

The New York Times

July 2, 2013

# Ruling on Same-Sex Marriage May Help Resolve Status of Divorce

By ERICA GOODE

Adam Cardinal's wedded life began happily in New Hampshire, where same-sex marriages are legal. It went sour three years later in Florida, where they are not.

Mr. Cardinal, who lives in Fort Lauderdale, separated from his husband several months ago. But the couple cannot get a divorce because, in the eyes of Florida officials, their marriage does not exist.

Returning to New Hampshire to sever the bond is not an option either. Although marrying can be accomplished with a brief visit there, a divorce requires residency in the state for at least a year.

Mr. Cardinal cannot remarry — to do so would make him a bigamist in states like Massachusetts or New York that recognize his previous nuptials. And although he and his husband did not combine their assets, the lack of an official document certifying the end of their marriage carries financial risks.

“I didn't realize this could potentially be an issue, that we couldn't divorce when we wanted to,” Mr. Cardinal said. “That was really upsetting.”

The Supreme Court's ruling last week [striking down the federal Defense of Marriage Act](#) has been hailed as a victory for gay couples who wish to marry. But it has also offered new hope to people like Mr. Cardinal who are stuck in a marriage they cannot dissolve.

In a highly mobile society, state bans on same-sex marriage have in many cases made untying the knot far harder than tying it in the first place. But the language in the court's decision is broad enough, legal experts say, to provide a basis for [challenges to state laws](#).

“I think that there's some reason to be optimistic that we might be able to see the end of these statewide marriage bans, which would have lots of positive effects, including being able to free people from relationships they no longer want to be in,” said [Elizabeth F. Schwartz](#), a family law and estate lawyer and gay rights advocate in Miami Beach.

Ms. Schwartz said that since the ruling, her office had been flooded with calls from clients asking how the decision would affect their chances for divorce. She tells them it might take some time, but the outlook is better than it was.

Early studies suggest that same-sex marriages in the United States are no more likely to end in divorce than heterosexual unions. A [2011 study](#) by the [Williams Institute](#), which conducts research on sexual orientation, gender identity law and public policy, found slightly lower divorce rates for same-sex couples, but [M. V. Lee Badgett](#), the institute's research director, said the rates would probably even out as more people married.

[Stephanie Coontz](#), a professor of family history at Evergreen State College in Washington State and an expert on marriage, said a breakup could be far more damaging without legal guidelines.

"Divorce makes people crazy," she said, "and if there are not clear exit rules and support systems for those exit rules, divorces, when they occur, can get very bad."

The legalization of same-sex marriage in a dozen states in recent years led to a flood of weddings, many of them involving couples from states where such unions are still forbidden. Like newlyweds everywhere, most gave little thought to the prospect of divorce.

"You think, 'This is perfect, this is great, I never have to worry about anything,' and it's only in retrospect that you sit back and say, 'I shouldn't have done that,'" said a woman who lives in Florida but married in Connecticut. She insisted on anonymity because she did not want to jeopardize her chances of eventually obtaining a divorce.

Returning to the state where the wedding was performed is rarely practical. Most states require residency to file for divorce, and few couples have the means or flexibility to move for an extended period. (Six states, including Delaware and Vermont, allow nonresident same-sex couples who married in the state to divorce under some circumstances.)

At the same time, states that do not recognize same-sex marriage also decline, at least officially, to dissolve marital bonds formed elsewhere. An exception is Wyoming, which as a result of a State Supreme Court ruling allows divorces for same-sex couples who married in other states. In some states, sympathetic judges have quietly granted divorces, but for the couples involved, the emotional turmoil of the split is often compounded by the fear that someone will challenge its legality.

Even when same-sex couples divorce in states that recognize their marriages, the process is often more complex than for heterosexual couples. The Supreme Court's decision may

correct some of those inequities — the division of retirement funds and tax deductions for alimony payments, for example. [Peter Zupcofska](#), a family law and divorce lawyer who practices in Massachusetts and New York, said that in light of the court's decision, married couples living in states where they can divorce “really should look at estate planning documents and prenuptial agreements,” because federal regulations governing the division of assets may now apply.

But discrepancies are likely to remain, he and other lawyers said. One example is that although many same-sex couples have lived together for years or decades before marrying, assets in most states are considered divisible only if they were acquired after marriage. For couples with children, difficulties can arise if they have not been legally adopted by the nonbiological parent.

Some same-sex couples have been startled to find their divorces as politicized as their efforts to marry. In Texas, two same-sex couples who sought to divorce met with fierce opposition from the state's attorney general, Greg Abbott. Both cases have been appealed to the State Supreme Court and are awaiting decisions on whether they will be heard.

In Ohio, Jonathan Baize, 32, was scheduled to have his divorce granted by a private judge last year when a group opposed to same-sex marriage filed an amicus brief objecting to the proceeding. The divorce went through anyway, but Mr. Baize said he was so rattled that he had blocked out much of what happened.

“I think that if I had not been able to finalize the divorce, it would have been pretty devastating to me mentally,” he said. “I would have felt like there was no chance of me being able to move on, to find normalcy or happiness or anything.”

Mr. Baize said that in seeking a divorce, he and his husband had no intention of challenging Ohio's same-sex marriage ban. They simply wanted to put a painful part of their lives behind them.

Said Ms. Schwartz, the lawyer in Miami Beach, “If you're going to let people into a relationship, you've got to let them get out.”