



EDUCATION

Supreme Court's Historic Ruling on Marriage Spotlights Social Security Issues

June 26, 2015



In a historic decision on June 26, the US Supreme Court ruled that same-sex couples in the United States have a constitutional right to marry. Gail Buckner, vice president and our national planning spokesperson, breaks down what this landmark ruling means, and how it impacts Social Security benefits.

In a major victory for the LGBT community, by a vote of 5 to 4, the US Supreme Court has ruled that Americans have a fundamental, i.e., constitutional, right to marry, regardless of gender.

In the *Obergefell v. Hodges* decision, the justices determined the right to marriage equality for same-sex couples falls under the 14th amendment's equal protection clause, overriding the states that continued to define "marriage" as a union of a man and a woman. It

requires that legally married same-sex couples be treated the same as heterosexual ones and extended the same rights and protections with regards to marriage—no matter where they live.

As you may recall, a year ago in the *Windsor* case the high court struck down the federal government's definition of "marriage," saying that limiting this to two individuals of the opposite sex amounted to discrimination. Since then, federal agencies such as the Internal Revenue Service and Department of Labor have revised their regulations to recognize same-sex marriages.

However, despite *Windsor*, same-sex couples living in states such as Texas have not been able to qualify for Social Security spousal benefits. The reason goes back to the founding of our country and the language of the Social Security Act of 1935.

The United States of America consists of 50 individual states *united* under a single national government. But from the beginning, there has been a "separation of powers" between the federal government and the states. Among other things, states retained the right to define "marriage." (For instance, some states recognize "common law" unions while others don't.)

When Congress passed the Social Security Act of 1935 it did not define "marriage." Instead, it stated that, for purposes of Social Security, the federal government would defer to the definition of marriage used by a couple's *state of residence*. (Sec. 216 of 42 U.S.C. Sec.216) Thus, despite the *Windsor* decision, the Social Security Administration's hands were tied. It could not simply announce that it was granting spousal benefits to same-sex couples, regardless where in the United States they live; the very Act which created the program required that it follow *state* law.

Now that the Supreme Court has ruled that Americans have a constitutional right to marry an individual of the same gender, states must now recognize same-sex unions. This change in state law will enable Social Security to begin paying spousal benefits to legally married same-sex couples. The same rules and eligibility requirements will apply. For a concise summary of these, see [Franklin Templeton's *Options for Spouses, Widows & Ex-Spouses*](#). Choosing when and [how an individual applies for Social Security benefits](#) can

have a big impact on the size of those benefits. This decision becomes significantly more complex if you are or were married—something same-sex couples will now need to consider.

In the wake of *Windsor*, last year the Social Security Administration urged same-sex couples to apply for spousal benefits if they otherwise met the qualifications. Those who did so will be entitled to retroactive benefits back to the date of their initial filing. Visit the Social Security Administration's [web site](#) for more information in regard to this latest ruling.

Learn more about Social Security claiming options for divorced or widowed spouses in the [brief video](#) below.



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