

WHAT DOES THE **MARRIAGE EQUALITY DECISION OF THE SUPREME COURT** MEAN FOR YOUR ORGANIZATION?

PART 3 FEATURING MARK E. CHOPKO: STRADLEY RONON

**UNDERSTANDING THE MARRIAGE DECISION**

While some states already have laws in place to accommodate same-sex couples, it is still unclear what powers they have to regulate and recognize civil marriage in the United States. This includes what level of protection should be afforded to same-sex couples, the scope of exemptions and benefits, and how religious and non-religious companies should set up internal policies to address the new law.

**Pastoral issues:**

Under the first amendment of the U.S. constitution, churches and religious organizations have considerable freedom to operate according to the internal laws of their religious body. While the decision doesn't alter how religious organizations operate on a day-to-day basis, such as sacramental and liturgical practices and charity efforts, it does impact how a religious body applies some of its laws. The decision of marriage as a civil act does not affect a religious organization's right to free speech or public witness.

**Business issues:**

Under Title 7 of the Civil Rights Act of 1964, for-profit businesses must provide goods and services to the public regardless of race, gender, sexual orientation, etc. Non-profits such as schools, camps and social service agencies usually enjoy benefits of religious exemptions, and can look to state and local governments to help them navigate the finer points of the law. The size of a business and the number of its employees affect the application of certain rules within the new law. Sole proprietorships and mom and pop shops may be exempted from certain parts of the law as well. Both sides of the debate need to give each other space to work out the details.

**Government contracts and benefits:**

If a religious business decides to participate in a government program or accept federal benefits, it should read the entire contract. Many contracts are drawn up with strings attached, and often, businesses accept participation without understanding the terms. Under the marriage equality act, regulatory categories are expanding, as is the number of regulators. Before signing a contract, businesses should determine whether they could accept the conditions of compliance. Reading the contract in full will help businesses avoid hassles down the road.

**Taxes and other exemptions:**

The government cannot condition the receipt of a benefit based on someone's religious principles. However, the marriage equality law is still murky, and a lot hinges on specific facts and circumstances. The new law probably won't negatively impact a religious organization's exemption status, and federal tax exemptions are not under attack. There will probably be more activity with state and local exemptions because of their different public policies. Businesses should weigh the cost of doing business with the cost of an exemption and determine from there whether an exemption is worth pursuing.

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**Employment and service:**

Title 7 broadly protects those who perform services of ministry, especially against the scrutiny of state regulators. Churches exist in a kind of “free space” that protects them from court adjudication. Still, it’s important for churches to review their employment practices, because not all employees and church members are considered part of the ministry. The ministerial exception is not a barrier to litigation, but the process is still complicated, and both sides must prove their positions before the court.

**Accommodations:**

In some states, churches are not listed as a place of accommodation, which can impact the benefits and exemptions they receive. There is a wide variety of state and local laws, and classifications of property are wide-ranging. Regulators often examine the relationship between a property and the public when making these decisions. Who uses your property and why? Do people pay money to use your property? In most cases, payment is not determinative.



Featuring **Mark E. Chopko**  
Stradley Ronon

Mark E. Chopko chairs Stradley Ronon’s nonprofit and religious organizations practice group. He joined the firm in 2007, after serving for more than 20 years as general counsel for the U.S. Conference of Catholic Bishops (USCCB) and nearly eight years as a regulatory attorney in Washington, D.C.

A major emphasis of his practice is constitutional law and deflecting attempts by the government to regulate the activities of religious institutions.

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