

Marriage in the Balance: Safeguarding Rights for Same-Sex Couples

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The U.S. Supreme Court has been asked to overturn *Obergefell v. Hodges*, the landmark 2015 decision that legalized same-sex marriage nationwide. Whether the Court revisits the case now or in the future, the right to same-sex marriage appears less secure than it has in years.

For same-sex couples, especially those in states where legal protections are weaker, this development is a call to action. Although several legal safeguards would remain in place, a reversal of *Obergefell* could create serious legal and personal complications for many families.

What If *Obergefell* Is Overturned?

If the Supreme Court strikes down *Obergefell*, the constitutional right to same-sex marriage would no longer apply. Same-sex marriage would not immediately become illegal, but the right to marry someone of the same sex would hinge on individual state laws — much as it did before 2015.

This about-face would likely lead to a patchwork of marriage laws, under which same-sex couples could marry in some states but not in others. States that had bans against same-sex marriage before *Obergefell* could begin enforcing them once again or could reimplement bans that were repealed in the decade after the Court had declared same-sex marriage a constitutional right.

Some Protections Would Remain

Even without *Obergefell*, several important legal protections would continue to offer support for same-sex couples, though none is as comprehensive or stable as a constitutional right.

Respect for Marriage Act

Passed by Congress in 2022, the Respect for Marriage Act is a federal law that requires all states to recognize same-sex marriages lawfully performed in other states. In other words, if a couple gets married in a state where same-sex marriage remains legal, their home state would still have to recognize that marriage, even if the state stopped issuing licenses itself.

But the Respect for Marriage Act does not require any state to allow same-sex couples to marry within its borders. It provides important recognition but not universal access.

State Laws That Support Marriage Equality

Some states took independent action to legalize same-sex marriage through legislation, constitutional amendments, or ballot

referendums. In these states, marriage equality would remain intact even if *Obergefell* were overturned.

Many other states still have pre-2015 bans on same-sex marriage written into law. Those bans are currently unenforceable under *Obergefell*, but they could be revived if the precedent is reversed.

Existing Marriages Likely to Be Upheld

Most legal experts agree that existing same-sex marriages would remain valid, under the legal principle that the government generally cannot invalidate a lawful marriage.

Still, uncertainty could arise in areas like adoption, parental rights, inheritance, and medical decision-making, especially in states that chose to restrict marriage rights in a post-*Obergefell* era.

What Same-Sex Couples Can Do Now

Regardless of what the Court ultimately decides, couples can take proactive steps to protect their rights and relationships.

Consider Getting Married

If you're in a committed same-sex relationship, consider marrying before the law changes. Tying the knot now could help preserve important legal protections, especially if the right to get married is eventually rescinded.

Marriage provides many important benefits, including joint-ownership and survivorship rights, tax advantages, healthcare decision-making authority, inheritance protections, and parental presumptions. These rights could be lost in states that move to restrict marriage equality.

Put Legal Safeguards in Place

Whether they are married or not, all couples should have the following legal documents in place to protect themselves and their families:

- **Wills** ensure that your partner inherits your assets and that your final wishes are clearly stated.
- **Durable Powers of Attorney** allow your partner to manage your finances if you become incapacitated.
- **Advance Medical Directives** authorize your partner to make healthcare decisions on your behalf and outline your medical preferences.

These documents can provide peace of mind and legal clarity in the event of illness, incapacity, or death, especially if your marital status is ever questioned or unrecognized.

Looking Ahead

Even if marriage equality remains intact for now, the issue could return to the Supreme Court in the future. Under Court procedures, only four justices are needed to accept a case for review, and challenges to *Obergefell* are likely to persist.

Whatever the future holds, same-sex couples can take commonsense steps today to protect themselves and their families. Being prepared helps to ensure that your rights and relationships are as secure as possible in uncertain times.