



EQUALITY ILLINOIS

THE SUPREME COURT SAME-SEX MARRIAGE CASES: QUESTIONS AND ANSWERS

On Wednesday, June 26, 2013, the United States Supreme Court released its opinions on two cases concerning same-sex marriage. *United States v. Windsor* questioned the constitutionality of the Defense of Marriage Act (“DOMA”) and *Hollingsworth v. Perry* questioned the constitutionality of California’s ban on same-sex marriage (“Prop 8”). These questions and answers will help to explain what the cases were about, what the Supreme Court decided, and, most importantly, what these decisions mean for same-sex couples in Illinois.

- **Are same-sex marriages legal in Illinois?** No. The status of marriage in Illinois has not changed, and civil unions are still recognized only as civil unions.
- **My partner and I married in another state that allows same-sex marriage. What does this mean for us?** Your out-of-state marriage will continue to be recognized in Illinois as a civil union. We are working with our national partners and federal Administration officials to ensure that all marriages that were validly performed are recognized by the federal government regardless of where the couple now resides. Some federal benefits may be available to you right away.

UNITED STATES V. WINDSOR **(Defense of Marriage Act)**

The Decision: The Supreme Court agreed with the lower courts and decided that Section 3 of DOMA is unconstitutional. Edie Windsor will receive a refund on the \$363,000 in estate taxes she paid.

What does this mean? The federal government is now able to recognize same-sex marriages. This means that same-sex couples who are married in any of the thirteen states (and the District of Columbia) that allow same-sex marriages are entitled to federal recognition of their marriages. However, certain government agencies consider marriage in the state of residence, not in the state where the marriage took place. Therefore, a same-sex couple who married in a state that allows same-sex marriage but who currently live in a state that does not recognize their marriage may not be entitled to all federal benefits. Only time will tell whether the federal government will change its policies to recognize all same-sex marriages regardless of place of residence.

***FURTHERMORE*,** this ruling is limited to the federal government and does not change how states handle same-sex marriage. States are still free to decide whether or not they will recognize same-sex marriages from other jurisdictions, and need not offer state-level benefits and protections to same-sex marriages.

Are same-sex marriages legal in Illinois? No. This decision does not change Illinois laws regarding same-sex marriages. Same-sex marriage is still not legal in Illinois, and Illinois will continue to offer same-sex couples who were married in other states the same benefits and protections as couples who have a civil union in Illinois.

I have a civil union in Illinois. Does this decision change anything? No. The federal government has declared it will not give civil unions the same recognition as marriage.

My partner and I were married in another state that allows same-sex marriage. What does this mean for us? For now, your out-of-state marriage will continue to be recognized in Illinois as a civil union. We are working with our national partners and federal Administration officials to ensure that all marriages that were validly performed are recognized by the federal government regardless of where the couple now resides. Some federal benefits may be available to you right away. We expect the federal agencies to articulate how each will implement the court's ruling and act on the Administration's commitment to full marriage equality for gay and lesbian couples.

As of September 2013, a number of federal agencies have determined that couples married in a state that allows same-sex marriage will be eligible for certain federal benefits under the scope of that agency's jurisdiction, regardless of where the couple resides. Some of the federal benefits now available to married same-sex couples regardless of residency include the following:

- The ability to file federal taxes jointly with the Internal Revenue Service
- Spouses of federal employees, active duty military personnel, and military veterans are now eligible for spousal benefits
- American citizens in a bi-national relationship are now allowed to sponsor non-citizen spouses for citizenship
- Medicare beneficiaries will have equal access to nursing facilities along with their spouses

What does this mean for the future? Even though Section 3 of DOMA was found to be unconstitutional, Section 2 will remain the law unless the Supreme Court decides to overturn it in a future case or if Congress decides to repeal it.

What was this case about? New York residents Edith "Edie" Windsor and Thea Spyer had been together for 40 years when they married each other in Toronto in 2007. Because Section 3 of the Defense of Marriage Act ("DOMA") prevents the federal government from recognizing same-sex marriages, Edie had to pay \$363,000 in federal estate taxes after Thea died in 2009. Had the federal government recognized their marriage, Edie would not have had to pay any taxes on Thea's estate. Edie therefore sued the government on the theory that Section 3 of DOMA violates the Equal Protection Clause of the Constitution. The Obama administration agreed with her and refused to defend the case, but the Bipartisan Legal Advisory Group of the House of Representatives ("BLAG") stepped in to defend DOMA on behalf of the government. Both the federal court for the Southern District of New York and the Second Circuit Court of Appeals agreed with Edie Windsor and held that Section 3 of DOMA was unconstitutional. BLAG appealed this decision to the Supreme Court, who heard arguments on March 27, 2013.

HOLLINGSWORTH V. PERRY **(California's Proposition 8)**

The Decision: The Supreme Court held that Hollingsworth did not have standing to defend Prop 8 in federal court and dismissed the case. The Ninth Circuit's decision that Prop 8 is unconstitutional was vacated, meaning Judge Walker's decision in the Northern District of California finding Prop 8 unconstitutional is the final decision on Prop 8.

What does this mean? California once again is allowing same-sex marriage because the California Attorney General is prohibited under that decision from enforcing Prop 8's ban on same-sex marriage. Additionally, Governor Brown directed the state's agencies to begin issuing marriage licenses again.

Are same-sex marriages legal in Illinois? No. This decision does not change the legal status of same-sex marriages in Illinois.

I have an Illinois Civil Union. Does this decision change anything? No. The Supreme Court did not make any decisions regarding civil unions. Illinois will continue to offer civil unions to same-sex couples.

What does this mean for the future? Most of the country will see no change. Same-sex marriages are legal in California once again, and 30% of Americans now live in jurisdictions that allow same-sex marriage.

What was this case about?: In May 2008, the California Supreme Court decided that same-sex couples could not be denied the right to marry, making California the second state in the nation to allow same-sex marriage. Six months later, California voters approved Proposition 8 ("Prop 8") which amended the California constitution to limit marriage to opposite-sex couples. This amendment overruled the California Supreme Court's 2008 decision. After the passage of Prop 8, the American Foundation for Equal Rights ("AFER") filed a lawsuit on behalf of two same-sex couples, arguing that Prop 8 violates the Due

Process and Equal Protection Clauses of the United States Constitution. California Attorney General Jerry Brown and California Governor Arnold Schwarzenegger agreed that Prop 8 was unconstitutional and refused to defend the case. Dennis Hollingsworth, the head of ProtectMarriage.com, stepped in to defend Prop 8. The federal court sitting in California decided that Prop 8 violates the U.S. Constitution, and the Ninth Circuit Court of Appeals agreed. However, the Ninth Circuit issued a stay pending appeal, meaning that their decision reinstating marriages in California was officially on hold until the Supreme Court issued its ruling.

EQUAL PROTECTION

What is the issue? In deciding *United States v. Windsor*, the Supreme Court decided that equal protection cases involving LGBT individuals should be decided on a “careful consideration” basis.

Why is this important? The Supreme Court has never before decided what level of scrutiny to apply to cases involving the LGBT community. The standard level of scrutiny, called “rational basis,” simply means that the government need only show that it had a rational basis for passing a discriminatory law. “Careful consideration” appears to be a new level of scrutiny that has not been tested in courts, but it seems to be a slightly more rigorous standard than rational basis (along the lines of intermediate scrutiny which is applied to laws that discriminate on the basis of sex). Only time will tell how this standard will be implemented in the courts, and what this means for laws that discriminate against the LGBT community.

We are grateful to the law firm of Foley & Lardner LLP for their assistance with this project. This summary is intended only as a general description of the Supreme Court decision in Hollingsworth v. Perry and United States v. Windsor. It is not intended as legal advice.