

One thing leads to another, the tax deadline, vacation and etc., we have been delinquent in working out our monthly Tax Letter. Please accept our apology.

The US Supreme Court ruled against DOMA and rejected the Prop 8 Appeal in June 2013. Nearly every literature, paper and news broadcasting were quick to assume that California Prop 8 was dead. They are pre-matured, wishful thinking, and perhaps propagandas.

Legal Analysis

After a careful reading of the Opinion of the Supreme Court written by Justice Kennedy for the majority, the author came to the following conclusion:

(1) The ruling by the Supreme Court only struck down Section 3 of DOMA the other Sections of DOMA remain intact. For example, the Section specifically concerning recognition or non recognition of same sex marriage by the States. In that Section, DOMA allows States banning same sex marriage to deny recognition of marriage between same sex couples even they were legally married in States that permit same sex marriage.

(2) Further, at the end of the entire Opinion of the Court, Justice Kennedy said “This opinion and its holding are **confined to those lawful marriages.**” By concluding the Opinion of the Court this way, certainly, the majority of the Court do not wish to trespass against the power reserved to the States.

(3) The Opinion itself did repeatedly stated the provisions from the 10th Amendment of the US Constitution which specify that power not specifically granted to the Federal should be reserved to the States. Since marriage is one of those power specifically reserved to the States, the ruling against Prop 8 by the Federal District Court/9th Circuit Court in San Francisco should be considered out of jurisdiction. Both the District Court and the 9th Circuit Court should have thrown the appeal against Prop 8 out of the door at the very beginning.

(4) To follow the 10th Amendment of the US Constitution, the US Supreme Court decided not to accept/hear the appeal for Prop 8. This Action confirmed that the US District Court/9th Circuit Court’s decision against Prop 8 are acts out of jurisdiction, and the Ruling upholding Prop 8 by the California Supreme Court. in May 26, 2009 should be final. Therefore, Prop 8 is constitutional according to the California Constitution as well as the US Constitution.

DOMA Ruling Implication

Referring to the DOMA case, the ruling has certain important impacts on gay couples and our society as a whole. For example:

- (1) Social Security and Medicare Spousal and Survivor benefits
- (2) Immigration issues, i.e. same sex foreign spousal visas, etc.
- (3) Active gay military spousal benefits and housing to military gay spouses
- (4) Military retirement/medical benefits, and VA benefits.
- (5) Federal individual income taxes, estate and gift taxes, etc.