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Greetings!

Hi everybody - Here's our analysis of the Supreme Court decisions from last week. It has taken a few days to let this all sink in!

PROP 8 DECISION - HOLLINGSWORTH v. PERRY

Here's the decision:

http://www.supremecourt.gov/opinions/12pdf/12-144_8ok0.pdf

The Court held that the individuals who initially proposed Prop 8 had no right to defend it in court (called standing, in legal terms). Only the State of California could defend Prop 8, and California chose not to. So, as a result, the case reverts to the decision of the federal trial court, which found that Prop 8 was unconstitutional. This allows marriages to proceed in California.

There was a stay (essentially freezing the granting of same-sex marriages in California) granted by the 9th Circuit Court of Appeals, which has now been lifted. So same-sex marriages can proceed, and already have. The original plaintiffs (who brought the case) have already been married! For all practical purposes, this ends the marriage issues in California, and California now has marriage equality. The original proponents of Prop 8 again tried to stop the marriages, but Justice Kennedy (who is in charge of these petitions from California) rejected the request.

DOMA DECISION - WINDSOR v. UNITED STATES

Here's the decision: http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf

Wikipedia actually has a good analysis of the decision and the history of Windsor. The Scotus Blog, www.Scotusblog.com, also has some excellent analysis.

From Michele:

The Supreme Court struck down Section 3 of DOMA, which said that for federal government purposes, marriage is between only a man and a woman. That provision was found unconstitutional and has been eliminated but other parts of DOMA remain, including Section 2, which says that states do not have to recognize valid marriages between same-sex couples from other states. This will, no doubt, lead to further litigation.

The Windsor case (and the Prop 8 case), did not impact the 30 states with constitutional amendments and laws prohibiting marriage equality. Nonetheless, it opened the door for

challenges to those laws, and for arguments that those states must recognize valid marriages between same-sex couples. We will see immediate and significant litigation in this area. There are already cases in New Mexico, Michigan, New Jersey, Arkansas, and Oklahoma.

Here's the White House DOMA statement on the Windsor decisions:

<http://www.whitehouse.gov/doma-statement>

So now, the federal government will recognize valid marriages between same-sex couples. What does this really mean?

Federal Employees - the Office of Personnel Management (OPM) has already issued a "Guidance" that says federal employees in same-sex marriages will be found to be married NO MATTER WHERE THEY WERE MARRIED, which includes marriages from other countries. This is called the "place of celebration" rule. So, if you are a federal employee and live in Virginia, and are married to your same-sex partner, you are married for federal government purposes. That means health insurance, retirement benefits, long-term disability, time off for spouses and children, everything that a spouse is entitled to. Here's the link to the Guidance: <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=5700>

Immigration - Sea change for bi-national couples. For federal purposes, the validity of a marriage will be based on the place of "celebration" - where the couple got married. So it doesn't matter where you live, as long as you are validly married, and that includes marriages from other countries. For complete answers to immigration questions, go to Immigration Equality, www.immigrationequality.org and look at Couples and Families. But, the bottom line is that the federal government will treat married same-sex couples the same as every other married couple, green card application, fiancée visas, etc. A court has already stopped deportation of a foreign spouse based on the validity of the marriage to a U.S. citizen.

Military - Chuck Hagel, the Secretary of Defense, has already said that the military will treat all married couples the same, no matter where they got married, using the "place of celebration" rule. Here's the news release: <http://www.defense.gov/News/NewsArticle.aspx?ID=120364>. This means that military spouses will have rights to health insurance, base housing, ID cards, on-base shopping privileges, burial at Arlington Cemetery, and more.

Families with Children - If you have children, you should still do second-parent adoptions and estate planning as the Windsor decision DOES NOT require all states to recognize your family even if you are married. As before, it is absolutely crucial that you obtain court orders holding that you have legal relationships to your children if you are not the birth parent, and sometimes even if you are.

In General - Here's a terrific analysis of the Supreme Court DOMA decision by the National Center for Lesbian Rights and all of the other leading national LGBT organizations:

http://www.nclrights.org/site/DocServer/Post-DOMA_General-Overview.pdf

Where are we now?

The President has directed all federal agencies to review their policies and come up with a plan to implement marriage equality on the federal level. It APPEARS that marriages between same-sex couples NO MATTER WHERE THE COUPLE LIVES will be valid on the federal level, meaning that the federal government will adopt the place of celebration rule. BUT, this has not been finalized yet. This policy will give married couples access to over 1000 rights and responsibilities on the federal level. For an overview of those benefits, go here: <http://www.hrc.org/resources/entry/an-overview-of-federal-rights-and-protections-granted-to->

married-couples. It will take some time to sort all of this out. But, you should contact an attorney and an accountant to discuss how these issues affect you.

What should you do?

If you haven't married, but have been waiting for the fall of DOMA, contact your lawyer to discuss the implications of the Windsor decision for you. Make sure you know all of the implications before you take the big step.

If you are married and work for the federal government, immediately contact your Human Resources department to change your health insurance, etc. The federal government has indicated that the Windsor decision will be considered a "qualifying event" so you can change coverages, but you only have 60 days to do this.

If you are married and work for a state government or private employer, and you live in a recognition state - DC, Delaware, and Maryland locally - also contact your employer to make sure all of your coverages are what you want. Do this as soon as possible.

Update your estate planning, or get it done in the first place!

You MAY be able to amend your federal tax returns back 3 years and take advantage of filing as married.

You MAY be able to be named a spousal beneficiary on your spouse's retirement.

You MAY be eligible to receive your deceased spouse's social security benefits.

You MAY be eligible to receive a refund on health insurance payments paid to you for your spouse that you previously had to declare as income.

You MAY be eligible to receive a refund on capital gains or estate taxes paid (like Edie Windsor).

This list goes on and on. The answers to these questions are dependent on whether the federal government will make its recognition of marriages retroactive to when they were validly performed pursuant to state law. We'll see.

Our take on the real meaning of Windsor

The fact that same-sex marriages will be recognized on the federal level is, of course, extremely important. But, to us, how the Court got to this decision is even more important because of what the Court's legal analysis means for future cases. Everyone expected DOMA to be struck down, but on the basis on state's rights - that each state could decide for itself whether it would have marriage equality. Thirty states still say no. But instead, the Court based its decision on Equal Protection, a constitutional protection for groups otherwise targets of social animus.

That opens the door for challenges to ANY law discriminating against lesbians and gay men. Even Anton Scalia recognized this. Here's what he said:

In my opinion, however, the view that *this* Court will take of state prohibition of same-sex marriage is indicated beyond mistaking by today's opinion. As I have said, the real rationale of today's opinion, whatever disappearing trail of its legalistic argle-bargle one chooses to follow, is that DOMA is motivated by " 'bare . . . desire to harm'" couples in same-sex marriages. *Supra*, at 18. How easy it is, indeed how inevitable, to reach the same conclusion with regard to state laws

denying same-sex couples marital status.

One of the only times we hope he's right!

Our Staff

Michele is a partner and founder of the Firm. She works primarily in the areas of adoption, assisted reproductive technology, estate planning, family mediation, collaborative law, and probate. Her practice is particularly focused on developing legal protections for families, including families headed by same-sex couples. Michele was recently named Family Law Practitioner of the Year by the Bar Association of Montgomery County.

Eva is a partner with the Firm, and heads the Firm's litigation practice on divorce, custody, and dissolution issues. Eva was recently voted President Elect of the Virginia State Bar Diversity Conference.

Jill Seiferth is an associate with the Firm, helping clients with their litigation needs.

Emily Neuhausen is an associate with the Firm, helping clients with adoptions, assisted reproductive technology, estate planning, and probate matters. Emily was recently admitted to practice in Virginia.

Michael McHugh is "of counsel" to the Firm.

Camellia Jacobs has recently joined the Firm as "of counsel." We look forward to working with her. She will be helping clients with their litigation needs.

Lisa Szustak is the Firm's litigation paralegal.

Timothy Compton is a paralegal with the Firm. He works with adoptions, estate planning, and probate.

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QUICK TIP

Take some time for a review of your personal affairs. Be sure you have a Will, up-to-date beneficiary designations, and other personal planning documents, particularly if you have recently been married or brought children into your family. Contact us to discuss the implications of the fall of DOMA.

Please stop by and visit us!

To schedule an appointment with our office for litigation, [click here](#). To schedule an appointment for adoptions, estate planning, or probate, [click here](#).

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