



## SITZMANN ▪ MORRIS ▪ LAVIS

Employee Benefits | Life Insurance | Risk Management

**TO: Clients of Sitzmann Morris & Lavis Insurance Agency**

**RE: Supreme Court Decisions on DOMA and Proposition 8**

On June 26, 2013, the U.S. Supreme Court announced decisions in two significant cases regarding laws affecting same-sex marriage.

In U.S. v. Windsor the Court **struck down Section 3 of the Defense of Marriage Act (DOMA)**, which defined marriage as a union between one man and one woman as husband and wife. In a 5-4 decision, the court found this definition to be a violation of equal protection rights under the U.S. Constitution, holding that same-sex couples who are legally married under state law will be entitled to equal treatment under federal law with regard to income taxes and federal benefits. However, the Court's ruling does not establish a constitutional right to same-sex marriage.

In Hollingsworth v. Perry, the Court **dismissed the case involving California's Proposition 8** in a 5-4 decision, holding that it did not have jurisdiction to hear the case. Proposition 8 was previously struck down by federal courts in California. Supporters of Proposition 8 appealed, but the Supreme Court ruled that they did not have standing to do so. This means the lower court's ruling will stand, allowing same-sex marriages to resume in California.

### DOMA Background:

DOMA has two sections regulating same-sex marriage at the federal level:

- Section 2 provides that no U.S. state or political subdivision is required to recognize a same-sex marriage treated as a marriage in another state.
- Section 3 provides that, under federal law, the term "marriage" means only a legal union between one man and one woman as husband and wife.

Because DOMA barred federal recognition of same-sex marriage, a same-sex spouse was not a legal spouse for federal tax purposes. If a same-sex spouse did not qualify as a tax dependent of the employee under federal tax law, employers are required to report and withhold taxes on the value of employer-provided health coverage for the same-sex spouse. In addition, DOMA affects eligibility for employee benefits that are regulated by federal law.

### **The Court's Decision**

The Supreme Court ultimately ruled that Section 3 of DOMA violates the Constitution's Equal Protection Clause. In its ruling, the Court concluded that DOMA's definition of marriage is

invalid because it singles out a class of individuals “deemed by a state entitled to recognition and protection to enhance their own liberty.”

The Court concluded that DOMA treats same-sex marriages that are legal under state law as less respected than heterosexual marriages. As a result, the Court held that this section of DOMA is invalid, and that the state’s definition of marriage will apply for purposes of federal law.

The Court’s ruling means that same-sex couples who are legally married under state law will be entitled to equal treatment under federal law with respect to federal benefits. Therefore, in states that have legalized same-sex marriage, a same-sex spouse is now considered a legal spouse for federal tax purposes and same-sex spouses will be eligible for federal benefits in the same manner as other spouses.

The Supreme Court’s decision applies only to same-sex marriages that are legal under state law. Although the Court ruled that Section 3 of DOMA is unconstitutional, the ruling did not establish a constitutional right to same-sex marriage. This means that state bans on same-sex marriage continue to be valid. The Court did not address Section 2 of DOMA, which means that states can still refuse to recognize same-sex marriages that are legal in other states. This issue may be addressed in future cases.

#### Proposition 8 Background:

In May 2008, same-sex marriage was legalized after the California Supreme Court ruled it was a fundamental right. However, in September 2008, Proposition 8 was passed by California voters. Proposition 8 was a ballot proposition and constitutional amendment stating that only marriage between a man and a woman is valid or recognized in California.

Numerous lawsuits have been filed challenging the validity of Proposition 8 on equal protection and due process grounds. Most recently, in February 2012, the U.S. Court of Appeals for the Ninth Circuit held that Proposition 8 was unconstitutional. However, the court’s ruling was stayed pending an appeal to the U.S. Supreme Court.

California’s Governor and Attorney General chose not to defend the lawsuits, taking the position that Proposition 8 violates the U.S. Constitution’s Equal Protection Clause.

ProtectMarriage.com, a proponent group of Proposition 8, intervened in the case to act as the main defendant.

#### **The Court’s Decision**

The Supreme Court ruled that it did not have jurisdiction to rule on the case involving California’s Proposition 8. Although ProtectMarriage.com stepped in as defense when California’s Governor and Attorney General chose not to defend the case, the Court held that ProtectMarriage.com did not have the legal right to defend the law in court. As a result, the decision by the Ninth Circuit has no legal force, and the case was sent back to that court with instructions to dismiss it.

Because the Court dismissed the appeal regarding Proposition 8, the trial court’s final order will go into effect. This final order prohibits the Governor and the Attorney General from enforcing Proposition 8. As a result, same-sex marriages will likely continue to be legal in California.

## Employee Benefit Issues:

1. **Plan Eligibility.** In the absence of DOMA and the resuscitation of the same-sex marriage law in California, plan sponsors and insurance policy issuers must now define “spouse” to include same-sex spouses as eligible spouses. Refer to the chart for a list of all states with same-sex marriage laws.
2. **Domestic Partnerships.** Although there may be a significant reduction in the number of Registered Domestic Partnerships (RDPs) now that marriage is, once again, an option, RDPs remain subject to imputed income rules, *inter alia*. Similarly, their rights under California laws as RDPs remain as they are today, pending any further action by the California legislature.
3. **Multi-State Employers.** Multi-state employers with insurance policies situated in one of the 13 states or DC should recognize same-sex marriage in those states where state laws regarding same-sex marriage exist. Refer to the chart for a list of all states with same-sex marriage laws.
4. **Impact on Existing Imputed Income, Enrollment Rights, Etc.** It is our current understanding that the abolition of DOMA will not affect the existing imputed income collected so far in 2013. We believe that going forward, if a same-sex spouse resides in one of the 13 states or DC, then they can pay premiums pre-tax and use the health FSA for their spouse. We hope for guidance from the IRS soon on when, and if, any adjustments can be made for 2013.

It is unclear whether there is an immediate HIPAA QE for same-sex spouses to come onto employer plans. Again, we hope for guidance on this soon.

5. **FMLA and Other Leave Policies.** To the extent that leave policies were previously limited to taking leave to care for one’s opposite-sex spouse, employers must permit employees to take leave to care for one’s same-sex spouse.
6. **New Marriage.** Since many same-sex couples may be getting married in the near future and since marriage is a qualifying event under benefit plan eligibility rules and Section 125 plans, employers should allow enrollment rights.

## What’s Next:

Both cases will have a significant impact on many individuals and will create issues for the state and federal governments and employers. In the days to come, decisions will be made by state and federal agencies on how to specifically implement these rulings. California’s Governor Brown has already directed that marriage licenses must be issued to same-sex couples in the state as soon as the court there confirms that the stay on its ruling is lifted.

Employers in states that permit same-sex marriage may need to review their current policies to determine whether they are affected by the decision on DOMA. Guidance is anticipated from agencies affected by the revised definitions of spouse and marriage on how the ruling affects the laws they enforce, but the Court has essentially redefined these terms under the law. Protections granted to opposite-sex spouses by federal law must now be provided to legal same-sex spouses as well.

We will provide you with more detail as it becomes available. As always, contact your SML Account team if you have any questions.

## State Laws On Same-Sex Marriage

Currently, 13 states and the District of Columbia have laws allowing same-sex marriage. Thirty-five states have banned same-sex marriage. Some states, including several that have laws banning same-sex marriage, allow same-sex civil unions or domestic partnerships that offer some state-level rights and protections similar to marriage. See the chart below for information on state laws.

State	Allows Same-Sex Marriage	Bans Same-Sex Marriage	Allows Same-Sex Civil Unions or Domestic Partnerships
Alabama		X	
Alaska		X	
Arizona		X	
Arkansas		X	
California	Once stay is lifted		X
Colorado		X	X
Connecticut	X		
Delaware	X		
District of Columbia	X		
Florida		X	
Georgia		X	
Hawaii		X	X
Idaho		X	
Illinois		X	X
Indiana		X	
Iowa	X		
Kansas		X	
Kentucky		X	
Louisiana		X	
Maine	X		X
Maryland	X		
Massachusetts	X		
Michigan		X	
Minnesota	X		

Mississippi		X	
Missouri		X	
Montana		X	
Nebraska		X	
Nevada		X	X
New Hampshire	X		
New Jersey			X
New Mexico			
New York	X		
North Carolina		X	
North Dakota		X	
Ohio		X	
Oklahoma		X	
Oregon		X	X
Pennsylvania		X	
Rhode Island	X		
South Carolina		X	
South Dakota		X	
Tennessee		X	
Texas		X	
Utah		X	
Vermont	X		
Virginia		X	
Washington	X		
West Virginia		X	
Wisconsin		X	X
Wyoming		X	

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