

PUBLICATION

Baker Donelson Celebrates the Historic Impact of the *Obergefell* Decision

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On October 2, 2024, Baker Donelson was honored to host Jim Obergefell, the lead plaintiff in the 2015 United States Supreme Court case *Obergefell v. Hodges*, which legalized same-sex marriage across the United States. In a moderated conversation with Shareholder and BakerPride Chair Noah Kressler, Jim led listeners through the heartwarming and heartbreaking story that brought him and his husband John to the center of the fight for the legalization of same-sex marriage. Specifically, Jim brought the case that reached the Supreme Court to challenge the fact that the State of Ohio would not recognize his marriage to John for purposes of John's death certificate. The outcome of the case changed the legal landscape for same-sex marriage and the LGBTQI+ community more broadly, and it is as a beautiful tribute to the memory of John, who sadly passed prior to its resolution.

While it was truly a privilege to hear Jim speak about his story firsthand, he raised concerns about the longevity of the decision, specifically referencing the precedent set in the Supreme Court's decision to overrule *Roe v. Wade* on June 24, 2022, in *Dobbs v. Jackson Women's Health Organization*. This decision explicitly showed that at least one justice would like to see the *Obergefell* decision reconsidered. Specifically, Justice Clarence Thomas concludes that the Due Process Clause of the 14th Amendment does not provide for substantive due process such that rights like the right to marry are protected by it. While Justice Samuel Alito declined to undermine the substantive due process jurisprudence that underlies the *Obergefell* decision in his majority opinion, he previously dissented to the *Obergefell* decision and made similar arguments as Justice Thomas.

While the 2022 Respect for Marriage Act signed into law by President Joe Biden requires states to recognize same-sex marriages performed in other states, the decision to provide full marriage equality would return to the states if *Obergefell* was overturned. In such a legal landscape where states would be permitted to craft their own legislation and likely place bans on same-sex marriage, marriage equality would not be effectively enforceable nationwide. The protections afforded under the 2022 Respect for Marriage Act do provide a backstop of protections, though, as well as a starting place for necessary conversations for building out greater protections for marriage equality.

Walking away from the conversation with Jim, we saw that it is important to not only honor the sacrifices he and John made in the name of marriage equality but also to recognize that the fight for marriage equality is ongoing and still requires the considered input and energies of those who want to continue to maintain and further protect it.