

Marriage Equality and the Supreme Court: Preparing for the Unexpected

August 13, 2025
By Summer Abel



Big news dropped this week, and it's one of those stories that makes my phone start buzzing with texts from clients, friends, and family asking: *"Could the Supreme Court actually take away marriage equality?"*

Kim Davis, the Kentucky clerk who famously refused to issue marriage licenses to same-sex couples, has asked the Court to overturn *Obergefell v. Hodges*, the 2015 decision legalizing marriage equality nationwide. For Davis, the appeal is about religious beliefs, but for LGBTQ+ families, it's about the security of marriages and rights.

Can the Supreme Court Overturn *Obergefell*?

For Davis, the case is based on her personal beliefs and most experts think it's a long shot to undo marriage equality entirely. Still, this Court has surprised us before. Justice Thomas has already suggested revisiting *Obergefell*, and the fact that the question is back before the Court is a reminder that the fight isn't over.

What Would Happen if *Obergefell* Were Overturned?

If *Obergefell* were overturned, some states could stop issuing marriage licenses to same-sex couples almost overnight. Old bans and "trigger laws" are still sitting on the books in many states. However, due to the 2022 Respect for Marriage Act, current same-sex marriages would almost certainly still be recognized nationwide. Under this law, if a same-sex couple is legally married in one state, every other state and the federal government must honor that marriage, even if the couple later moves to a state that bans it.

Why Does This Matter if You're Already Married?

Some may assume, *"Well, we're already married, so we're fine."* Not necessarily. Without *Obergefell*, certain rights could become more difficult to enforce at the state level, such as hospital visitation, inheritance without a will, or the ability to make medical decisions for your spouse. For families with children, especially when only one parent is biologically related, the stakes are even higher.

Steps to Take Now

- **Make your family "court-proof."** Ensure you have legal documents in place, including wills, healthcare proxies, powers of attorney, and guardianship documents for kids.
- **Lock in parental rights.** A court order, such as a second-parent adoption, is recommended to make parental rights secure, even when both parents' names appear on the birth certificate.
- **Know your safe states.** In areas with an uncertain record on LGBTQ+ rights, it's important to know where your family would be protected in the event of upheaval.

- *Stay engaged.* Local and state protections matter. Back ballot measures and candidates who will uphold marriage equality in your state constitution.

Final Thoughts

Though it seems unlikely that *Obergefell* will be reversed in the immediate future, it would be unwise to become complacent or to assume it is beyond challenge. Now is the time to double-check your legal safety net, because the best time to protect your family is before the storm starts.