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## Attorneys Have a 'Lot to Analyze' in Gauging the Impact of DOMA Ruling on Client Benefits

Joel Stashenko

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Lawyers say it will take time for same-sex couples to receive the federal benefits now available to them after Wednesday's ruling by the U.S. Supreme Court declaring the Defense of Marriage Act unconstitutional ([NYLJ, June 27](#)). And they warned that those wed in New York should remain wary about venturing into any of the 37 states where their marriages are not recognized.

Like many attorneys who spoke following the Supreme Court's action, Proskauer Rose senior counsel Roberta Chevlowe said she received inquiries from several clients about how the ruling will affect them personally.

An employee benefits attorney, Chevlowe said it "will get very busy" for attorneys studying the additional rights conferred by the DOMA ruling plus the new federal health care law.

"This will definitely add to the plate of a lot of lawyers around New York and elsewhere," Chevlowe said. "There's a lot to analyze. It's pretty historic."

One attorney predicted that some same-sex couples will be dismayed to discover that the first practical effect of the court's ruling might be higher taxes if they decide to file jointly.

"It is going to be a bit of a shock when they realize the operation of marriage equality to their lives," said Ralph Randazzo of Randazzo & Randazzo in Huntington. "For some couples, they

might do better on their taxes come April 15. But for many other couples, the rates will be higher. I think that is going to create sticker shock for people."

In general, higher-earning individuals will pay higher federal income taxes when filing jointly with a spouse than when they filed independently.

But Arent Fox partner Hunter Carter said he believes he would have saved money on his taxes had DOMA not prevented him from filing jointly with his spouse.

"Can you say 'amended return?'" Carter asked in an interview following Wednesday's ruling. "You are entitled to amend [federal tax returns] for up to the last three years. No one has seen any IRS guidance and we have not litigated it, but I think a lot of people will amend their tax returns and argue that DOMA is no defense to deny the tax returns. DOMA was unconstitutional from the beginning [1996]."

Other issues confronting lawyers in the wake of [\*United States v. Windsor\*](#), 12-306, include making same-sex husbands or wives eligible to receive their spouses' Social Security benefits, federal pensions, military health benefits and death benefits, the inheritances or gifts from spouses free of federal taxes and immigration rights.

"It is a brave new world in the area of equal rights," said Lee Rosenberg of Salzman Chetkof & Rosenberg in Garden City.

Randazzo said a health care issue will quickly become another source of "sticker shock": the requirement that married spouses must assume financial responsibility for the nursing home care of their partners unless those partners qualify for Medicaid.

"It's something most same-sex couples have not thought much about until now," Randazzo said.

Andrew Koerner, an immigration law partner at Tarter Krinsky & Drogin, said *Windsor* had the immediate effect of changing the status of the spouse of a client from Italy who is transferring to New York from Paris in September to work in the fashion business. Accompanying her will be a woman she is to wed on July 5.

Koerner said the soon-to-be spouse had been facing entry into the United States on a six-month visa, or under the same status as a tourist. Following *Windsor*, she will be able to apply for the same visa that opposite-sex spouses of people entering the United States on work visas are granted.

If approved, that will effectively allow the woman to stay in the United States for as long as her new spouse works in this country, Koerner said.

But Koerner said it is unclear how long it will take U.S. Citizenship and Immigration Services (USCIS) to change its procedures.

Koerner said the adjustments by USCIS will have to be duplicated up and down the federal

bureaucracy. Advocates for rescinding the act have found about 1,100 instances where the federal government recognized benefits or programs for opposite-sex spouses that now apply to same-sex spouses.

"The question now is exactly how long it is going to take the different federal agencies to get their acts together to implement it," Koerner said. There are "little things" like changing words on forms and regulations, but also agencies and their staffs are going to need guidance on how to move forward, he said.

Carter noted that President Barack Obama has backed same-sex marriage—his Justice Department opted not to defend DOMA before the Supreme Court—and his support should prevent bureaucratic inertia in compliance with the high court ruling.

"Same-sex couples are dependent on President Obama and his administration for federal policy interpretation and regulatory reform," Carter said. "We are given to believe that they are prepared to take comprehensive action."

## **'Still a Patchwork'**

One key issue is the status of same-sex couples who marry in New York and then move to a state where their union is not recognized, said Olivia Sanson of Satterlee Stephens Burke & Burke.

Will the federal government recognize the same-sex marriage the couple celebrated in New York or regard them as unmarried if they are residents of North Carolina, Oklahoma or other states where such marriages are not legal? she asked. The *Windsor* ruling does not address the state-of-residence versus the state-of-celebration question for same-sex couples.

And it remains uncertain if gay couples who legally adopt a non-biological child in the state where they were married would retain the same parental rights if they move to a state where gay marriage is banned, said Michele Kahn of Kahn & Goldberg.

"Because the states are still a patchwork, for lack of a better word, and we do live in a very mobile society, it is quite possible that a couple could get married in a state where it is recognized and end up working in a state where it isn't," said Kahn, chairwoman of the New York State Bar Association's Committee on LGBT People and the Law. "Until the states are all in line, most practitioners are going to still be recommending that couples do second-parent adoptions."

Lewis Silverman, a professor and director of the family law clinic at Tuoro Law School on Long Island, said he does not believe the status of same-sex marriage will change rapidly where it is now illegal despite the Supreme Court's "watershed" ruling.

"I think it is going to be piecemeal and it is going to take decades," Silverman said. "I can see some states never allowing it until it gets to a point where just about every other state has it, then they ask themselves, 'Why are we the only ones without it?'"

The section of DOMA that says states don't have to recognize marriage contracted in other states was not affected by Wednesday's ruling. But Rosenberg predicted there would be attempts to honor same-sex marriages under the full-faith-and-credit clause of the U.S. Constitution.

He compared same-sex marriage to abortion in that the legal and social controversy still rages 40 years after the Supreme Court's ruling in *Roe v. Wade*.

"The issue is not over," Rosenberg said.

@/Joel Stashenko can be contacted at [jstashenko@alm.com](mailto:jstashenko@alm.com).

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