



Written by [Dave Bohon](#) on December 9, 2012

Supreme Court Rulings on DOMA, Prop. 8 Will Impact Marriage in Nation

As expected, the U.S. Supreme Court announced it will hear a pair of cases that will impact the future of marriage in America. After a week of deliberation the High Court said Friday it would consider a challenge to the Defense of Marriage Act (DOMA), which for federal purposes defines marriage as only between a man and a woman. It will also hear an appeal to a lower court ruling that overturned California's Proposition 8, the state constitutional marriage protection amendment passed by voters in 2008.



In the Proposition 8 case, U.S. District Court Judge Vaughn Walker ruled in 2010 that the state amendment, passed by voters on a ballot initiative, violated the U.S. Constitution's due process and equal protection clauses, and placed a stay on its implementation. The U.S. Ninth Circuit Court of Appeal upheld Walker's suspension of the amendment, and after hearing the case in full earlier this year, threw out the amendment completely, setting up the appeal to the Supreme Court.

After his retirement in 2010, Walker confessed that he had been in a homosexual relationship for years, a revelation that called into question the impartiality of his ruling on Proposition 8.

As for DOMA, signed into law in 1996 by President Bill Clinton, a number of lawsuits have been filed by same-sex couples challenging its constitutionality, and in February 2011 President Obama [ordered the Justice Department to stop taking up the law's defense in court](#). "Much of the legal landscape has changed in the 15 years since Congress passed DOMA," Attorney General Eric Holder said in announcing that the DOJ would not defend the duly passed federal statute. "The Supreme Court has ruled that laws criminalizing homosexual conduct are unconstitutional. Congress has repealed the military's Don't Ask, Don't Tell policy. Several lower courts have ruled DOMA itself to be unconstitutional."

The nation's homosexual lobby has long been a staunch Obama ally, and the president strongly courted the "gay" voting bloc during his first administration, working to overturn the "Don't Ask, Don't Tell" policy barring homosexuals from openly serving in the military, and promising to hand them legalized same-sex marriage in his second term.

How the High Court comes down on the two cases will determine the future definition of marriage both nationally and in individual states. As it stands, 30 states have constitutional amendments limiting marriage to a man and woman, while 11 others have state laws that define marriage in a traditional sense. By contrast, only nine states officially recognize same-sex marriage.

The two cases in question strike at the heart of marriage definitions at both the state and federal levels. Should the High Court uphold the lower court's decision against California's Proposition 8, the other 41 states that have thus far protected traditional marriage via statutes and constitutional amendments



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would be expected to allow legalized same-sex marriage. However, there is also the possibility that one or more states could decide to nullify the federal action as an unconstitutional intrusion on matters lacking federal jurisdiction. Likewise, a Supreme Court ruling against DOMA would open the door to legislation legalizing same-sex marriage at the federal level — or federal legislation prohibiting the Supreme Court from deciding marriage cases, based on the congressional power to limit the appellate jurisdiction of the high court.

Homosexual activist groups and their allies are naturally expectant that the High Court will side with what they call “marriage equality.” Chad Griffin, president of the “gay” activist group [Human Rights Campaign](#), said that a favorable ruling for his side in either case “would mark an incredible, decisive point in this movement’s history.” He added that if the Supreme Court rules against the people of California and Proposition 8, “more than a quarter of Americans will live in states where LGBT couples can marry legally.” And should it rule against DOMA, “every single one of those couples will have the same federal rights and benefits of marriage as heterosexual couples.”

House Minority Leader Nancy Pelosi (D-Calif.), a longtime supporter of legalized homosexual marriage, applauded the High Court’s decision to hear the cases, calling it a “landmark moment in the history of civil rights in our nation.” Pelosi said that she and other pro-homosexual legislators were “confident that the justices’ ruling will fall on the side of civil rights and discard DOMA and Prop 8 into the dustbin of history.”

By contrast, pro-family leaders remained confident that the High Court would ultimately rule in favor of traditional marriage. “Marriage between a man and a woman is a universal good that diverse cultures and faiths have honored throughout the history of Western Civilization,” said Jim Campbell, legal counsel for [Alliance Defending Freedom](#) and California’s [ProtectMarriage.com](#), the organization behind Proposition 8. “Marriage expresses the truth that men and women bring distinct, irreplaceable gifts to family life. The ProtectMarriage.com legal team looks forward to advocating before the U.S. Supreme Court on behalf of the people’s right to preserve this fundamental building block of civilization.”

Andy Pugno, general counsel for ProtectMarriage.com, added that “every one of the numerous legal steps we have taken for the past four years has been in anticipation of this moment. Arguing this case before the Supreme Court finally gives us a chance at a fair hearing, something that hasn’t been afforded to the people since we began this fight. We are delighted that the nation’s highest court will decide whether to uphold the will of more than seven million Californians who voted to preserve the unique definition of marriage as only between one man and one woman.”

Brian Brown, president of the [National Organization for Marriage](#), said that the issue before the Supreme Court in both cases is fundamentally one of religious liberty. “Redefine marriage, [and] you redefine it for everyone,” he said, “and the law will be used to punish and marginalize those of us that believe marriage is the union of a man and a woman. It’s already happening.” He added that “unions of two men or two women are not the same thing as a marriage between a man and a woman. And only marriage between a man and a woman can connect children to their mother and father and their parents to the children.”

Tony Perkins, president of the [Family Research Council](#), also weighed in on the High Court announcement, declaring that “nothing is more important to the future of our country than marriage and the family. This is why we are pleased that the Supreme Court has decided to examine lower court decisions striking down the Defense of Marriage Act and Proposition 8.” Perkins warned that should the court uphold the lower court rulings against DOMA and Prop. 8, essentially overturning the pro-



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marriage laws in 41 states, that decision would prove “even more divisive than the Court’s infamous *Roe v. Wade* decision.”

Similarly, Matt Staver of the pro-family [Liberty Counsel](#) said that a High Court ruling in favor of same-sex marriage “would have significant negative social consequences.” He noted that in the 1972 [Baker v. Nelson](#) case, the Supreme Court ruled that “the U.S. Constitution does not grant a right for same-sex couples to marry. Common sense and a quick read of the Constitution say there is no such right to same-sex marriage.”

The same can be said about a right to abort pre-born babies. A big question is: Should the Supreme Court somehow find a right to same-sex marriage in the “penumbra” of the Constitution, just as it found a right to privacy allowing for abortion in its *Roe v. Wade* decision, would the states once again comply with the federal ruling? Or would a number of states, instead, nullify the latest federal encroachment, recognizing, in the words of the 10th Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”?



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