

Court ruling leaves Florida same-sex couples in limbo

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CARL JUSTE / MIAMI HERALD STAFF

Isaiah Lieberperson, left, sits on his father's, Chaim Lieberperson, as he passes a flag to Jason Cohen, 8, who is on his father's shoulder, James Cohen, next to his brother Reggie Herring, 17, right. Members of the LGBT gathered at courtyard of the LGBT Visitor Center to celebrate today's Supreme Court decision striking down California's Proposition 8 and the Defense of Marriage law on Wednesday, June 26, 2013 in Miami Beach, Florida.

Wednesday's Supreme Court decision striking a portion of the 1996 federal Defense of Marriage Act leaves many uncertainties for same-sex couples in Florida, where marriage is constitutionally defined as between one man and one woman.

But one thing is certain: Florida Gov. Rick Scott made clear Wednesday that he intends to enforce the same-sex marriage ban that voters approved in 2008.

"I'll uphold the law of the land, and that's the law of our state," he told reporters in Tallahassee, saying Florida is a "traditional marriage state."

Rep. Joe Saunders, D-Orlando, one of Florida's first openly gay state representatives, said the court ruling leaves Florida gay families in limbo.

"What can be expected may be a series of court challenges," he said. "While the winds are in

the sails of gay and lesbian families here, it's still going to be a patchwork and a space of limbo until we figure out exactly what happens in states like Florida."

Legal experts say gay couples in Florida should not assume they will be granted the same benefits, rights and protections enjoyed by legal spouses in other states.

"People living in states like Florida should proceed with caution in marrying because they will be surprised to learn they will not get all the federal benefits that heterosexual married couples get or people living in equality states," Miami Beach family attorney Elizabeth Schwartz said. "Eligibility for all these federal benefits will have to be determined on a benefit by benefit, case by case basis."

The benefits are many, according to the Human Rights Campaign, the nation's biggest gay-rights group, which notes that marriage affords 1,138 benefits, rights and protections to legal spouses.

The Supreme Court case decided Wednesday involved Edith Windsor, an 83-year-old New Yorker who got hit with \$363,053 in inheritance taxes after her wife, Thea Spyer, died in 2009. The high court ruled Windsor was not liable for the tax bill, telling the U.S. government it must

recognize legal marriages of same-sex couples.

That directive may not apply to same-sex couples in Florida, where in 2008 just under 62 percent of voters passed Amendment 2, which banned gay marriage and civil unions.

“Historically, the IRS has looked at where you live and whether your marriage is valid where you live,” said Schwartz, who is a nationally recognized expert in gay family law and estate planning.

“That’s what’s sad about this case,” Schwartz said. “It’s creating two tiers of relationships where there are couples who are able to enjoy benefits on a state and federal level, and the rest of us who are not able to enjoy benefits on a state or federal level.”

In Florida, for example, the Internal Revenue Service may not recognize same-sex spouses legally married in places like New York or Massachusetts. Yet, those petitioning federal immigration authorities for legal U.S. residency will likely get to stay in the country.

Consider Daniel Zavala, a Mexican national and his husband, Yohandel Ruiz, of Coral Gables. The Supreme Court’s decision means that Daniel Zavala will likely get his green card and won’t be separated from Ruiz.

“I’m just super happy. It’s just amazing. I want to share with everybody and celebrate. We knew it was the logical thing to happen. We were really reserved before, but not now,” said Zavala, who last year married Ruiz in Washington, D.C., where gay marriage became legal in 2010.

Six months after their nuptials, the U.S. Department of Homeland Security denied Zavala a green card under the Defense of Marriage Act (DOMA).

On Wednesday, U.S. Secretary of Homeland Security Janet Napolitano announced that DOMA “denied thousands of legally married same-sex couples many important federal benefits, including immigration benefits. ... Working with our federal partners, including the Department of Justice, we will implement today’s decision so that all married couples will be treated equally and fairly in the administration of our immigration laws.”

Ruiz and Zavala’s original immigration denial likely will be reversed, said the men’s attorney, Lavi Soloway, who specializes in same-sex immigration cases.

“It’s very clear. Not ambiguous at all. If you are in a marriage that’s valid under the laws in the jurisdiction in which the marriage took place, that it will be recognized as a valid marriage for immigration purposes, regardless of whether it is recognized under the laws of the state in which you reside,” Soloway said.

Even though the future is unclear, the Supreme Court’s announcement on Wednesday fueled emotions from supporters and opponents of same-sex marriage throughout Florida.

“It’s an amazing feeling and the overall sentiment is the validation of our relationship,” said Juan Talavera of Miami, in a 13-year relationship with partner Jeff Ronci, who wept when the ruling was announced.

“The statement that ‘justice and equality prevails’ is dear to my heart,” Talavera said. “That’s what resonates in this decision.”

Pastor Jack Hakimian of Impact Miami church in North Miami voiced displeasure with the five justices who sided against religious conservatives.

"I definitely am disappointed by their inability to see marriage from a traditional perspective, to put limits on what it means," Hakimian said. "It ultimately opens a can of worms in future generations as to what ultimately defines marriage."

John Stemberger, the Orlando lawyer who led the Amendment 2 campaign and is president of the Florida Family Policy Council, said the court ruling "has no impact whatsoever in Florida."

"It doesn't affect the marriage amendment at all," he said, adding that the Supreme Court "could have found a new right to same-sex marriage in the equal protection clause and could have imposed around the country a single standard and invalidated every DOMA and state marriage amendment."

In Wilton Manors, the heart of Broward County's large gay community, many gathered Wednesday morning at spots along Wilton Drive.

Paul Hogan and Bill Sullivan have been together for more than three decades. They met while working for U.S. senators in Washington, D.C. (Hogan for Bob Graham and Sullivan for George Mitchell) and ultimately got married on Election Day 2012 in Washington D.C.

"It's unconstitutional! — Hello-o!" cheered Hogan who threw his hands up in the air and yelled 'Mazel Tov.'

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