

What does the Supreme Court's decision invalidating DOMA mean?

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On June 26, 2013, the United States Supreme Court invalidated Section 3 of DOMA, the "Defense of Marriage Act." Section 3 had barred federal recognition of same sex marriages, placing special burdens on legally married same sex couples and their families. The *Windsor* decision--

http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf

-- changes this. Legally married couples living in states that recognize same sex marriage are now entitled to be treated as married for federal law purposes.

Windsor did not address Section 2 of DOMA, which permits states to refuse to recognize same sex marriages legal under the law of other states. Because Section 2 remains in place, it is not yet clear how consistently *Windsor* will be applied to same sex spouses who reside in states that do not yet have marriage equality laws.

Teachers College has been treating same sex spouses like other spouses to the extent permitted by existing federal law, but DOMA limited the efficacy of this approach. This will change. While we must await federal guidance on many specific issues, there will be changes in at least these areas:

- **Taxation:** All married couples will now be eligible to file joint federal tax returns. The IRS has indicated that it will issue guidance in the near future. Health care benefits provided for same sex spouses will become non-taxable for federal purposes to the same extent that they are non-taxable for different sex spouses.
- **Employee benefits:** Same sex spouses will have the same rights as different sex spouses for purposes of social security and College-sponsored retirement plans. We do not yet know what steps retirement plan participants will need to take to ensure that their spouses are covered. The U.S. Department of Health and Human Services, which includes the Social Security Administration, has indicated that it will be reviewing all relevant federal statutes and ensure that *Windsor* is implemented swiftly and smoothly.
- **Immigration:** Same sex spouses will be treated as different sex spouses for immigration purposes. This means that US citizens will be able to sponsor same sex spouses for immigration and that individuals with certain student and employment visas may be able to obtain derivative visas for their spouses.

Teachers College will need to modify some policies and procedures in light of this major change in law. We will do this as quickly as we can obtain the necessary guidance about federal expectations and put new procedures into effect.

Most changes relating to the invalidation of Section 3 of DOMA are not employment-related. While the Office of General Counsel is not able to provide legal advice about such matters, we are establishing a webpage to provide links to useful resources. It will be posted at www.tc.edu/counsel in the near future.