

DOMA Unconstitutional: Federal Government to Recognize New York Same Sex Marriage

The United States Supreme Court in a 5-4 decision struck down the Defense of Marriage Act.

DOMA defined marriage as a union between a man and a woman only. While some states, like New York, permit same sex marriage, the federal government, until now, did not recognize the validity of those marriages.

In the Windsor case decided today (<http://divorce.clementlaw.com/marriage/a-new-york-federal-court-declares-doma-unconstitutional/>), Edith Windsor sued the federal government because it failed to recognize her Canadian marriage to Thea Speyer. Speyer died, leaving her estate to Windsor. Normally, inherited property would pass between spouses without the imposition of estate taxes, but, because DOMA prevents recognition of same sex marriages, the estate was assessed \$363,000 in estate taxes.

As a result of today's ruling, same-sex couples who are legally married must now be treated the same under federal law as married opposite-sex couples.

Here is a summary of what the Court decision means as summarized by the SCOTUSBLOG:

** It ruled unconstitutional the Defense of Marriage Act's Section 3, which defines marriage for purposes of one thousand federal laws and multitudes of official regulations as the union of one man and one woman only — a definition that excludes probably millions of already-married same-sex couples from any of those benefits or opportunities. "DOMA," the Court majority said caustically, "writes inequality into the entire U.S. Code."

** It decided that sponsors of California's "Proposition 8," adopted by the state's voters in an election almost five years ago, did not have a legal right to be in the Supreme Court or in a federal appeals court to try to defend that measure from constitutional attack. That is likely to have the early impact of putting into final effect a San Francisco federal judge's 2010 decision striking down Proposition 8 under the U.S. Constitution. Some 18,000 California same-sex couples already had been married when they had a brief chance to do so as the issue developed in that state, but now millions are likely to gain the right to marry when the judge's ruling is implemented by state officials. Happening perhaps in just a few weeks, that would make California the fourteenth — and largest — state to permit such marriages (along with Washington, D.C.).

** It declared, in quite explicit terms, that it was not deciding at this point whether the Constitution guarantees gays and lesbians a right to marry or whether the Constitution forbids states' bans on such marriages. That will leave the promoters of marriage equality to continue with their efforts, in state legislatures and in lower courts, to try to win the right one more state at a time. The Court itself has a chance to take up that basic

issue, as early as tomorrow, in a pair of new cases — from Arizona and Nevada — but it may not yet be ready to do so.

** And the Court did not spell out a new constitutional test for courts to use in judging new laws or other government actions that treat homosexuals less favorably than other people in similar settings and factual contexts. Although DOMA's benefits ban was nullified under the Fifth Amendment's guarantee of legal equality, the majority opinion did not sort out explicitly which level of judicial review — in escalating toughness — is supposed to be used in gay rights cases. In fact, the test that was applied this time appeared to be notably indistinct