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CLIENT BULLETIN

Supreme Court Rules Same-Sex Marriages Are A Protected Right Under The Constitution

Ruling Invalidates State Law Bans Against Same-Sex Marriage

On June 26, 2015, the U.S. Supreme Court of the United States issued an opinion the case of Obergefell v. Hodges, ruling that all 50 states must issue marriage licenses for two people of the same sex and that states must recognize a same-sex marriage lawfully performed out-of-state. This is a landmark ruling.

The holding applies to federal, state and local laws, but does not directly affect dealings between private individuals, although given the new law of the land, individuals or businesses discriminating against same-sex married couples on the basis of the sex of one of the spouses would most likely violate the federal anti-discrimination provisions of Title VII, and perhaps any state and local anti-discrimination statutes. The effect of the case will be played out as adjustments are made to this new, national standard of marriage equality.

The vote was close (5-4) with vigorous dissent. Chief Justice Roberts was provoked to read his dissent from the bench for the first time as Chief Justice, objecting that the issue was a legislative issue that should have been allowed to play out in the states and was not an issue for judicial interpretation. Justices Scalia, Thomas and Alito also dissented. The opinion makes for interesting reading alone for the discussions on the role, nature and purpose of marriage in society.

Since the 2013 *Windsor* case, federal law has recognized same-sex marriages and qualified pension plans had to recognize same-sex spouses as "spouses" for all purposes. After *Windsor*, there was debate about whether self-funded *ERISA* group health plans must cover same-sex spouses. Some health plans adopted an "opposite sex" only view of marriage and spousal coverage. Other plans, sensitive to the probability of discrimination litigation under Title VII adopted a definition of marriage that included same-sex spouses.

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While the *Obergefell* ruling on its face does not require self-funded *ERISA* group health plans to cover same-sex spouses, the odds seem fairly high that failure to do so would be discriminatory under federal law. Health plans should consult their Fund Counsel. Hopefully, as was done after *Windsor*, guidance will be issued on the subject.

An Overview Of The Case

To summarize, same-sex couples from Michigan, Kentucky, Ohio and Tennessee filed suits in Federal District Courts in their home States, claiming that state officials violated the Fourteenth Amendment by denying them the right to marry or to have marriages lawfully performed in another State given full recognition. These four states defined marriage as a union between one man and one woman. Each District Court ruled in petitioners' favor, but the Sixth Circuit consolidated the cases and reversed upholding state law bans on same-sex marriage.

The U.S. Supreme Court held that "*the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty*." Thus, the Fourteenth Amendment requires a State to *license a marriage* between two people of the same sex and to *recognize a marriage* between two people of the same sex when their marriage was lawfully licensed and performed out-of-State.

The pdf of the opinion runs 103 pages. The first 5 pages sum up the majority opinion in the Syllabus. The majority opinion runs from pdf page 6 to page 33. Chief Justice Roberts dissent runs from pdf page 40-63; Justice Scalia's scathing dissent from pdf pages 64-77, Justice Thomas dissent from pdf pages 78-95 and Justice Alito's dissent from pdf page 96-103.

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