

# Obergefell v. Hodges

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The United States Supreme Court recently issued an historic ruling in Obergefell v. Hodges which holds that the Federal Constitution guarantees same-sex couples the right to marry throughout the country. As a result of this decision, same-sex couples who choose to marry can gain all the financial and legal rights and responsibilities of opposite-sex married couples, regardless of which state they call home.

In 2013, the Supreme Court, in *United States v. Windsor*, struck down a section of the federal Defense of Marriage Act ("DOMA") which defined marriage as between one man and one woman. The *Windsor* ruling resulted in numerous federal benefits for same-sex couples who were legally married in a jurisdiction that performed same-sex marriages. However, in the *Windsor* case, the Supreme Court declined to address whether states could define marriage as between one man and one woman. This allowed states to continue to ban same-sex marriage as well as refuse to recognize same-sex marriages performed legally in other jurisdictions.

Since the *Windsor* decision, many states around the country, including New Jersey, addressed the issue of legalizing same-sex marriage. In October 2013, the New Jersey Superior Court, citing the *Windsor* decision, ruled that same-sex couples have the right to marry in New Jersey. Prior to that decision, same-sex couples were only allowed to form civil unions in New Jersey. Although civil unions were intended to provide the same State rights to same-sex couples as opposite-sex married couples, federal benefits were not available to same-sex couples in civil unions. Since October 2013, same-sex couples in New Jersey have been legally able to marry. Those couples remaining in civil unions remain unable to access federal rights and benefits, unless they choose to marry.

While New Jersey and other states permitted same-sex couples to marry, some states expressly forbid such marriages. This led to confusion for those same-sex couples who move from state to state. For many same-sex couples, whether they were considered married depended upon the state in which

they happened to be. For instance, a same-sex couple could marry in New Jersey, and thereafter, may have to relocate to Georgia for employment purposes. While in New Jersey the couple was considered married, yet in Georgia they were not. If that couple needed to dissolve their relationship, they could not divorce in Georgia, because the state never recognized the union in the first place.

The issue of state recognition of same-sex marriages performed in another state was confronted head-on by the United States Supreme Court in recent case of *Obergefell v. Hodges*. On June 26, 2015, the Supreme Court answered the question of whether a state can ban same-sex marriages and refuse to recognize same-sex marriages performed in other jurisdictions. The Supreme Court held that the Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed in another State.

The *Obergefell* decision has immediately affected those people who lived in non-recognition states (prior to *Obergefell* there were 14 such states). Those same-sex couples living in such states are now able to marry or have their marriage performed elsewhere recognized by the state. With that change, same-sex couples will now be on even ground with the rest of the married population in several significant ways including, but not limited to, taxes, estate planning, social security benefits, veteran's benefits, and the right to make medical decisions for a spouse.

Married same-sex couples will be able to file joint returns at both the federal and state levels. These couples are already required to file joint returns at the federal level, but if they lived in states that did not recognize their unions, they had to file a joint return for the federal government and an individual one for the state. Now these couples only have to prepare one joint return.

Same-sex married people living in non-recognition states will have the right to administer their partner's estate, inherit as a spouse if one partner dies without a will, bring a wrongful-death action, and inherit property from a spouse without paying certain estate or inheritance taxes.

With national recognition, all married people, regardless of which state they live in, will be entitled to benefits from social security, including spousal benefits and survivor benefits. However, there are many

questions regarding social security benefits that remain unanswered and may still unevenly benefit married same-sex couples because under social security rules the length of marriage is often of critical importance.

For instance, couples must be married for nine months before they become eligible for survivor benefits under social security. If a New Jersey same-sex couple, who had been together for 20 years, finally married in 2013 when marriage became available to them, and one spouse passed away eight months later, would Social Security look to the entire length of the 20-year relationship, or simply the eight month marriage when determining eligibility for survivor benefits?

In another example, divorced spouses are entitled to Social Security benefits based upon a former spouse's earnings if the couple was married for at least 10 years and the spouse claiming benefits is currently unmarried. If a New Jersey same-sex couple married in 2013, but get divorced in 2020, would one spouse be eligible for benefits based upon the former spouse's earnings, or would Social Security strictly look to the seven-year marriage to determine the spouse ineligible for such benefits? What if the couple's relationship had existed for 20 years prior to the 2013 marriage? These are important and potentially critical questions that Social Security has not been faced with in the past.

While the Obergefell ruling does not change the rights of any same-sex married couple in New Jersey, the most immediate affect will be had on those same-sex couples who married in New Jersey and later moved to a non-recognition state. The ruling makes clear that all states must recognize same-sex marriages entered into in other states. Before this, for instance, hospitals in Georgia did not have to recognize same-sex couples married in New Jersey, and may have chosen to deny hospital visitation rights that opposite-sex couples have. Now, all New Jersey couples who relocate or travel will have the benefit of recognition no matter the state in which they chose to reside.

Every family's circumstances are different, and the ways in which New Jersey, and many other states and agencies, both local and federal, are responding to and implementing marriage equality continues to evolve. It is important to discuss your questions with experienced professionals who have knowledge about how these issues impact same-sex couples and who can advise you on your particular circumstances.

For additional information, please contact the author, [Matthew S. Coleman, Esq.](#)