

A lot at stake in same-sex marriage decision

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Ryan Cloud knows he wants to be cremated, but he also knows his parents would put his body in a casket if he died before they did.

“Make sure that doesn’t happen,” Cloud said to his partner, Randy Rud.

The couple know each other’s preferences for details such as when to pull the plug, an open casket versus closed casket, cremation versus burial, etc.

“He’s the only one I have,” Cloud said. “But I know he wouldn’t have a leg to stand on.”

The couple have been committed to each other for almost eight years, and in their eyes, they were spouses — they live together, pay bills together and both have access to accounts in the other’s name. But until recently, they didn’t have a legal document to prove it.

For three days last week, same-sex couples could marry in Indiana and suddenly had more than 1,600 rights available to them. Rud and Cloud were married Thursday morning.

“It’s that free thing that’s automatically thrown into the marriage contract,” Cloud said.

Yet, what happens now with these rights is up in the air, giving newly married same-sex couples even more to ponder.

The 7th Circuit Court of Appeals granted an emergency stay Friday night of a district court ruling that overturned Indiana’s statutory ban on same-sex unions. The stay stops clerks from issuing marriage licenses and puts the status of licenses issued between Wednesday’s ruling and Friday’s stay in a legal holding pattern.

The attorney general’s office made no mention of what could happen to the hundreds of couples who were legally married after Judge Richard L. Young struck down Indiana’s same-sex marriage ban Wednesday, other than to say those unions ultimately could be invalidated by a Supreme Court



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decision upholding the rights of states to define what marriage is.

However, Jennifer Drobac, professor of law at Indiana University-Purdue University at Indianapolis, said the stay does not change the fact that legal marriages of same-sex couples took place during those three days.

“They’re validly married,” Drobac said. “A stay simply says, ‘Freeze, and freeze in whatever position you’re in.’”

There are 600 mentions in Indiana law related to marriage and more than 1,000 in federal law, said Deborah Widiss, associate professor of law at IU-Bloomington.

“There are just defaults the law has in place if you are married,” Widiss said.

The stay could make some of those rights murky, especially since it’s likely that Indiana will not recognize, pending appeal, marriages that took place before the stay, following in the footsteps of states like Utah. But it doesn’t mean that all doors are shut for the newly married couples. The federal government has recognized the rights of legally married gay couples in states where stays of similar district court rulings are in place.

One of the more well-known rights is filing joint tax returns, but most people don’t think about the importance of marriage in the law until something happens. A spouse gets sick. A spouse dies. A person wants to immigrate and join their spouse in the U.S. A couple wants to buy a house or a car. A couple wants to adopt.

“These are things that we actually get to talk about,” Cloud said. “We have a learning curve ahead of us.”

Amy Cope, who married Ruth Chapman Thursday morning, agreed there’s a lot to suddenly figure out.

“We’re still so shell-shocked,” Cope said. “I think there are going to be a lot of things that we just never anticipated having those rights ... I have a lot of research to do.”

One benefit Cloud and Rud hadn’t thought of until Friday afternoon was how it will affect student loans, because Rud is still in graduate school. They added that to the growing list, which also includes changing their last names, putting Cloud on Rud’s health insurance and combining duplicate accounts into one.

“This is going to be the fun part — what does this open up for us?” Cloud said.

Health care and insurance rights

If couples acted quickly following their marriage, the most immediate, noticeable right is probably the ability to be on a spouse’s health insurance plan, Widiss said. It may be the most protected right, too,

with the stay granted. Most companies could continue to recognize the marriage, even if Indiana does not, as it relates to employee benefits, though it would be a decision by the individual company.

Cope said she and Chapman had individual health insurance plans through IU because it was cheaper than having one of them listed as a domestic partner. She said it would have cost about \$400 to have Chapman on her health insurance rather than \$40 for Chapman to have her own plan.

“I don’t think a lot of people understand how that works,” Cope said. “There was still a difference ... a large, large difference.”

Nancy Kalina, who has been in a relationship with Kim Davis for 18 1/2 years, said their worst day together was when they had to go to IU to establish domestic partner health insurance benefits. The couple had to bring in documents such as a mortgage bill, electric bill and car insurance bill to prove they were in a committed relationship.

“I was really furious ... that I needed to go and actually prove with three pieces of paper that we were in a committed relationship,” Kalina said. “For people who are married, that whole thing of needing to actually prove that you exist and you are of equal status really went away.”

If the state chooses to recognize same-sex marriages, there are other health-related rights that couples would have, such as the ability to be with a spouse in the hospital or being the default beneficiary and executor of a spouse’s estate should he or she unexpectedly die without a will.

But if the state chooses to do nothing, it’s unclear if these rights would be granted.

“Sorry that there’s no clear answers here. It’s largely uncharted territory,” Widiss said.

Cope mentioned that being legally married could significantly benefit them with health care, because Chapman has been diagnosed with a rare form of cancer. So far, Cope said she hasn’t had issues of being kept out of hospital rooms or meetings with doctors.

“But it’s not that way everywhere,” Cope said. “I can’t imagine not being included in everything.”

Kalina, who recently had surgery that required her to be under anesthesia, said she brought in her will and paperwork to prove Davis holds her power of attorney — something that would have been unnecessary had they been married at the time.

Kalina and Davis also discovered the complications with funeral arrangements about a year and a half ago — if they wanted the other one in charge of future funeral planning, it required that a special document be signed by both of them.

“It’s a real blow when you’re already getting a blow,” Kalina said. “That’s nothing that people who are heterosexual have to worry about.”

A funeral request is just a one of the issues Kalina and Davis have encountered. They’ve bought a

house together, arranged for health insurance benefits together and assigned power of attorney rights, to name a few.

“There was so much to think about to make sure we covered our butts,” Davis said.

Marital status even can allow couples to get discounts in places, in addition to lowering taxes and making it easier to get government aid.

“Everywhere you look, the status makes a difference, and most people take it for granted,” said Drobac.

Family law implications

It’s largely assumed that despite what the state does, the federal government will recognize the marriages.

So, Cloud and Rud’s marriage would be recognized for Rud’s student loans. Should a couple face immigration issues, the recognition of their marriage could ease the process. The marriage would count for welfare and other benefits from the federal government, tax purposes and any other are in which the feds have jurisdiction.

But the one section, and for many one of the most important sections, of law the states control is family law.

“The children of these families suffer when the state of Indiana doesn’t recognize the marriage,” Drobac said. “It really wreaks havoc on anything from wills to family formation.”

In most states, including Indiana, the assumption is that if a child is born during a marriage, the married persons are the parents, Widiss said. But before Wednesday, that was not the case for gay couples.

If a woman gave birth to a child but later died, her wife would have no claim over the child, if she did not adopt it, even though she is the child’s mother. The child would be a “legal orphan,” Drobac said, and a ward of the state.

Cope said she and Chapman don’t have plans to adopt children, but “perhaps if this had happened 20 years ago, I don’t know, maybe we would have.”

Cloud and Rud plan to adopt in the future but had concerns about doing so while they weren’t married.

“It was something we really wanted to do,” Rud said.

“Hopefully, that will make it a little bit easier on us,” Cloud added.

For most people, the ability to get married is more significant as a symbolic gesture than a legal one, and the appeals court stay order won’t change that.

“For many of us, gay or straight, it may not matter from a perspective other than a personal perspective, but it would matter (legally) when something happens,” Widiss said. “Most people get married for personal reasons rather than all the legal rights.”

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