# Supreme Court Rules DOMA Is Out, Same-Sex Marriages Are Legal

Insights
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As the 2012 term of the U. S. Supreme Court comes to a close, the Justices left the most politically and emotionally charged decisions for last. On June 26, 2013, the Court handed down its decision striking down the federal Defense of Marriage Act (DOMA) in *United States v. Windsor*. A companion case challenging California's Proposition 8 was remanded to the U.S. Court of Appeals for the 9th Circuit for lack of standing by the proponents of the law in *Hollingsworth v. Perry*.

While the political and cultural impact of the decisions will be felt nationwide, there will also be some direct effects felt by employers.

**Background**
DOMA, enacted in 1996, is the controversial law which has been the subject of much national debate concerning the legalization of same-sex marriage. At the time the statute was enacted, states that opposed same-sex marriages were concerned that they would be required to legally recognize such marriages performed in states where they may be legal. The Full Faith and Credit Clause of the U.S. Constitution generally requires that states recognize public acts, records, and judicial proceedings of every other state.

Section 2 of DOMA, which was not at issue before the Supreme Court, stipulates that no state is required to recognize a same-sex marriage from another state, or recognize a right or claim arising from the relationship. But Section 3 of DOMA, which was at the heart of the appeal in *Windsor*, provides that for all purposes of *federal* law, marriage means "only a legal union between one man and one woman as husband and wife." It further states that "spouse" refers "only to a person of the opposite-sex who is a husband or wife."

The controversy in *Windsor* began in New York in 2010. Edith Windsor and Thea Clara Spyer married in Toronto, Canada in 2007. As residents of New York, their same-sex marriage was recognized by state law. In 2009, Spyer passed away, leaving her estate to her spouse, Windsor. Since the marriage between Spyer and Windsor was not recognized by federal law (because of Section 3 of DOMA) the federal government taxed the estate $363,000. Had their marriage been recognized, Spyer's estate would have qualified for a marital exemption, i.e., no taxes would have been imposed.

Windsor filed suit in federal district court in New York seeking a declaration that Section 3 of DOMA

is unconstitutional. Windsor prevailed and the U.S. Court of Appeals for the 2nd Circuit affirmed the district court's ruling that Section 3 of DOMA is unconstitutional.

The controversy in *Hollingsworth* began in California in 2008. Same-sex marriage became legal in that state on June 17, 2008, after the California Supreme Court held that state laws limiting marriage to couples of the opposite sex violated the state constitution. Later, same-sex marriages ceased to be legal in California with the passage of Proposition 8 on November 4, 2008. The voters in California approved a ballot measure that provided "only marriage between a man and a woman is valid or recognized in California." Hence, only same-sex marriages performed in California between June 17 and November 4, 2008, are currently recognized.

The American Foundation for Equal Rights filed the *Hollingsworth* case on behalf of two same-sex couples who were denied the ability to marry after the passage of Proposition 8. The couples sought to have the measure declared unconstitutional and sued several state officials who declined to defend the constitutionality of Proposition 8. The federal district court then permitted the proponent of the ballot measure, ProtectMarriage.com led by California State Senator Dennis Hollingsworth, to intervene as defendants. The district court ruled that Proposition 8 was unconstitutional and the 9th Circuit agreed.

The appeals before the Supreme Court followed and oral arguments were heard by the Justices on March 26-27, 2013.

**Issues On Appeal**

The appeal in *Windsor* presented three questions:

- whether Section 3 of DOMA violates the Fifth Amendment's guarantee of equal protection of the laws as applied to persons of the same sex who are legally married under the laws of their state;
- whether the executive branch's agreement with the court below that DOMA is unconstitutional deprived the Supreme Court of jurisdiction to decide the case; and
- whether the Bipartisan Legal Advisory Group of the United States House of Representatives (BLAG) had standing under Article III of the Constitution to argue the case.

The *Hollingsworth* case presented the following issues:

- whether ProtectMarriage.com (Hollingsworth) had standing under Article III of the Constitution to argue the case; and
- whether the Equal Protection Clause of the Fourteenth Amendment prohibits the State of California from defining marriage as the union between a man and a woman.

**The Decisions**

Upon determining that the Court had jurisdiction to hear the case and that the parties had proper standing, the Court, in a 5-4 decision, ruled in *Windsor* that Section 3 of DOMA is unconstitutional.

The Court held that federal DOMA deprives persons of the equal liberty protected by the Fifth Amendment. The opinion stated:

> By history and tradition the definition and regulation of marriage has been treated as being within the authority and realm of the separate states. Congress has enacted discrete statutes to regulate the meaning of marriage in order to further federal policy, but DOMA, with a directive applicable to over 1,000 federal statutes and the whole realm of federal regulations, has a far greater reach. Its operation is also directed to a class of persons that the law of New York, and of 11 other States, have sought to protect.

The Court's opinion, written by Justice Kennedy, reviews the history of the constitutional guarantees afforded to marriage as an area that has long been regarded as an "exclusive province of the States." Since Section 3 of DOMA rejects the concept that domestic relations are reserved to the states, it has now been overturned on the grounds that it denies a class of people, in states where same-sex marriage is legal, due process and equal protection under the law. As the Court put it:

> DOMA's principal effect is to identify and make unequal a subset of state-sanctions marriages. It contrives to deprive some couples married under the laws of their State, but not others, of both rights and responsibilities, creating two contradictory marriage regimes within the same State. It also forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of federal law, thus diminishing the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect.

In the companion case, *Hollingsworth*, the Court did not reach the constitutionality issue of California's Proposition 8. The opinion, which was also a 5-4 decision, was written by Chief Justice Roberts, who explained that Hollingsworth did not have legal standing to challenge the ruling of the California Supreme Court before the 9th Circuit Court of Appeals.

The *Hollingsworth* case has been remanded to the 9th Circuit, but the practical result of today's ruling is that Proposition 8 has been overturned based upon the substantive rulings by the lower courts which deemed it unconstitutional. Therefore, same-sex marriage will again be legally recognized in California.

**The Impact On Employers**

As Justice Kennedy explained in the *Windsor* opinion, Section 3 of DOMA wrote "inequality into the entire United States Code." Now that this section has been struck down, presumably federal benefits and protections currently provided to opposite-sex couples will be extended to those in state-recognized same-sex marriages. This decision could impact federal laws and regulations in numerous areas, including employment law. Now that same-sex marriage is squarely resting in the hands of each state to determine whether it will be legally recognized, employers are left wondering what this means for them.

In the context of employee benefits, employers with pension and 401(k) plans may be required to recognize same-sex spouses for purposes of determining surviving spouse annuities or death benefits and administration of qualified domestic relations orders (QDROs). Federal income tax treatment of health and welfare coverage may also be affected, in that employees will no longer be taxed on the value of the coverage for a same-sex spouse that is not a federal tax dependent under Internal Revenue Code Section 152.

Employers will also have to offer COBRA continuation and Health Insurance Portability and Accountability Act (HIPAA) special enrollment rights to same-sex spouses. Federal leave laws, such as the Family and Medical Leave Act (FMLA), which provides that an employee may take job protected leave to care for a spouse with a serious health condition or medical and non-medical leave for a spouse serving in the Armed Forces, are also implicated.

This change to federal recognition of same-sex marriages will only occur in states where same-sex marriage is recognized. Currently, there are thirteen states which recognize same sex marriage: Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, Washington, and now California. It is also recognized in the District of Columbia. Therefore, employers in those states should continue to monitor state and federal legislation that may seek to clarify the impact of today's rulings in these areas and consult with their benefits counsel about potential impacts for current and upcoming benefit plan years. This should, however, be welcome relief for those employers in the above states whose payroll departments have been struggling with different state and federal taxation of the same employee benefit.

For more information and this decision and how it might affect you contact any attorney in the Employee Benefits Practice Group of Fisher Phillips.

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