



The Supreme Court Decision on the Defense of Marriage Act: An Employer's Perspective

by John W. Boyd of Baker Hostetler LLP. Reprinted with permission.

In a closely watched and eagerly anticipated decision, the Supreme Court, in *United States v. Windsor*, 570 U.S. ____ 2013 (June 26, 2013) has overturned Section 3 of the Defense of Marriage Act (DOMA) which limited the definition of marriage for federal law purposes to "only a legal union between one man and one woman as husband and wife." Writing the majority opinion for a 5-4 divided Court, Justice Anthony Kennedy noted that the regulation and definition of marriage has historically been within the authority and jurisdiction of state government. In the matter before the court in *Windsor*, the State of New York had enacted legislation recognizing the legal right of same-sex couples to marry. In this context, Justice Kennedy wrote that DOMA -- which by its design and terms was intended to interfere with the dignity of state sanctioned same-sex marriages by depriving those couples of equal treatment under federal law -- violates the basic due process and equal protection

principles of the Fifth Amendment of the Constitution.[1] A copy of the majority's decision as well as the three dissenting opinions can be accessed here.

Pollsters, strategists, and religious and philosophical leaders will, no doubt, weigh in on the ramifications of this week's decisions. In the meantime, employers will need to start thinking about the real world implications of the court's decision.

What State Law Controls?

With the uniform mandate of Section 3 of DOMA now eliminated, employers will face a patchwork of state laws which must be accessed when determining an employee's marital status. A relevant inquiry will include not only whether the employee's state of residence recognizes same-sex marriage, but alternatively whether

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Tech Tip: 9 easy steps to print a file on our NEW copiers from a USB device!

By: Julie Koehne, Systems Librarian

1 Insert money or your vend-card into the vending station.

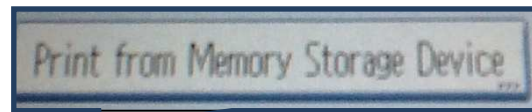
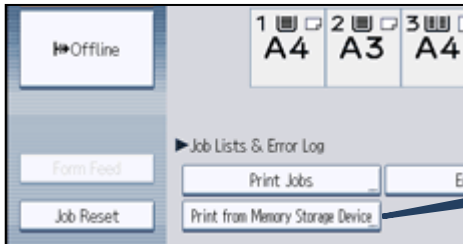
2 Insert a removable memory device into the media slot.



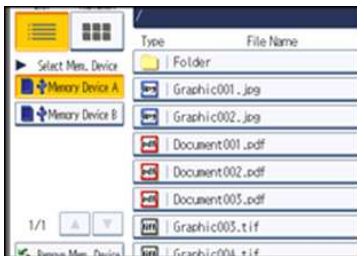
3 Press the [Printer] key to display the printer screen.



4 Press [Print from Memory Storage Device].

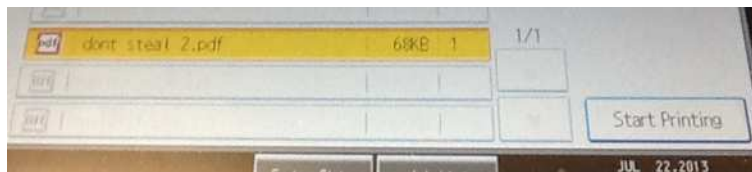


5 Select the file you want to print.



Only PDF, TIFF and JPEG files may be printed.
If you have a word processing document it will not display. We do have software to convert your word processing documents into PDF format.

6 Press [Start Printing] or the [Start] key to begin printing.



7 When printing is finished, press [Remove Mem. Device] to safely remove your drive.

8 Select the removable memory device you want to remove, and then press [Remove].



9 On the confirmation screen, press [Exit], then remove the USB device.

Free CLE

Free to subscribers; \$50 for non-subscribers

To register, call 513.946.5300 or via email reference@cms.hamilton-co.org

Lawyers and Depression: The Silent Epidemic

Presenters: Tabitha Hochscheid and Pat Garry

Wednesday, August 21
Noon-1pm

The seminar will focus on:

- Recognizing the signs and symptoms of Depression
- Prevalence of depression among legal practitioners
- Relationship between depression and addiction.

Approved for 1.0 hour of general credit in Ohio. Kentucky credit is pending.

Juvenile Law

Presenter: Donald Webb
Tuesday, September 10
Noon-1pm

The seminar will present an overview/introduction to Juvenile Law focusing on:

- Overview of Ohio Juvenile Court System
- Jurisdiction of Juvenile Court
- Particular types of cases handled in Juvenile Court
- Issues attorneys and judges confront in Juvenile Court

Approved for 1.0 hour of general credit in Ohio. Kentucky credit is pending.

Ten Things You & Your Elder Client Need to Know About Long Term Care Legal Issues

Presenters: Mary Ann Jacobs and James T. O'Reilly

Wednesday, September 18
1-2pm

The seminar will focus on:

- Financial considerations
- Categories of care,
- Residency agreements,
- Patients' rights and responsibilities,
- Credentialing and certification of medical staff
- Assault and other incidents,
- Litigation
- Liability issues

1.0 hour of general credit is pending in Ohio and Kentucky.

Legal Research Training

Did you know that 99% of respondents to a recent survey on legal research training report teaching about free and low cost research options?

The Law Library offers our full firm and solo subscribers off-site access to Loislaw and Fastcase primary law sources. Our website points to free legal research materials for public access. Let us know if you'd like us to offer training on this topic.

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that state law recognizes any valid marriage obtained outside of the state. What will be the impact of inter-company transfers for employers with multi-state facilities? What about employees in a multi-state metropolitan area who work in one state but reside in another?

Benefits Plan Administration.

The Employee Retirement Income Security Act of 1974 (ERISA) confers special spousal rights and protections with regard to retirement benefits. These rights include spousal approval of pension benefits payable other than as a joint and survivor annuity, and spousal consent to alternate beneficiaries under 401(k) plans and other defined contribution plans. Given that one of the expressed goals of ERISA is to foster uniform rules for benefits plan administration, can/should the Department of Labor and the Department of Treasury consider expanding spousal protections to cover not only legally married individuals, but also other relationships? What -- if anything -- should plan administrators do about situations where spousal rights were not extended to same-sex couples in the past because of DOMA?

COBRA Continuation and Tax Treatment of Group Health Plan Coverage.

Employers that have previously chosen to make group health plan coverage available for an employee's same-sex partner will now be faced with new administrative issues. Group health benefit continuation rights following an employee's loss of coverage as a result of job loss or other qualifying events (referred to as "COBRA" continuation coverage) must be made available to the spouse

of a covered employee. COBRA continuation rights generally do not extend to non-spousal partners. Thus, group health plan administrators will again need to wade into the morass of applicable state law to assess any rights to benefits continuation based on marital status. Moreover, the Internal Revenue Service has previously held that employer-provided health plan coverage to same sex partners (regardless of marital status under state law) is a taxable benefit to be reported as compensation to the employee. Assuming that, post-Windsor, the tax treatment will now depend on the recognized legal status of the relationship, how should the value of coverage provided prior to the court's vitiation of DOMA be reported for income tax and employment tax purposes? Additionally, employers who have previously limited group health plan coverage to employees and their eligible dependents for health care purposes will need to determine how the Windsor decision will impact the eligibility status of same sex spouses.

Dependent Care Assistance Programs and Health Savings Accounts. The Internal Revenue Code annual limits on dependent care assistance plan benefits and health savings account contributions vary depending on whether a taxpayer is married. Employers that make these vehicles available to employees will need to determine how the court's decision and its impact on the recognized marital status of employees may affect the impact the 2013 annual limitations under those arrangements.

The Department of Labor and the Internal Revenue Service previously have sought to provide guidance to same sex couples. Most recently, the IRS updated its "Answers to

Frequently Asked Questions for Same Sex Couples" effective May 30, 2013. These government agencies will now face additional pressure to provide guidance with regard to same-sex couples reflecting the demise of DOMA. We will continue to monitor that guidance as it becomes available and will provide further updates, either through additional Executive Alerts or through our on-going Benefits Broadcast series. In the meantime, plan administrators must endeavor to operate benefit plans in accordance with their terms and in a manner consistent with the holding in the court's decision. For questions or assistance with employment or employee benefit plan issues, please contact any member of Baker Hostetler's [Employee Benefits Group](#).

The Library's Logo

The Law Library recently contracted with Mayhew Creative to create a logo and branding for the library, for use on printed materials, in online formats, and in marketing materials. This effort is tied to the beginning of a campaign that will see a redesign of the library's website and outreach to current non-subscribers and the general public as we seek to increase the user base.

The library board and administration chose to make very limited changes to the appearance of the logo and website in 2010 when the governance of the library changed. But years have passed and it's time to reach out to a broader audience with an updated image. This is our start. You can expect to see the use of new materials gradually over the last quarter of 2013 with a full implementation in early 2014. The services that you rely on will not change, except as we enhance resources over the coming year.

Computer Lab

By Mary Jenkins, Law Librarian & Director

I'm grateful to those subscribers who responded to our brief survey about the Law Library's computer lab. We asked regular users of the lab about their perceptions of the lab hardware, applications, furnishings, and support. The results were clear:

- Technical support is strong (thanks largely to Julie with help from the rest of the staff) but we could do a bit better with ease of accessing the array of information resources available through the library.
- Software and applications are generally good but respondents noted that the hardware itself could be more consistent and up to date.
- The obvious loser? The furniture. Respondents said that it does not convey the professional image that one might expect in a lab serving the legal profession.

And what are we doing with these results? Julie has modified the desktop display to be consistent throughout the lab. A desktop icon called Databases connects to our online legal information resources. Additionally, she has rectified the Lexis password issue so that users should not be asked to enter a password anymore.

There are expenses associated with correcting the other perceived deficits. We will offer improvements in the coming year as we identify the right solutions. We will also involve computer lab users in our decision-making process.

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepard's, CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

You and the Legal System: Probate Law

Attorney James Grey Wolf is our next speaker in the *You and the Legal System* series for the public. Mr. Wolf will discuss Probate law on Friday, August 16 at noon at the Law Library.

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513.946.5302.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Save the date for the next event in the *You and the Legal System* series: Bill Reynolds will discuss Domestic Relations Law on September 27.



Estate Planning & Probate Resources

The Law Library offers a variety of print and online resources on estate planning and probate law. If you have questions about access to any of these resources, just call us at 531.946.5300.

Books

American Bar Association Guide to Wills & Estates: Everything You Need to Know About Wills, Trusts, Estates, & Taxes
KF750.Z9 A47 2009

Basics of estate administration
KFO147 .B37 2012

Best Practices for Structuring Trusts & Estates: Leading Lawyers on Protecting Assets, Meeting the Needs of Today's Clients, and Understanding the Impact of Recent Federal Estate Tax Issues
KF730.Z9 B74 2010

Creating a Trust-What You Need to Know
KF730. Z9 C74 2008

Drafting Wills and Trust Agreements/Michael L.M. Jordan
KF748.1 J66 2011

Drafting Wills and Trusts (In Ohio)
KFO144.D7 2011

Estate Planner's Guide to Family Business Entities: family limited partnerships, limited liability companies, and more
KF1380 .M39 2010

Merrick-Rippner Ohio Probate Law
KFO144 .M42 2008-

Nuts and Bolts of Wills and Trusts
KFO144 .N88 2012

Oddities and challenges in probate law in Ohio

KFO144 .O33 2010

Ohio Estate Will and Trusts Library; Forms and Practice Manual/Edward M. Segelken, Lori-Lou Kim
KFO140.A65 S44 2011

Probate and Administration of Decedents' Estates
KF6289.A1 T352 no. 804-2rd

Probate Litigation
KFO144.A75 2012

Probate Practice: the essential basics
KFO144 .P& 2008

Top 7 Estate Planning Techniques in Ohio
KFO.Z9 2009

Updating the Ohio Trust Code
KFO137 .U63 2012

Online Resources Remote Access* Loislaw/Aspen

Practical Guide to Estate Planning
Price on Contemporary Estate Planning
Multistate Guide to Estate Planning
Estate and Gift Tax Handbook
Estate and Retirement Planning Answer Book
Internal Revenue Code

EBSCO

Busy Family's Guide to Estate Planning
Complete Guide to Organizing Your Records for Estate Planning
Complete Guide to Planning Your Estate
Estate Planning Basics
Estate Planning for Blended Families
Get It Together
Mom's Guide to Wills & Estate Planning
Plan Your Estate

*Remote access is available to subscribers who are solo attorneys or firm attorneys whose entire firm has a subscription to the Law Library.

Upcoming Events:

August 16: You and the Legal System: Probate Law

August 21: Mental Health CLE

September 10: Juvenile Law CLE

September 18: CLE-10 Things You and Your Elder Client Need to Know about Long Term Care Legal Issues



August 2013 Law Library Newsletter

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