. The ruling recognizes people of faith can believe and teach that same-sex marriage is wrong; the ruling does not recognize that people of faith might want to act on that belief. To put it another way, as far as this ruling is concerned, a church is free to say same-sex marriage is wrong. That's it. This will embolden the assault against religious liberty in America.

3. Does the ruling affect private business owners?

Answer: Yes. By making same-sex marriage a "fundamental right," the court has made it very difficult for private business owners—such as florists, bakers, photographers, and others—who might have religious objections to same-sex marriage to decline to participate in same-sex ceremonies. The result will be additional litigation against people of faith who simply wish to conduct their businesses in accordance with their faiths.

4. Does the ruling affect charities and other nonprofits?

Answer: Yes. During the debate prior to the court's decision, it was noted that if the court constitutionalized same-sex marriage, faith-based charities could risk losing nonprofit status. This might be especially true of faith-based groups who receive government grants. We have already seen at least one case in which a Christian college's accreditation came under fire after it was learned the college prohibited homosexual conduct among its students, and faith-based adoption agencies in Illinois were forced to shut down in 2011 after they refused to place children with same-sex couples.

5. Who will likely feel the negative consequences of this ruling first?

Answer: In the short-run, people of faith with religious objections to homosexuality and same-sex marriage will feel the effects first. That includes ministers and churches who do not want to participate in same-sex ceremonies; businesspeople—such as florists, photographers, bakers, caterers, venue owners, and others—who do not want to take part in same-sex weddings; counselors and psychologists who do not believe homosexuality and same-sex relationships are normal or healthy; faith-based adoption services who do not want to place children with same-sex couples; religious schools with policies against homosexual conduct among students or faculty; and public officials—such as justices of the peace—who, for religious reasons, decline to solemnize same-sex marriages. In the long-run, all Americans will feel the negative effects of this ruling as these people and organizations are vilified and forced to change or discontinue their services.

6. Does the ruling legalize polygamy?

Answer: Not outright, but the ruling does set the stage for polygamy to be legalized in the future. The court's logic in the ruling hinges on the notion that marriage's chief end is personal satisfaction—that it is chiefly about the happiness of the married couple. If people have a fundamental right to marry whomever they want, future courts will have a hard time explaining why a person cannot marry as many people as they want. Chief Justice Roberts clearly highlighted this in his dissenting opinion.

7. Will this ruling result in more litigation concerning marriage?

Answer: Without a doubt. When a minister declines to officiate a same-sex ceremony; when an adoption agent declines to place a child with a same-sex couple; and when a Christian college declines to place a "married" same-sex couple in its married student housing, the result likely will be a lawsuit. This ruling leads to more—not less—litigation over marriage.

8. Will this ruling affect public education in America?

Answer: At the very least, when discussing marriage, public school textbooks likely will have to reflect that same-sex marriage is recognized in America. However, textbook companies likely will face mounting pressure from activists and others to present same-sex marriage as commendable—even though millions upon millions of Americans do not agree with the court's redefinition of marriage. This will further politicize school textbook selection and public education.

9. Can we impeach and remove the five U.S. Supreme Court justices who issued this ruling from the bench?

Answer: The U.S. Constitution allows Congress to bring impeachment proceedings against public officials accused of "treason, bribery, or other high crimes and misdemeanors." The U.S. Senate votes whether or not to remove an impeached judge from the bench. Past judges have been impeached on charges ranging from alcoholism to unlawful rulings and abuse of power. There is no case, however, in which a U.S. Supreme Court justice was removed from office for issuing a bad ruling.

10. What can we do about this ruling?

Answer: Americans need to be protected from this ruling. Arkansas' new Religious Freedom Restoration Act could prove crucial. At the national level, Congress needs to ensure our laws and policies promote traditional marriage and protect people of faith from this bad ruling as well.