



THE CASE FOR INCLUSION

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Life After Obergefell – Legal Challenges Still Linger

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Nearly six weeks after the Supreme Court issued its opinion in *Obergefell v. Hodges* on June 26, 2015, we are seeing the aftermath of the landmark decision and how certain states are scrambling to undermine the applicability of the decision.

Recall that the Obergefell decision determined that the 14th Amendment requires states 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 out-of-state. Even before the decision was issued, conservative states began positioning themselves to avoid implementing the Supreme Court's anticipated ruling. North Carolina's House and Senate passed Senate Bill 2, over the veto of its Governor, which allows magistrates and other officials to opt-out of performing marriages for same-sex couples due to a personal, sincerely held, religious objection; however, once opted-out, such person cannot perform marriages for any couple for six months.

North Carolina's bill is representative of the continuing (yet diminishing) battle by opponents to same-sex marriages. Indiana, Arkansas, Louisiana and Texas also have "religious freedom" acts which, effectively, protect discriminating against a person based on their sexual orientation if it conflicts with a person's religious beliefs. Although, protecting a person's religious freedoms is certainly proper, each state's law is drafted differently. The extent to which a person can rely on his or her religious beliefs to discriminate based on a person's sexual orientation will likely be the next battleground for the same-sex marriage debate.

The debate must also resolve how religious freedom acts operate in the public and the private sectors. For example, what happens if all of the magistrates or other officials simply refuse to issue marriage licenses to same-sex couples? The North Carolina law provides that, in such a situation, the State Administrative Office of the Courts will ensure that there is a magistrate available at all times to perform marriages and other official duties.

But what about situations in the private sector? In Colorado, a state that has a law prohibiting discrimination based on

sexual orientation, a bakery owner is trying to prevent being forced to serve wedding cakes that will be used in a same-sex marriage reception, relying on the premise that the 1st Amendment protects his freedom of expression. He is currently appealing to the Colorado Court of Appeals.

The needle has definitely moved in favor of protection for same-sex marriages, but the Obergefell decision leaves some wiggle room for opponents to contest its application and, although supporters of same-sex marriage may have won a battle, it seems that the war is not over...yet.