



Written by [Dave Bohon](#) on March 28, 2013

Supreme Court Considers Arguments in Federal DOMA Challenge

On March 27 the U.S. Supreme Court finished up two days devoted to cases brought by homosexual couples against a pair of marriage protections laws, considering arguments against the Defense of Marriage Act (DOMA), the federal law that defines marriage as only between a man and a woman for purposes of federal transactions. The main question before the High Court is whether federal law should ban homosexual couples from enjoying the benefits derived from federal laws that heretofore have only applied to traditional married couples. Currently marital status is an issue in more than 1,100 federal statutes and rules impacting such matters as estate taxes, social security survivor benefits, and even health insurance for federal employees.



The DOMA challenge before the Supreme Court came from New York resident Edie Windsor, who was forced to pay more than \$300,000 in estate taxes following the death of her lesbian partner of 44 years. A traditional married couple would have been free of the tax burden. American University Law professor Stephen Vladeck framed the core issue for [CBN News](#): “Can the federal government deny to those legally married [same-sex] couples benefits that would be available to heterosexual couples?”

Over the past couple of years President Obama established himself as a close ally of the homosexual lobby and its aggressive efforts to dismantle laws limiting same-sex couples. While his administration’s Department of Justice should be leading the defense of DOMA, in February 2011 Obama ordered Attorney General Eric Holder to [halt all federal defense of the measure](#), which was signed into law by President Bill Clinton in 1996. In explaining the Obama administration’s decision to renege on its responsibility to defend the law, Holder told reporters that “much of the legal landscape has changed in the 15 years since Congress passed DOMA. 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 Congress has repealed the military’s Don’t Ask, Don’t Tell policy.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.” □ Obama’s abandonment prompted conservative Republicans in the House of Representatives to step forward to provide a defense in the cases challenging DOMA.

As for former President Clinton, he now claims he made a mistake in signing the bill into law and has come out in favor of the federal government recognizing homosexual relationships as equal to marriage.

[Baptist Press News](#) noted that the March 27 arguments in the DOMA case only concerned Section 3 of the law, which prohibits the federal government from recognizing same-sex marriage for such purposes as taxes and federal benefits. “DOMA’s Section 2, which was not challenged in this case, authorizes states to refuse to recognize gay marriages performed in states where such unions are legal,” reported



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BP News.

How the High Court rules both on DOMA and the challenge to California's Proposition 8, which the Justices considered on March 26, will likely determine whether individual states can continue to make their own determinations about the legality of same-sex marriage. According to OneNewsNow.com, some of the justices appeared to be hesitant about making a sweeping decision that would impact states — at least 30 of which have passed laws or constitutional amendments limiting marriage to only a man and a woman.

For example, Justice Anthony Kennedy, who is considered a crucial swing vote on the issue, observed that same-sex marriage advocates "were asking the Court to 'go into uncharted waters,'" OneNewsNow reported. "Kennedy even went on to say, 'I just wonder if the case was properly granted,' questioning whether or not the Supreme Court should have taken the case."

Surprisingly, even liberal Obama appointee Justice Sonia Sotomayor appeared to side with the argument of traditional marriage advocates that states need more time to sort out the marriage issue and it is premature for the High Court to wade into the debate just now. "If the issue is letting the states experiment and letting the society have more time to figure out its direction, why is taking a case now the answer?" questioned Sotomayer.

OneNewsNow noted that erstwhile conservative Antonin Scalia appeared to be one of the most skeptical justices regarding DOMA's constitutionality, asking same-sex marriage attorney Ted Olsen: "I'm curious, when did it become unconstitutional to exclude homosexual couples from marriage? 1791? 1868 — when the Fourteenth Amendment was adopted? Was it always unconstitutional?"

To which Olsen replied, " ... when we as a culture determined that sexual orientation is a characteristic of individuals that they cannot control ... at that point limiting marriage became unconstitutional." Wondered Scalia, "When did that happen?" — to which Olsen replied: "There's no specific date in time. This is an evolutionary cycle."

BP News reported that the Supreme Court justices "spent almost half of the nearly two hours of arguments hearing from lawyers debating whether the House of Representatives leadership had standing to defend DOMA after President Obama's administration refused to advocate for it and whether the High Court has jurisdiction over the appeal since the Department of Justice agreed with the Second Circuit Court of Appeal's invalidation of the law."

CBN News noted that overwhelmingly those who oppose same-sex marriage do so on conservative moral and religious grounds. Representative of that position were the comments of the Rev. Wiley Drake, pastor of First Southern Baptist Church in Buena Vista, California, who argued that the court needed to draw a moral line. "It's very, very important that this court says, 'Enough is enough,'" Drake declared after the two-day High Court hearings, adding that the Court should decide that "we will not go against God's rule for marriage."

While nearly all media outlets framed the debate over the DOMA and Prop. 8 cases as liberal same-sex marriage advocates versus conservative proponents of traditional marriage, completely left out of the discussion was the option that former Congressman Ron Paul has advocated for years — keeping all government out of the issue of marriage entirely.

"I think the government should just be out of it," said Paul, who is a Christian and who has emphasized that he personally believes marriage "should be between a single man and a single woman." Nonetheless, during the last presidential campaign he stood nearly alone in his view that government



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has no role in defining or enforcing marriage. "I think it should be done by the church or private contract," he said, "and we shouldn't have this argument [of] who's married and who isn't married. I have my standards, but I shouldn't have to impose my standards on others. Other people have their standards and they have no right to impose their marriage standards on me."

In his book [Liberty Defined](#), Paul writes that in a free society, "all voluntary and consensual agreements would be recognized," adding, "There should essentially be no limits to the voluntary definition of marriage."

The former congressman explained that in a free society each person "can have his or her own definition of what marriage means, and if an agreement or contract is reached by the participants, it would qualify as a civil contract if desired.... Why not tolerate everyone's definition as long as neither side uses force to impose its views on the other? Problem solved!"

The Supreme Court's decisions in both the Prop. 8 and DOMA cases are not expected before late June.

Photo of U.S. Supreme Court building



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