

Supreme Court marriage rulings: Anything but simple

by [Richard Wolf](#)

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(RNS) If the range of possible Supreme Court rulings on gay marriage this month requires a scorecard, the potential confusion arising from those decisions may demand a manual.

It's not as simple as whether gays and lesbians can marry, and whether they become eligible for federal benefits. The two decisions are likely to create new questions for couples in civil unions and those who move between states, as well as for employers.

As a result, what's already a complex situation for many gay and lesbian couples could get more complicated, at least initially, said John Culhane, a law professor at Widener University's Delaware campus and co-author of "Same-Sex Legal Kit for Dummies."

"Obviously, we're going to have to come up with a second edition pretty quickly," Culhane said. "Whatever the court does, some things are going to change."

A few of the potential decisions could make things easier or leave them unchanged, but those are among the more unlikely outcomes. The court could uphold California's gay marriage ban, leaving the status quo there. It could declare a new right to marriage for all same-sex couples nationwide — an initial upheaval, but one offering long-term uniformity.

And the court could leave intact the Defense of Marriage Act, which denies federal benefits to legally married gays and lesbians in 12 states and the District of Columbia that allow same-sex marriage. The law has created an uneven situation

within and among states, but at least such a ruling wouldn't require change.

But if DOMA's benefits ban is struck down or the case is thrown out on technical grounds, both of which appear more likely, several unanswered questions would arise:

- * What happens if legally married couples have moved to a state without same-sex marriage? The section of DOMA that protects those states from having to recognize marriages performed in other states would apply to state benefits, but what about federal benefits? That could be up to President Obama — and future court cases.

That's because some federal agencies base marriage rights on where the license was issued, so the federal benefits would follow the couple; for others, however — including Social Security — it's the current residence.

"I don't think anybody really knows how that's going to play out," said Steve Branton, a financial planner at Mosaic Financial Partners in San Francisco.

- * What happens to couples in civil unions, from New Jersey to Hawaii, who currently receive virtually the same state benefits as those who are married?

Federal law does not recognize civil unions, so they wouldn't automatically qualify for federal benefits. But Todd Solomon, an expert on domestic partner benefits at the law firm McDermott Will & Emery in Chicago, said another legal fight could be expected.

New opportunities also would arise for gay and lesbian couples if the federal law denying benefits is struck down. Some are straightforward, such as being able to contest the last three years of federal tax returns. Others are more dramatic; for instance, they could move to a gay-marriage state because of the added attraction of federal benefits.

Getting divorced is another matter: If a same-sex married couple moves to a state that has not legalized gay marriage, they may have to move back to the first state to break the marriage apart, Branton said. A San Francisco attorney jokingly coined such a marriage "wedlocked."

Striking down DOMA also would force employers in the affected states to change their benefit plans.

“In the long run, it would be easier for employers,” said Richard Stover, an actuary with Buck Consultants who deals with human resources and benefits for gays and lesbians. Many employers’ health plans already cover same-sex spouses and domestic partners, he said.

As for California’s Proposition 8, most speculation has focused on rulings that would permit same-sex marriages to resume in California for the first time since 2008. That could happen if the Supreme Court upholds one of the lower court rulings, denies standing to those defending the law, or dismisses the case outright.

Some of those options could leave unanswered questions as well:

If the ban’s backers lacked the legal right to defend it, the federal district court ruling would stand. That could be interpreted to apply only to the two couples who sued, to the two counties where they live (Los Angeles and Alameda), or statewide.

If the case is dismissed, the 9th Circuit Court of Appeals decision would stand. Three other states in the circuit — Oregon, Nevada and Hawaii — allow civil unions or domestic partnerships. Same-sex couples there might argue that they deserve marriage rights as well.

Said Culhane: “There’s always the question of how broadly precedent will be applied.”

(Richard Wolf writes for USA Today.)