

Gay Marriage Battle Heats Up in New Jersey

New Jersey must immediately allow **same-sex marriages** now that the U.S. Supreme Court has invalidated the federal law defining marriage as between a man and a woman, lawyers for gay-marriage advocates argued before a state judge on Thursday.

The arguments come in the first case to test whether the Supreme Court's decision to overturn the **Defense of Marriage Act** forces states to reconsider laws that restrict **gay marriage**, a dispute that could play out in courthouses across the country.

Judge Mary Jacobson, hearing the arguments in Mercer County Superior Court in Trenton, said she would not rule until September at the earliest.

Lawyers representing Governor Chris Christie, who vetoed **same-sex marriage** legislation last year, told Jacobson that the litigation is premature because the full effect of the Supreme Court's decision is not yet known.

Following the Supreme Court's June 26 ruling in *U.S. v Windsor*, advocates of **same-sex marriage** filed court papers in a dozen states, arguing that the legal landscape had changed and that certain state laws prohibiting gay marriage could no longer withstand scrutiny.

In a 5-4 ruling, Supreme Court found that DOMA violated the Constitution's guarantee of equal protection under the law by denying gay married couples tax breaks and other federal benefits available to married heterosexuals.

Thursday's hearing was the latest skirmish in a legal battle that began in New Jersey more than a decade ago.

In 2006, New Jersey's Supreme Court ruled that same-sex couples were entitled to the same rights as heterosexual married couples. That decision led the state legislature to pass a civil unions law meant to grant same-sex couples equal rights.

Lawyers for Garden State Equality, a **gay rights** advocacy group, told the judge on Thursday that the Supreme Court's decision applied only to marriages, not to civil unions.

As a result, they argued, the state's prohibition of same-sex marriage results in unequal treatment, in violation of the state Supreme Court's 2006 ruling, since those couples will not access to federal benefits available to married heterosexual couples.

"Federal benefits depend on marriage," said Garden State Equality attorney Lawrence Lustberg. "After Windsor, that is true whether the couples are of the same sex or different. That is what Windsor changed."

Kevin Jespersen of the New Jersey Attorney General's office said the burden is on federal agencies to respect the state's civil union law and confer the same benefits to same-sex couples. If that is not happening, the plaintiffs' quarrel is with the federal government, not New Jersey, he said.

"The New Jersey constitution cannot create a state remedy for the federal government acting under federal law," Jespersen said.

But Lustberg said that argument is misplaced.

"This case is about state action," he said. "It is the state, not the federal government, that is the source of the problem here."

The government also questioned whether the request for an immediate ruling was premature, given that federal agencies

are still determining how to apply the DOMA decision to benefits.

“When you step into a very fast-moving stream, the footing is very uncertain,” Jespersen said.

Lustberg, in response, cited several federal departments that have already said they will honor same-sex marriages, but not civil unions, when evaluating eligibility for benefits.

While the legal dispute continues, **gay marriage** advocates are pursuing a legislative remedy, pressing state lawmakers to override Christie’s veto of the bill that would have legalized gay marriage.

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