

Will Supreme Court Undermine Traditional Marriage?

The Supreme Court announced that it will take up two marriage laws, the federal Defense of Marriage Act (DOMA) (*U.S. v. Windsor*) and California's Proposition 8 (*Hollingsworth v. Perry*), a state marriage amendment. The High Court will decide both cases by the end of the term in June 2013.

Section 3 of **DOMA** defines marriage as a relationship between one man and one woman. A federal district court struck down the definition, and the Obama Department of Justice then refused to defend and appeal the ruling. The U.S. House then agreed to take the case up on appeal and defend DOMA.

California's **Proposition 8** is a state constitutional amendment that defines marriage as the union of one man and one woman. Proposition 8 was upheld by the California Supreme Court in May 2009, but a separate suit in federal district court struck it down. After that ruling, the California Attorney General refused to appeal the case, and proponents of Prop 8 appealed it.

The questions the Supreme Court decided to hear are telling and may allow them to dismiss both cases without reaching the merits. For the DOMA case, the additional question is: "Whether the Executive Branch's agreement with the court below that DOMA is unconstitutional deprives this Court of jurisdiction to decide this case; and whether the Bipartisan Legal Advisory Group of the United States House of Representatives has Article III standing in this case." For the Prop 8 case, the additional question is: "Whether petitioners have standing under Article III, §2 of the Constitution in this case."

For the DOMA case, the fact that the Executive Branch agreed

with the lower court that DOMA is unconstitutional should not deprive the Supreme Court of hearing the case, any more than it would if they agreed DOMA was constitutional.

If the DOMA case is dismissed because the Legislative Branch had no standing to continue the appeal, than that would mean the federal court of appeals decision would be vacated and only the lower district court decision in the Southern District would stand, meaning the impact of the decision would be limited to only the Bronx, Dutchess, New York City, Orange, Putnam, Rockland, Sullivan, and Westchester. The decision would not affect the entire state of New York and certainly not the surrounding states in the circuit court of appeals.

If the Prop 8 case were dismissed on standing, that would mean the federal court of appeals decision would be vacated and only the lower district court decision in the Northern District would stand, meaning the impact of the decision would be limited to Alameda, Contra Costa, Humboldt, Monterey, Napa, Santa Clara, San Francisco, San Mateo, Solano, and some other Northern counties. The decision would not affect the entire state of California, nor would it affect the other states within the circuit court of appeals.

“Redefining marriage to include same-sex unions would undermine marriage and the family and would have significant negative social consequences,” says Mat Staver, founder and chairman of Liberty Counsel. “The United States Supreme Court has previously indicated in *Baker v. Nelson* 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. Based on the questions which the Supreme Court will decide, these cases could either be blockbusters or duds. The Court could decide the central issue of same-sex marriage, but the Court could also kick the can down the road and save that question for another day.”