

Marriage for Gay Couples in the Supreme Court



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The U.S. Supreme Court has announced that it will hear two cases this term involving marriage for gay couples. The charts at the end of this memo explain some possible outcomes for these cases, one of which challenges the *Defense of Marriage Act* (DOMA) and the other California's Proposition 8 as unconstitutional. The Court will likely hear oral arguments in these cases during the last week of March and render a decision by the end of June 2013. There are four important things to know as the Court prepares to take up these historic cases:

1) Americans in the middle now support marriage for gay couples. Recent polls have shown consistent majorities who favor allowing gay couples to marry, with a new *USA Today/Gallup* poll finding that 53% of the country supports it.¹ And support for marriage is even higher among voters in the center. A *Gallup* survey last summer found that 59% of Independents and 65% of moderates thought that gay couples should be able to marry.² Between 2004 and 2011, support for marriage increased 16 points, and this shift happened across every demographic group, with moderates moving fastest.³

2) An even bigger portion of the country thinks the federal government should defer to states' determinations of who is married and respect the marriages of gay couples in states that allow it. An *Associated Press* poll in August found that 63% of Americans believe "couples of the same sex [should] be entitled to the same government benefits as married couples of the opposite sex" and only 32% said "the government [should] distinguish between them."⁴ A *CBS News/New York Times* poll in May found a similar 57% of Americans said that "laws regarding whether same-sex marriage is legal or not should be left to each individual state government to decide," with most Republicans and Independents agreeing with that statement.⁵ And in the

summer of 2011, Quinnipiac asked this question "Under current federal law spouses in same-sex marriages are denied eligibility for federal benefits. Do you think this law should remain in existence or not?" and found 59% said it should not.⁶

3) Nearly all of the ways the Court could rule would have no effect on most states that do not allow gay couples to marry under their laws. The case challenging DOMA is a narrow one, only calling into question the section of the law that says the federal government won't recognize a marriage by a gay couple, even if that marriage is legal in their own state. A decision striking down that section would not alter the section of DOMA that says states may refuse to acknowledge the marriages of gay couples from another state. And there are many ways the Court could decide the Proposition 8 case, but most would affect only California (as the appeals court decision did) or possibly California and a handful of other states. [See the chart at the end of this memo for details.]

4) The First Amendment guarantees that no pastor, priest, or church would ever be forced to marry gay couples. No matter what the Supreme Court decides at the end of its term, its rulings will not change the fact that every church has a right to decide who may participate in the religious sacrament of marriage in its denomination.

Finally, when talking about marriage for gay couples in the context of the Supreme Court cases or otherwise, keep in mind two things:

- **Marriage is about commitment.** Americans see marriage as a promise of lifetime commitment, not a basket of legal rights. And when they believe that gay couples want to marry for the same reasons as other couples—to make a promise of fidelity and commitment—Americans are more likely to support allowing those couples to do so. While the cases before the Court are about legal rights, don’t lose sight of the fact that they involve committed couples who married because they wanted to take care of each other for the rest of their lives. These couples hope to gain the *protections* that the law provides to other married couples in order to help them carry out that promise, but that’s not all their marriages are about.
- **Gay couples want marriage,** not “gay marriage” or “same-sex marriage.” Using the latter terms implies that gay couples want something other than to join the tradition of marriage that has been a cornerstone of our society. It is better to talk about “allowing gay couples to marry” or “marriage for gay couples” than to use phrases that modify marriage itself and indicate that the kind of marriage gay couples seek is different from everyone else’s.

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END NOTES

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