

PCOA information & assistance

Same-Sex Marriage Protected Under Federal Law

In *United States v. Windsor*, the U.S. Supreme Court ruled that the definitions of “marriage” and “spouse” in Section 3 of the Defense of Marriage Act (“DOMA”) violate the U.S. Constitution and are invalid. For purposes of federal law, Section 3 defined a “marriage” as being between only one man and one woman, and a “spouse” as being only an individual of the opposite gender to whom another individual is married. By striking down Section 3, the Court introduced benefits and burdens of marriage under federal law to individuals of the same gender who are married (“same-sex marriage”). It is unclear how federal law will treat same-sex marriage in States such as Arizona that do not recognize same-sex marriage.

The Case

Ms. Edith Windsor and Ms. Thea Spyer were married in Ontario, Canada, in 2007. When Ms. Spyer died in 2009, she left her entire estate to Ms. Windsor. Under federal tax law, property left to a decedent’s spouse is deducted from the value of the decedent’s estate subject to federal estate tax. DOMA prevented the deduction despite the fact the marriage of Ms. Windsor and Ms. Spyer was valid in New York, where they resided. As a result, Ms. Spyer’s estate incurred federal estate tax of \$364,053. Absent DOMA, Ms. Spyer’s estate would not have incurred the estate tax.

Ms. Windsor, as the executor of Ms. Spyer’s estate, paid the estate tax and sued the U.S. government for a refund. Ms. Windsor claimed that Section 3 of DOMA violated the “equal protection clause” of the U.S. Constitution’s Fifth Amendment.

The Court agreed with Ms. Windsor. The Court held that the purpose of Section 3 was to single out individuals in same-sex marriages with the intent of treating them differently than individuals in more traditional, “opposite-gender marriages,” even though individuals in same-sex marriages may otherwise have equal status as individuals in opposite-gender marriages under applicable State law. This intent, the Court noted, caused the law to be especially suspect. The Court concluded that Section 3 of DOMA violated the equal protection clause.

What it means

The definitions of “marriage” and “spouse” in Section 3 of DOMA applied to over 1,000 federal statutes, and a greater number of federal regulations and administrative rules. Consequently, the effect of *Windsor* appears significant. Under *Windsor*, it seems individuals in a same-sex marriage may (1) file joint tax returns, (2) share employer-provided health insurance without paying tax on that benefit, (3) make gifts to each other free of gift taxes, (4) leave property to

each other at death free of estate tax, (5) receive social security retirement benefits from a living or deceased spouse, (6) enjoy preferential tax treatment as the sole beneficiary of a qualified retirement plan (like an IRA or 401(k)), (7) enjoy preferential immigration and naturalization benefits, and (8) be among the class of people to whom health-care providers may disclose health information.

However, it is unclear whether such benefits will accrue to individuals in a same-sex marriage who were married in a State that recognizes same-sex marriage but who reside in a State, such as Arizona, that does not recognize same-sex marriage. It is also unclear if marriage “alternatives,” such as civil unions or domestic partnerships, that are recognized in lieu of marriage for individuals of the same gender under certain States’ laws will be protected under *Windsor*. Guidance on such issues may be piecemeal. The Department of Homeland Security (“DHS”), for one, recently announced that for immigration purposes DHS would recognize any valid marriage regardless of where the couple resides.

Conclusion

Windsor is an important case. It answers certain questions regarding the legal effect of same-sex marriage. The full effect of *Windsor*, however, remains to be seen.

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Successful Aging - The LGBT Perspective

Sunday, October 20
2:00 p.m. to 4:00 p.m
Tucson Jewish
Community Center
3800 E. River Road

A free forum co-sponsored by the University of Arizona Center on Aging, the University of Arizona Institute of LGBT Studies, and the Pima Council on Aging.

Speakers will present on the following topics:

- **The US Supreme Court overturned DOMA** – What are the consequences for us? This will review impacts on social security, taxes, inheritance laws and other spousal benefits.
- **The care and feeding of our brains** – How to help our brains stay healthy.
- **Planning for our care as we age** - What we need to know to prepare for our care needs. How Project Visibility trainings can help long term care providers to be responsive to us.
- **Community Resources** – Getting the help we need. What assistance is available from our community and how we can access it. We’re entitled to lots of discounts at places you’d never think of. Find out what they are.

For additional information on this Forum, please contact Sarah Bahnson at Wingspan, (520) 624-1779, extension 122.