

Supreme Court, in Next Gay Marriage Case, Eyes Federal Law

For the second day running, the **Supreme Court** on Wednesday will confront the issue of **gay marriage**, hearing arguments on a U.S. law that denies federal benefits to legally married same-sex couples.

Almost two hours of oral argument before the court will focus on the **Defense of Marriage Act** (DOMA), just a day after the nine justices considered the constitutionality of California's **Proposition 8** ban on gay marriage.

Both cases come before the court as polls show growing support among Americans for gay marriage, but division among the 50 states. Nine states recognize it; 30 states have constitutional amendments banning it and others are in-between.

Rulings in both cases are expected by the end of June.

DOMA limits the definition of marriage as between a man and a woman. It permits benefits such as Social Security survivor payments and federal tax deductions only for married, opposite-sex couples, not for legally married same-sex couples.

President **Bill Clinton** signed DOMA into law in 1996 after it passed Congress with only 81 of 535 lawmakers opposing it. Clinton, a Democrat, earlier this month said that times have changed since then and called for the law to be overturned.

In the California case argued on Tuesday, the justices seemed wary of endorsing a broad right for gay and lesbian couples to marry, as **gay rights** advocates had wanted. As a result, the Proposition 8 case is less likely to influence how the court approaches DOMA, which presents a narrower question.

The slightly lower-profile case being argued Wednesday focuses on whether Edith Windsor, who was married to a woman, should get the federal estate tax deduction available to heterosexuals when their spouses pass away.

Windsor's marriage to Thea Spyer was recognized under New York law, but not under DOMA. When Spyer died in 2009, Windsor was forced to pay federal estate tax because the federal government would not recognize her marriage. She sued the government, seeking a \$363,000 tax refund.

Windsor's lawyers say the federal government has no role in defining marriage, which is traditionally left to states.

"It's the states that marry people," said James Esseks, an American Civil Liberties Union lawyer who is part of Windsor's legal team. "The federal government doesn't do that."

The roughly 133,000 gay couples nationwide, married in one of the nine states where it is legal, are not recognized as married by the federal government, Windsor's supporters say.

Various groups are calling for DOMA to be struck down, such as the Business Coalition for DOMA Repeal, whose members include Marriott International Inc., Aetna Inc., eBay Inc. and Thomson Reuters Corp., the corporate parent of the Reuters news agency.

Obama Turns Back on DOMA

The **Obama administration** has agreed with Windsor that the section of law that defines marriage violates the **U.S. Constitution's** guarantee of equal protection under the law. The Justice Department has therefore declined to defend the statute, as it normally would when a federal statute is challenged.

That has left a legal group acting on behalf of the Republican-dominated U.S. House of Representatives, known as the **Bipartisan Legal Advisory Group**, or BLAG, as the party defending the federal law. Its lawyer, Paul Clement, will

argue that there are several reasons to support Congress' decision to enact DOMA.

Noting the strong bipartisan support the law attracted when it was first enacted, Clement said in court papers that a move to strike it down as unconstitutional "would be wholly unprecedented."

Before the court reaches that bigger question, preliminary matters could prevent the court deciding the case. One is whether BLAG has legal standing.

If such a procedural issue prevents the court from deciding the case on the merits, Windsor would win her refund. Yet DOMA would remain on the books in parts of the country where courts have not ruled on it. Further litigation would likely ensue.

Editing by Kevin Drawbaugh and Cynthia Osterman.

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