

How about those who live elsewhere in the United States, travel to Hawaii, obtain a license, marry and return home? Lots of heterosexual couples marry each year in a state other than the state where either resides. Where will the gay or lesbian couple from Vermont stand? Again, that is impossible to answer in complete confidence.

Think of a Vermont couple who marry in Honolulu and later seek to file a joint Vermont tax return. In this country, in general, there is a strong tradition, one that has grown stronger over recent years, for states to recognize a marriage as valid, if it is valid in the state where it was performed. If Vermont honors that tradition, it would permit the couple married in Hawaii to file a joint Vermont return, even if Vermont itself would not have issued a marriage license to the couple. The best hope is that Vermont and many states will accept the Hawaiian marriages. (An even more hopeful possibility would be that, eventually, the Vermont legislature would decide to permit our gay and lesbian citizens to marry right at home rather than having to travel 6000 miles to do so.)

The courts and legislatures in some states—it isn't hard to imagine examples—are, however, likely to be extremely hostile to gay and lesbian marriages. Courts in these other states—and it might, despite my hopes, include Vermont—might refuse to recognize the couple as married for purposes of its laws on the ground that the gay marriage violated what they regarded as some strong state policy. (In the same manner, state courts have sometimes refused to recognize the marriage conducted elsewhere of a person who traveled elsewhere to marry but was too young to marry under her home state's laws.) And, whatever

their courts did, legislatures might change their laws to limit some benefit (such as the joint return) solely to married persons of the opposite sex. If a state's courts or legislature refused to recognize the Hawaiian marriages of gay or lesbian couples, it is quite uncertain whether anything in the United States Constitution would require them to act otherwise.

Finally, even in states that decided that couples that marry in Hawaii will be treated as married under their law, it is uncertain whether private entities, such as private employers in Vermont, will have to treat gay and lesbian employees married in Hawaii in the same manner that they treat married heterosexual employees. The gay couple married in Hawaii will have a powerful moral claim for equal treatment with other married couples (the same claim they have now, only more so), but unwilling employers in many states might well get away with altering their benefit packages to limit them to married persons in opposite-sex relationships.

The short of it is that any gay or lesbian couple married in Hawaii will have the greatest protection for their relationship if they remain in Hawaii, but will (at least until time passes and we see what states do) face uncertainties when they live anyplace else. They will face some uncertainties even in Hawaii when they seek the benefits of federal law. All this is a way of saying that the Hawaii decision is an astounding landmark but, not surprisingly, leaves many unanswered questions. If you buy that ticket to Hawaii, do not expect to live a hassle-free life in your later relationships with the government. But then whoever said that life as a gay man or lesbian could be hassle-free? ▼

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