



Texas-Louisiana Gulf Coast Synod

Evangelical Lutheran Church in America

God's work. Our hands.

FAQ on Marriage Issues in the Wake of the Supreme Court Ruling in Obergefell v. Hodges

In the ELCA's Social Statement, "Human Sexuality: Gift and Trust," this denomination recognized that the policies and practices of our congregations around issues of same sex marriage will not all be the same. The Social Statement neither forbids nor endorses same sex marriage; instead, it recognizes that many in the ELCA may feel called by their conscience-bound faith to hold diverse views on this issue. Given that the issue of same sex marriage is on the mind of many in our communities, this is a time for us to be in prayerful, respectful, and loving conversation with one another around these and other issues that may affect our ministry in following Jesus in the world. In that regard, a shared reading and discussion of the Social Statement would be a good place for those conversations to begin.

The Supreme Court's ruling on June 26, 2015 in the Obergefell case, which recognizes a fundamental right of same-sex couples to marry, may lead to questions in our congregations. It is best to address those questions lovingly, transparently, and directly - so we have prepared this FAQ to assist you in doing so.

1. What did the Supreme Court rule?

The Supreme Court issued decisions in June 2015 concerning the right to marry and the ability of states to restrict access to marriage licenses by same-sex couples.

In its decision, the Court ruled that the right of two consenting adults to marry is a fundamental right that may not be abridged by the refusal of the state to grant marriage licenses (or other formal recognition of marriages) to same-sex couples on the same terms as it grants them to heterosexual couples. In the words of the Court, "The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry....and the State laws challenged by Petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples."

In practical terms, this decision also means that marriages performed in other states that have (up to now) recognized same-sex marriages must be recognized as law in states that (up to now) had not recognized such marriages. "The Court, in this decision, holds same-sex couples may exercise the fundamental right to marry in all States. It follows that the Court also must hold - and it now does hold - that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character."

2. What does this decision have to say about the continuing right of people to hold deeply held religious views about marriage and same-sex marriage?

The Court emphasized that the right of same-sex couples to obtain a marriage license does not mean that those with deeply held religious views are prohibited from continuing to practice their religious faith. As the Court put it in its opinion, "Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. The same is true of those who oppose same-sex marriage for other reasons. In turn, those who believe allowing same-sex marriage is proper or indeed essential, whether as a matter of religious conviction or secular belief, may engage those who disagree with their view in an open and searching debate."

In short, while this decision makes same-sex marriage legal and available in every State, it also leaves intact the existing discretion of pastors to perform (or refuse to perform) marriages on religious grounds, as well as the right of a church council (on behalf of a congregation) to permit (or refuse to permit) marriages to be performed on church property.

3. What does the ruling mean for the legality of same-sex marriage in Texas and Louisiana?

Texas requires issuance of a marriage license to perform a formal marriage in Texas. Louisiana requires the issuance of a marriage license to perform any marriage in the state.¹

¹ Texas also recognizes as valid informal (formerly known as common law) marriages that arise through the conduct of the couple, without the benefit of any license or formal ceremony. Louisiana law does not appear to recognize common law or informal marriages formed in Louisiana. Accordingly, it appears that a couple wishing to be married in Louisiana must obtain a marriage license from the relevant state official.

Until now, both Louisiana and Texas had declined (based on their respective state laws) to grant marriage licenses to same-sex couples. The Supreme Court's decision prohibits Texas and Louisiana from refusing to grant marriage licenses to same-sex couples based on the requirements of state law. Issuing of licenses is, however, a matter that requires action by the government. In Texas, some county clerks have begun to issue marriage licenses, while others have indicated they intend to await guidance from the Texas Attorney General. In Louisiana, the Attorney General has indicated the state will await formal issuance of a mandate from the Supreme Court before issuing any marriage licenses to same-sex couples, at which point the State will issue further guidance to local officials regarding the issuance of marriage licenses. In our context, the issuance of a marriage license is a matter for the government, but once a license is obtained a couple may be formally married under Texas or Louisiana law.

4. Can churches be compelled to perform same sex marriages?

When authorized by state law, pastors have authority as part of their calls to perform marriages if they wish to do so, but they cannot be compelled to perform any marriage ceremony for any couple. In the ELCA, churches also retain their right to decide how and whether they will "recognize, support, and hold publicly accountable" persons in same gender relationships who wish to be married. Accordingly, while neither pastors nor congregations can be compelled to permit any particular marriage to be performed in their churches, it is our shared calling to be engaged in loving and candid conversations about how we will welcome, support, and - where consistent with our faith - perform marriage ceremonies for those who wish to be married.

5. How should we address a circumstance where a pastor wishes to perform a same-sex marriage ceremony and the congregation does not? What happens if the congregation wishes to recognize a same-sex marriage and the pastor declines to do so?

Pastors have historically decided (and can continue to decide) to perform (or to refuse to perform) marriage ceremonies for any number of reasons. They can continue to do so, even after the Supreme Court's ruling. There may be pastors who feel called by their faith to perform (or refuse to perform) marriage ceremonies in circumstances where the congregation where the pastor serves holds a different, conscience-bound view. In that event, the mutual care between pastor and people calls on both to engage in respectful, caring and open conversations around this issue. The pastor, however, always retains the pastoral authority and judgment to perform (or refuse to perform) marriages as the pastor concludes it is appropriate.

Where the pastor's judgment differs from that of the congregation, the mutual respect of both may require that the marriage be performed in a location other than the church where the pastor is serving.

6. What does the Supreme Court's ruling mean for the understanding of "bound conscience" under our 2009 ELCA resolution?

The Supreme Court has interpreted the United States Constitution on an important legal matter, but it is not a theological statement of the church. Indeed, the Supreme Court decision is at pains to emphasize that the right of citizens to continue to hold deeply held religious views about the nature of marriage remains wholly intact.

We, as Christians, are now called to engage in constructive, loving, and respectful conversation with one another around these issues. But the guidance concerning when and in what circumstances marriages may be performed by pastors, or may be performed on a congregation's property, remains unchanged.

7. Is a conscience bound congregation prohibited from seeking the removal of a pastor whose views on same-sex marriage differ from the congregation's views?

No. Just as a pastor may not be disciplined for performing same-sex marriages, a congregation is not precluded from seeking the removal of a pastor whose views on whether to perform same-sex marriages are incompatible with those of the congregation.

We strongly discourage congregations from taking steps in haste to amend wedding policies or issue other statements in the wake of the Supreme Court's decision. The better course is for pastor and people to remain in prayer together, asking the Holy Spirit to breathe into them a shared spirit of discernment concerning where God is leading the congregation on this and other issues relevant to their shared ministry in the community, so that in all that we do we reflect the love of Christ.