

Same-Sex Marriage Ripple Effect Part Deux

by Louise A. Jackson



In June 2013, the U.S. Supreme Court ruled in the *Windsor* case that provisions in the federal Defense of Marriage Act which required same-sex spouses to be treated as unmarried for purposes of federal law is unconstitutional. That decision was discussed in [“The Windsor Case Same-Sex Marriage Ripple Effect”](#) and can be read on our web site.

The U.S. Supreme Court issued a new decision regarding same-sex marriage in June 2015. *Obergefell v. Hodges* answers some questions the Court left unanswered by *Windsor*.

How will state income tax returns be impacted? Same-sex married couples will follow the same rules for filing state income tax returns as opposite-sex married couples.

Can there be same-sex marriage divorces in states like Ohio and Michigan? Yes.

What is the effective date for changes the Obergefell case will cause? We read the court decision as in effect immediately. The Court basically stated that there is no point in waiting for any further debate, litigation or legislation as the potential harm from waiting is immediate and as a result of extensive state and federal litigation, society has an enhanced understanding of the issue. The Court’s decision essentially is that it is against the U.S. Constitution for states to decline to issue marriage licenses to same-sex couples who desire to marry.

Will Ohio, Michigan and other states that do not recognize same-sex marriages legally entered into in other states be required to recognize them as to persons now resident in their states? The Court clearly said that states must now recognize same-sex marriages if such marriages were lawfully performed in other states.

How will employers operating in both recognition and non-recognition states efficiently carry out their legal responsibilities? Employers must treat same-sex spouses the same as opposite-sex spouses for all purposes of carrying out employee benefit plan administration and other responsibilities.

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There are still unanswered questions: For example, must religious institutions which are opposed to same-sex marriages for reasons of faith now officiate at same-sex marriages? The Court held that the First Amendment insures religions which adhere to religious doctrines and others have “protection as they seek to teach the principles that are so fulfilling and central to their lives and faiths”. In the 2011 case, *Snyder v. Phelps*, in which a father sued the Westboro Baptist Church and its minister for, among other things, causing him severe emotional distress as a result of the church’s members picketing and hateful speech during the funeral of his soldier son, the Court held that the church had first amendment rights of free speech and exercise of religion in ruling against Mr. Snyder. The Court’s rationale was that the church spoke on matters of public concern rather than matters of purely private significance. In the *Obergefell* case, the Court held that the religious institutions can still “advocate” against condoning same-sex marriage.

This is probably an area for future litigation as some religious institutions already have indicated they will not marry same-sex couples based on religious grounds regardless of the *Obergefell* case. Anticipate that some religious institutions will follow European models of couples getting married in civil ceremonies at their local courthouses and then having a formal wedding in a church or other house of worship as weddings are sacramental in some faiths.

Other questions that await future determinations:

Will the IRS challenge the tax-exempt status of religious institutions which refuse to officiate at same-sex marriages?

As Chief Justice Roberts posed in his dissent in the *Obergefell* case, does this decision mean that a religious college can’t restrict its housing to opposite-sex married couples and religious adoption agencies can’t decline to place children with same-sex married couples?

Will a group advocate for a Constitutional amendment to overturn the results of the *Obergefell* case?

Is recognition of polygamy next?

The *Windsor* and *Obergefell* decisions are perfect examples of how a court decision can cause major ripples in U.S. law.

For information regarding the *Obergefell* case and its effect on taxes, or any other questions about tax law, please contact [Louise A. Jackson](mailto:Louise.A.Jackson@eastmansmith.com) or visit our web site at www.eastmansmith.com.

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