

Supreme Court Urged to Support Gay Marriage Limits

The Supreme Court was urged on Tuesday to uphold the constitutionality of two laws that define marriage as the union of a man and a woman, as it prepares to hear arguments in the historic same-sex marriage cases two months from now.

Supporters of the 2008 California prohibition on **same-sex marriage** known as **Proposition 8** told the court that defining marriage should be left to voters rather than judges, and that the ban did not dishonor gays and lesbians.

“That same-sex relationships are not recognized as marriages does not reflect a public judgment that individuals in such relationships are ‘inferior’ or ‘of lesser worth as a class,’” the brief said, “but simply the fact that such relationships do not implicate society’s interest in responsible procreation in the same way that opposite-sex relationships do.”

In a separate filing, the top three Republican members of the House of Representatives—Speaker John Boehner, Majority Leader Eric Cantor and Majority Whip Kevin McCarthy—urged the court to uphold Section 3 of a 1996 federal law, the Defense of Marriage Act, that has the effect of denying same-sex couples a variety of federal benefits that heterosexual couples receive.

“Judicially constitutionalizing the issue of **same-sex marriage** is unwarranted as a matter of sound social and political policy while the American people are so actively engaged in working through this issue for themselves,” their brief said.

The Supreme Court will on March 26-27 hear arguments on the California and federal laws, in two of the most anticipated cases of its current term. Nine U.S. states have legalized same-sex marriage.

Opponents of both provisions are expected to file their briefs next month. The Obama administration has stopped defending Section 3.

'Agents of the People'

In the California case, *Hollingsworth v. Perry*, the 9th U.S. Circuit Court of Appeals had last February voided **Proposition 8** but on narrow grounds, saying the state could not take away a right to same-sex marriage that it had previously allowed.

The law was allowed to remain in effect during the appeals process, which gives the Supreme Court a chance to accept or reject a constitutional right to same-sex marriage, or perhaps issue a narrower ruling affecting only California.

In their brief, supporters of Proposition 8 also said they are legally entitled to defend the ban "as agents of the people" because state officials including Governor Jerry Brown refused.

They raised this argument after the Supreme Court asked them to explain why they had "standing" to sue. If the court finds they do not, it could leave the 9th Circuit ruling intact, which could result in same-sex marriage being legalized in the state.

The New York case, *U.S. v. Windsor*, seeks to invalidate Section 3 of the **Defense of Marriage Act**, which defines marriage as between only a man and a woman for the purpose of federal benefits such as Social Security survivor payments and the right to file joint federal tax returns.

In October, the 2nd U.S. Circuit Court of Appeals in New York struck down Section 3, joining a May 2012 ruling by a federal appeals court in Boston.

Charles Cooper, a former lawyer in the U.S. Department of Justice under President Ronald Reagan, represents Proposition 8 supporters.

Paul Clement, a solicitor general under President George W. Bush, is representing the House Republican lawmakers, whose brief identifies them as the Bipartisan Legal Advisory Group of the U.S. House of Representatives.

The two Democratic members of that group, Minority Leader Nancy Pelosi and Minority Whip Steny Hoyer, do not support their position taken on Section 3.

Equality is also a theme of two other major Supreme Court cases this term: a challenge to affirmative action in admissions at the University of Texas, and whether a key provision of the 1965 Voting Rights Act should stay on the books.

The same-sex marriage cases are *Hollingsworth v. Perry*, U.S. Supreme Court, No. 12-144; and *U.S. v. Windsor*, U.S. Supreme Court, No. 12-307.

Editing by Howard Goller and Lisa Shumaker

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