



WRNewswire

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The *WRNewswire* is created exclusively for AALU Members by insurance experts led by Steve Leimberg, Lawrence Brody and Linas Sudzius. *WRNewswire* #15.07.14 was written by Linas Sudzius of [Advanced Underwriting Consultants](#).

TOPIC: Implications of Supreme Court Decision on Same-Sex Marriage

CITATIONS: [*Obergefell v. Hodges*](#), 135 S.Ct. 1039, 576 U.S. ____ (June 26, 2015); [*United States v. Windsor*](#), 133 S. Ct. 2675, 570 U.S. ____ (2013).

SUMMARY: The U.S. Supreme Court, in a 5-4 decision, ruled that principles of liberty, as well as the due process and equal protection provisions of the Constitution's Fourteenth Amendment, require all states to recognize the validity of same-sex marriages. The decision helps resolve the inconsistency in the treatment of same-sex marriages that has been created by differences in state law and the Court's prior decision in *United States v. Windsor*.

As a result of the decision, all states must immediately allow same-sex couples to marry and must recognize the validity of same-sex marriages performed elsewhere.

The decision has immediate and far-reaching implications, including some relevant to life insurance and financial services professionals. The purpose of this *WRNewswire* is to simply give a brief overview of the decision and its potential impact on the pertinent planning implications for AALU members.

RELEVANCE: Financial services professionals working with same-sex couples who are in a civil union or are not yet otherwise legally married, should advise those couples about the potential benefits and consequences of a state sanctioned legal marriage, including:

- Unlimited marital deduction for Federal (and possibly state) estate tax planning
- Spousal and survivor benefits for Social Security
- Married filing jointly status for Federal (and possibly state) income tax planning
- State spousal property rights during lifetime (e.g. – community property) or after death (e.g. – election of spousal share)

- Split joint gift election for Federal gift tax purposes
- ERISA protection as a spouse under pension plans
- Other spousal rights under employer-sponsored benefit plans (e.g. – health insurance)

Where life insurance to pay for potential estate tax liabilities has been purchased on one party in a same-sex relationship in the past, life insurance professionals should discuss with those couples the possible use of survivorship insurance.

FACTS: The Supreme Court was called upon to review a Sixth Circuit decision that denied same-sex couples have a Constitutional right to

- marry or
- have marriages lawfully performed in another state given full recognition.

The Sixth Circuit had originally heard the appeal of several federal district court decisions in which the lower courts had ruled in favor of the same-sex plaintiffs. The Sixth Circuit reversed the district courts' rulings in a consolidated opinion, which was the subject of the appeal to the Supreme Court.

The four dissenting U.S. Supreme Court Justices asserted that the majority's opinion of the reach of the Constitution's protections had no basis in statutory precedent, the Constitution or the common law.

However, the majority of the Justices concluded that the principles of the Fourteenth Amendment of the Constitution require a state to license marriages for same-sex couples and to fully recognize same-sex marriages performed out-of-state.

As a result of the 5-4 decision, the Sixth Circuit's decision was reversed. The majority opinion now represents the law in the United States, under which same-sex marriages have been validated and normalized.

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