

Obergefell in Question: Estate Planning Risks for Same-Sex Spouses

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By Candace Dellacona



On August 11, 2025, the United States Supreme Court was asked to reconsider *Obergefell v. Hodges*, the 2015 decision that federally guaranteed marriage equality for all couples. This new case involves the four-times married former Kentucky county clerk who famously denied marriage licenses to same-sex couples in 2015. She argues that her religious freedom should have allowed her to refuse to recognize same-sex marriage and asked the Supreme Court to take up her cause.

While many remain cautiously optimistic that marriage equality will not be undone, the fact that the Court may even consider this petition is deeply unsettling for the LGBTQ+ population and their allies. ([Axios](#), [Forbes](#), [The New Republic](#))

Why This Matters for Estate Planning

- **A Return to Patchwork State Laws**

If *Obergefell* were overturned, the U.S. would revert to a pre-2015 tapestry of laws in which individual states would have the opportunity to determine marriage rights for their own domiciliaries. For those residing in more conservative states, it could mean disaster for same sex spouses.

- **Legal and Emotional Chaos for Families**

Suddenly, all the rights, protections, and privileges that come automatically with marriage, such as hospital visitation, medical decision-making authority, inheritance, and tax breaks, would once again require lawyers to draft elaborate, and admittedly brittle workarounds. In some states, lawmakers are bound to make those workarounds incredibly difficult to accomplish.

- **Estate Planning Problems Magnified**

- **Tax implications:** Without a legally recognized spouse, couples will lose spousal estate tax exemptions at the federal and possibly state levels.
- **Probate exposure:** Without the automatic transfer rules of marriage, such as tenancy by the entirety designations on deeds, estates could be forced to go through a full probate proceeding or worse, pass to next-of-kin heirs, and not the spouse.
- **Healthcare proxies and decision-making:** Health care directives, such as Health Care Proxies, would need constant updates as cross-state enforcement could become uncertain when an individual's status is demoted from "spouse" to simply "agent" under a health care directive. It should be noted that the rights of an agent are certainly less secure than spousal rights.
- **Children and parentage issues:** The parental presumptions, adoptions, and guardianships may also be under fire and could become contested in ways they have not been observed for a decade. As with documented workarounds for

estate planning, it is concerning that parentage could hinge on an estate planning document that is enforceable in one state and not another.

In summary, this possibility bears a real human cost if the federal government no longer sees a marriage as valid, and all the financial ease, parental securities, medical protections, and end-of-life comfort assumed to be guaranteed are no longer. Same-sex couples do not just lose a symbolic right to marry — they face disruptions to fundamental life, health, and legacy decisions. This is not just another court case: the ramifications will fundamentally reshape how families, especially those with trans and LGBTQ+ members, plan their lives, protect each other, and preserve their legacies. It is vital we pay attention, share the facts, and act with allyship.