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Narrow holdings, huge implications

Erwin Chemerinsky is dean and distinguished professor of law, Raymond Pryke Professor of First Amendment Law, University of California, Irvine School of Law.



It is now only a matter of time before gays and lesbians will be able to marry everywhere in the U.S. The Supreme Court did not go that far Wednesday in its rulings on marriage equality, but there is now no doubt that ultimately the court will hold that laws denying the right to marry to gays and lesbians violate equal

protection.

The holdings in the cases were narrow, but the implications for people's lives will be huge. The Supreme Court's ruling striking down Section 3 of the Defense of Marriage Act in *United States v. Windsor* will matter enormously for all of the same-sex couples who are married in states which allow such marriages - an increasing number of states each year. There are over 1,000 federal laws which give benefits to married couples which are denied to nonmarried couples; same-sex couples who are married in those states now get these benefits.

The court's dismissing of the challenge to Proposition 8 on standing grounds will have the practical effect that same-sex couples in California can marry. The federal district court declared Prop. 8 unconstitutional and issued an injunction against the governor, the attorney general, and other state officials from enforcing Prop. 8. There was standing in the district court because it was a suit brought by two same-sex couples that wished to marry.

But the Supreme Court said that there was not standing to appeal. This means that the district court ruling stands and Prop. 8 is enjoined. Same-sex couples thus will be able to marry in California. Supporters of Prop. 8 will try to argue that the federal district court's order is limited to the two same-sex couples who brought the lawsuit. But the district court's injunction was explicitly state-wide and no one challenged this at the time; it is highly unlikely that any court will say otherwise.

So the practical effect of these rulings is that same-sex couples will soon be able to marry in California and same-sex couples who are married will get all federal benefits that are accorded to married heterosexual couples. But Justice Anthony Kennedy's opinion in striking down Section 3 of DOMA was clear that there is no legitimate government purpose served by denying gays and lesbians of equality in marriage. He explained that marriage has traditionally been regulated by the states, but then went further and explained how DOMA denied equal protection to gays and lesbians. Laws denying gays and lesbians the benefits of marriage, he explained, are based on animus against gays and lesbians and not any permissible government purpose.

Indeed, it is impossible to identify what legitimate interest is served by keeping gays and lesbians from marrying. The supporters of DOMA and Prop. 8 argued to the Supreme Court that marriage is primarily about procreation. But never has a state limited the right to marry to those who have the ability or desire to have children. More importantly, gay and lesbians couples will procreate - through adoption,

U.S. Supreme Court State's gay marriage fight is not over yet, attorneys predict after Supreme Court ruling

Don't order the wedding cake just yet, lawyers warned following the U.S. Supreme Court's refusal Wednesday to decide the Proposition 8 case on its merits.

California Supreme Court Who can defend initiatives? High courts disagree

A two-year old state Supreme Court decision loomed large in Wednesday's ruling by the U.S. Supreme Court declining to decide the Proposition 8 case.

Judges and Judiciary California judges get dramatic at historical reading

Six state and federal judges presented a drama Tuesday night in downtown Los Angeles titled "Chief Justice David S. Terry and Federalism: A Life and a Doctrine in Three Acts."

Real Estate Real Estate Deals

Genworth Financial Wealth Management Inc. is moving its corporate headquarters from Pleasant Hill to a 50,000-square-foot space in Swift Plaza in Concord under a long-term lease agreement with Swift Real Estate Partners.

Law Practice Cozen O'Connor poaches litigator from Greenberg Traurig

Cozen O'Connor is adding commercial litigator Matthew S. Steinberg from Greenberg Traurig LLP, according to two sources with knowledge of the move. Steinberg was a founding shareholder of Greenberg Traurig's Los Angeles office.

California Courts of Appeal Appellate court says sex discrimination claims against VC fund deserves a trial

Ellen Pao, a former employee of Silicon Valley venture capital firm Kleiner Perkins Caufield & Byers, cannot be pushed into arbitrating her sexual discrimination claims against the company, an appellate panel ruled Wednesday.

Judges and Judiciary Judicial Council rule change balances power among courts

surrogacy, and artificial insemination - whether or not they can procreate.

The court's analysis thus paves the way to challenges to laws in states that prohibit same-sex marriage. After today, it is clear that it is only a matter of time before marriage equality exists everywhere in the U.S.

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A proposed change to judicial branch rules that's slated to pass without discussion at Friday's Judicial Council meeting represents a small but noteworthy victory for the state's trial courts in the balance of power within the branch.

Litigation

San Francisco Examiner sues Chronicle for lowballing ad rates

The free daily tabloid San Francisco Examiner has accused the San Francisco Chronicle of undervaluing its advertising prices in hopes of harming its competitor.

U.S. Supreme Court

Same-sex marriage rulings - community reacts

The U.S. Supreme Court's decisions Wednesday to dismiss the appeal to Proposition 8 and strike down the Defense of Marriage Act, or DOMA, brought out a flurry of responses from lawyers, politicians and organizations on both sides of the same-sex marriage debate.

Government Contracts

Bill to deny funding to some charter cities passes Assembly committee

A controversial bill to shut off state funds to charter cities that don't require contractors to pay wages close to union wages advanced in the state Assembly Wednesday.

Law Practice

Goodwin Procter to shutter its San Diego office

Six years after opening its San Diego office to capitalize on the area's transactional work, Goodwin Procter LLP plans to close the 18-attorney outpost this fall, sources said Wednesday.

Large Firms

Biglaw's tool kit

Here are the Biglaw tools that you can expect to be applied with increasing frequency - and force - to reallocate money and governance power within law firms. By **Edwin Reeser**

Family

Marriage equality does not mean divorce equality

The logical increase in marriage numbers following the high court's ruling Wednesday likely will be followed by an increase in work for family law attorneys as well. By **Robert Stanley**

U.S. Supreme Court

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