

How Will the U.S. Supreme Court's Same-Sex-Marriage Decision Affect Religious Liberty?

On Friday, five justices affirmed LGBT Americans' Constitutional right to wed. The other four foreshadowed the major conflicts over religious freedom that are about to begin.

Carlos Barria / Reuters

For a long time, supporters of gay marriage in the U.S. were in the minority. As early as last year, that started changing, and now, a solid majority of Americans support same-sex unions. As of Friday, they can count the Supreme Court as their ally: In a 5-4 decision, the justices ruled that LGBT individuals have a Constitutionally protected right to wed.

What does this mean for the shrinking number—but still substantial portion—of Americans who oppose gay marriage, particularly on religious grounds? In their dissents to the Court's opinion in *Obergefell v. Hodges*, Justices Samuel Alito, John Roberts, Antonin Scalia, and Clarence Thomas worry about other Americans' right to dissent to gay marriage, just as they have. They worry what will happen as those who oppose gay marriage become, for the first time in this country's history, a minority.

This is not a new fear. Especially over the last two years, as more and more states have legalized same-sex marriage, religious conservatives have expressed anxiety about attacks on religious freedom: the cake baker who doesn't want to work a same-sex wedding ceremony, the college that faces potential consequences for not supporting homosexuality. In a statement outside of the Supreme Court following the *Obergefell* decision, Russell Moore, the head of the Southern Baptist Convention's Ethics and Religious Liberty Commission, said, "We need to be the people who know how to articulate a Christian vision of sexuality that will be increasingly counter-cultural from this point on."

Alito shares this anxiety. "Today's decision ... will be used to vilify Americans who are unwilling to assent to the new orthodoxy," he writes. In particular, he objects to the comparison between bans on same-sex marriage and the bans on interracial marriage that were widespread before the Court overturned them in 1967 in *Loving v. Virginia*. "The implications of this analogy will be exploited by those who are determined to stamp out every vestige of dissent," he argues.

On Friday, same-sex marriage supporters outside of the Supreme Court were giddy with delight—advocates have been working toward this moment for literally decades. There was also somewhat giddy dissent: Bobby Jindal, Louisiana's governor and a GOP presidential candidate, suggested that the Court should be abolished. Pike Couty, Alabama, has decided to stop issuing marriage licenses altogether. But as Alito, Roberts, Scalia, and Thomas point out, this decision will almost certainly kick off a series of legal challenges related to religious liberty. The justices focus on three issues in particular, some of which have already created legal and political tussles: gay adoption; the tax-exempt status of religious organizations that wish to discriminate on the basis of sexual orientation; and the obligation of private churches and individuals to recognize and perform same-sex marriages.

As *The New York Times* wrote earlier this month, this decision means that "gay couples [will] for the first time be able to widely adopt children regardless of which state they live in." Same-sex partners

have long struggled to secure adoption rights, particularly in states that place limitations on the kinds of couples that can adopt. Mississippi, for example, has a law expressly forbidding adoption by couples of the same gender; Nebraska restricts same-sex couples from being foster parents. These laws may face challenges in light of the Court's decision, but another kind of law may become more common: Earlier in June, Michigan passed a law allowing adoption agencies—even those that are publicly funded—to refuse to place children with same-sex couples if they have religious objections to doing so. It's unclear how this religious-liberty claim might be interpreted in light of *Obergefell*; this is one of the “hard questions” that will be raised by the Court's decision, Roberts writes, and “there is little doubt that these and similar questions will soon be before this Court.”

The other example Roberts specifically calls out is the tax status of religious organizations that wish to discriminate on the basis of sexual orientation. This was a question that came up during oral arguments for *Obergefell*: Alito raised a 1983 case involving the evangelical Christian Bob Jones University, which had refused to allow interracial dating on its campus. The Court ruled that the school could not be tax exempt if it maintained its ban; the university accepted the consequences, not changing its policy until 2000. The question, now, is what will happen to the many, many religious organizations that don't support homosexuality, let alone gay marriage. This involves everything from stated policies—“for example, [when] a religious college provides married student housing only to opposite-sex married couples,” Roberts writes—to issues of employment and benefits for employees in gay unions.

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Examples of this have already come up. The most prominent example is that of Gordon College, which faced the possibility of losing its accreditation after the New England Associations of Schools and Colleges asked it to review how its policies affect gay students. The school has decided to maintain its position on sexuality, which prohibits student or faculty sex outside of heterosexual marriage. It could be a signal of similar cases to come—last summer, for example, a broad coalition of faith leaders asked President Obama to provide a exemption for religious groups in an executive order banning federal contractors from discriminating against gays and lesbians. Those same groups that asked for the exemption will likely face new questions in the days to come on how the *Obergefell* decision should affect their policies.

Finally, individual church leaders—and judges—will face decisions about whether to perform and recognize gay marriages. In June, North Carolina passed a law allowing judges to refuse to issue marriage licenses altogether if they object to same-sex unions on religious grounds. This law may only be the beginning. “In our society, marriage is not simply a governmental institution; it is a religious institution as well,” Thomas writes. “It appears all but inevitable that the two will come into conflict, particularly as individuals and churches are confronted with demands to participate in and endorse civil marriages between same-sex couples.”

The future of gay marriage has long been a question in the United States, and on Friday, the country got an answer. The questions and conversations surrounding gay marriage now will be of a different kind: what it means to oppose, rather than support, same-sex marriage.

<http://www.theatlantic.com/politics/archive/2015/06/how-will-the-us-supreme-courts-same-sex-marriage-decision-affect-religious-liberty/396986/>