

## FOCUS ON POLICY

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### SCOTUS RULINGS ON SAME SEX MARRIAGES TO RIPPLE THROUGH EMPLOYMENT POLICIES

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At the end of its 2012-13 term, the U.S. Supreme Court issued two historic decisions that will have a significant impact on the LGBT community and implications for employers providing benefits to same-sex spouses of employees.

#### ***Recognizing Legal Same-Sex Marriages Under Federal Laws***

In *United States v. Windsor*, the Court analyzed the constitutionality of the Defense of Marriage Act (DOMA). Signed into law by President Bill Clinton in 1996, DOMA allowed states to refuse to recognize same-sex marriages legally performed in other states. Section 3 of DOMA, a directive amending Title 1, § 7 of the United States Code, defines “marriage” and “spouse” to exclude same-sex couples and applies to all federal statutes and regulations.

In effect, DOMA prevented legally married gay and lesbian couples from being recognized as “spouses” under federal law and receiving federal benefits available to other married couples.

Plaintiff Edie Windsor and her wife Thea Spyer were legally married in Canada and resided in New York, where their marriage was recognized under state law. After Ms. Spyer died in 2009, Ms. Windsor sought to claim a federal estate tax exemption as the surviving spouse and requested a refund of the \$363,053 she paid in estate taxes. The Internal Revenue Service denied her refund request based on Section 3 of DOMA, concluding that Ms. Windsor was not a “surviving spouse.” Ms. Windsor sued the federal government for the refund, claiming that DOMA violated equal protection principles. The U.S. District Court for the Southern District of New York held that Section 3 of DOMA was unconstitutional, and the Second Circuit Court of Appeals affirmed.

In a landmark 5-4 decision, the Supreme Court held Section 3 of DOMA to be “unconstitutional as a deprivation of the equal liberty of persons that is protected by the Fifth Amendment.” Justice Anthony Kennedy wrote for the majority and was joined in his opinion by Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan. Recognizing that each individual state’s authority to define and regulate marriage is “of central relevance,” the Court held that “DOMA, because of its reach and extent,

departs from this history and tradition of reliance on state law to define marriage." Justice Kennedy explained that Section 3 of DOMA effectively "writes inequality into the entire United States Code" and the principal effect of the federal statute is to "identify a subset of state-sanctioned marriages and make them unequal." The Court ultimately held that DOMA, "[b]y seeking to displace" the state laws granting marriage rights to same-sex couples and "treating those persons as living in marriages less respected than others," violates due process and equal protection principles.

### ***California Voter Initiative Overturned***

Later the same day, the Court issued a ruling in *Hollingsworth v. Perry*, dismissing the case and allowing the legal marriage of same-sex couples to resume in California. Proposition 8, the focus of the *Perry* case, was a controversial ballot initiative passed in November 2008 that banned same-sex marriage by amending the California Constitution to define marriage as between a man and a woman only. California state courts upheld Proposition 8 as constitutional, and it was subsequently challenged in multiple federal cases.

In August 2010, Chief Judge Vaughn Walker for the U.S. District Court for the Northern District of California issued a ruling in *Perry v. Schwarzenegger* (later *Hollingsworth v. Perry*), holding that Proposition 8 violated both the Equal Protection and Due Process clauses of the Fourteenth Amendment. The Ninth Circuit Court of Appeals affirmed the lower court's decision declaring Proposition 8 unconstitutional, but stayed its enforcement thus barring same-sex marriages from taking place pending appeal to the Supreme Court.

In another 5-4 decision authored by Chief Justice John Roberts, the Supreme Court declined to address the legal merits of the constitutionality arguments surrounding Proposition 8 and dismissed the case on a procedural basis. The Court held that the Proposition 8 proponents lacked sufficient legal standing under Article III of the U.S. Constitution and therefore could not appeal the lower court's ruling blocking the ballot initiative. Because of the proponents' lack of standing, the Ninth Circuit's decision was also vacated.

Thus, the ruling in effect is Judge Walker's district court opinion invalidating Proposition 8 under the Fourteenth Amendment. Two days after the Supreme Court's ruling, the Ninth Circuit lifted its stay, allowing the issuance of same-sex marriage licenses to resume in California counties.

The practical effect of the *Hollingsworth v. Perry* ruling combined with the Court's decision in *Windsor* is that same-sex couples legally married in California—including those married before the passage of Proposition 8—will receive federal recognition and access to federal benefits.

### ***Employment Law Take-Away***

The rulings in *Windsor* and *Perry* are indicative of the growing trend to recognize certain rights and privileges for individuals who have made commitments outside DOMA's definition of marriage. These decisions will likely have a wide-reaching impact on employers, depending on how states and federal agencies interpret them, but the exact implications for the workplace will not be immediately clear. Employers should evaluate policies such as payroll and employee benefit plans to consider how these systems will be affected, especially in states that already recognize same-sex marriage.

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