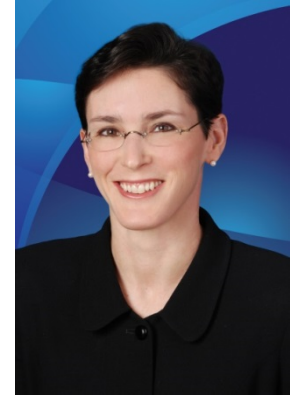


The Supreme Court this morning issued a historic ruling in four related cases addressing the constitutionality of same-sex marriage on the state level. The Court's decision this morning addresses some of the key issues not addressed in the Court's 2013 landmark ruling in *Estate of Windsor*, which had struck down as *unconstitutional* a key provision of the federal Defense of Marriage Act (DOMA) denying federal marital benefits to same-sex couples who were legally married under state law. The Court's 5-4 decisions today in *Obergefell v. Hodges*, *DeBoer v. Snyder*, *Bourke v. Beshear* and *Tanco v. Haslam* found that the equal protection rights granted by the Fourteenth Amendment to the United States Constitution require states to license marriage between two people of the same sex and to recognize a marriage between two people of the same sex that was lawfully licensed and performed in another state. While the Court's decision today may not resolve all issues relating to the families formed by same sex marriage, such as adoption by same-sex couples or recognition of parental rights where children of the marriage are not adopted by both spouses, it eliminates the disparate treatment of marital status from state to state, which impacted the ability of same-sex married couples to freely change domicile.



The focus of today's news coverage is rightly centered on the civil rights aspects of the Court's equal protection of same-sex couples; however, today's decision has some broad reaching tax and succession planning implications that should be considered:

- Same-sex married couples in states that had not previously recognized same-sex marriage will now be required to file both their state and federal income tax returns as "married." This will simplify the coordination of their federal and state income tax reporting, but may increase their annual tax liability.
- Both the state and federal gift and estate tax marital deductions, which allow spouses to transfer assets to each other during lifetime or at death without a transfer tax, will now be available for same-sex married couples in all states. This will eliminate inconsistency between state and federal tax law and allow couples to freely structure their ownership of assets within the marriage without the cost of state gift, estate or inheritance taxes.
- The Court's decision today not only grants same-sex couples the right to marry without regard to what state they might be living in at the time of their marriage, but it also ensures that their marital rights, including inheritance rights under intestacy laws, visitation and health care decision making rights, support rights and divorce rights, will be recognized wherever in the United States they might later move.

Same-sex married couples who have not updated their planning structures recently should revisit their estate planning, as well as their retirement planning, income tax planning and medical and life insurance planning in light of the Court's 2013 *Windsor* decision. In addition, couples who have existing domestic partnerships or civil unions in place may wish to revisit these arrangements in light of the privileges (and burdens) now afforded same-sex married couples that do not extend to domestic partnerships and civil unions.

Laura Zwicker
LZwicker@GreenbergGlusker.com
310.785.6819