

Supreme Court Same-Sex Marriage Cases Explained



by Crystal A. Proxmire

At the Ferndale Public Library, attorney Lisa Schmidt donates her time to do community education classes about a variety of legal issues. Most recently she tackled the sometimes complicated issue of gay marriage, breaking down its context and where the laws may be headed once the US Supreme Court hears two marriage-related cases this year.

The easy-to-follow presentation left everyone in the room more educated on the matter, and with permission we've passed along a bit of that information here so that readers can too have a basic understanding of what is going on with this issue.

What is marriage?

While this may seem obvious to some, in debates it can seem like people are discussing two very different issues. Schmidt pointed out that in legal terms marriage cannot be defined by religious beliefs, nor by the ability to have children. Often people will argue that because only a man and a woman can  procreate, that only a man and a woman should marry.

However infertility is not a legal barrier, and there are many married couples who do not have children or who may not ever want them.

Why does marriage matter?

Courts have determined that the right to marry is fundamental to freedom. Not only does it promote free will, there are other benefits that married couples enjoy, including:

- Joint liability for debts
- Mutual support obligations
- Property rights

- Survivor benefits & intestate succession
- Immunity from subpoena against a spouse
- Visitation rights in jails, prisons, & hospitals
- Military communication rights & death notifications ✘

Why do some states allow same-sex marriage and others do not?

States are allowed to regulate marriage without infringing on the rights of a man and a woman, including for reasons of race or religion. They can, however determine things like legal age, waiting periods, how far apart they must be in the bloodline etc. Throughout the nation couples who are married in one state are considered married wherever they go. This is called the Full Faith and Credit clause, meaning that states must recognize the legal contracts of other states. "This is called the Full Faith and Credit clause, meaning that states must recognize the legal contracts of other states." The Full Faith and Credit clause is part of the Federal Constitution and requires the states to recognize the legal affect of other states' laws. In this case it means a person married in Texas is also considered married in Michigan. Same-sex marriage is the glaring exception. In Sept. of 1996, President Bill Clinton signed the Defense of Marriage Act which explicitly defined marriage between one man and one woman for all Federal purposes (such as Social Security). DOMA doesn't override the constitutional clause (statutes can't do that), but it attempts to make an exception.

Should the Supreme Court care?

In 1967 the Supreme Court ruled that states could not prohibit interracial marriage, with their decision in the case of Loving v. Virginia. Some wonder why a similar case could not break down the state-level barrier for same-sex couples.

In 1972 a couple did try to bring their fight for equality to the Supreme Court. In Baker v Nelson a two men were denied marriage and they appealed. The Supreme Court chose not to hear their case "for want of a substantial federal question." Since then the case has been viewed as a precedent against the Federal government ruling on the issue. Schmidt explained that Baker may not be a valid precedent because there was not a high enough level of scrutiny in the case.

Could the change in climate matter?

Times have changed since 1972. There are now 11 states which allow it, and it would have been 12 had Governor Christie of New Jersey not vetoed the law. Plus there are eight states which have some version of domestic partner benefits. On the flipside there are 35 states with bans, 31 of which are codified in the state's constitution, including in Michigan.

Popular opinion has changed too, and while polling may vary there is generally stronger support among young adults.

What will the Supreme Court rule on this year?

The Supreme Court has decided to take on two same-sex marriage cases this year. Each one addresses a different, but important facet of the marriage issue. The first addresses the Proposition 8 case in California and the second addresses a case where a couple was married in Canada and had a civil union in New York, but when one partner died the other was left with a \$363,053 inheritance tax.

Prop 8

In California, there was gay marriage, and then a ballot proposal stating that marriage could only be between a man and a woman was passed. In 2009 it was upheld by the State Supreme Court. In 2010 it was struck down by the US District Court and that ruling was again affirmed by the 9th District US

Court of Appeals.

The Supreme Court has accepted this case and will determine if the law is allowed in California. They could frame their ruling just in terms of California, just in terms of the people in California who did receive legal marriage licenses during the time it was legal, or in broad terms that could affect other states.

Windsor v US



In Windsor v US the issue involves the Federal Government's DOMA saying that marriage is between a man and a woman. In this case a same-sex couple had a civil union in New York and was married in Canada. When Thea Spyder passed away in 2009, her wife Edith Windsor was given a \$363,000 tax bill from the IRS. Married male/female couples would not have to pay anything in inheritance tax. However because the Federal government won't recognize same-sex marriages, they treated Windsor as a legal stranger.

Windsor sued, claiming that this is unfair and violation of the Equal Protection Clause. A Supreme Court decision in this case would affect the Federal Government's perspective on same-sex marriage.

What could those rulings mean for us?

There are several ways that the Court can rule. They can rule in a very limited way, making the determination for just the specific cases. Or they could rule in a broad way that affect's state's rights and the Federal government's rights. The rulings could go in favor of same-sex marriage or against it. Schmidt presented the outcomes on a sliding scale, looking at what could be gay-positive outcomes or gay-negative outcomes.

What are potential positive outcomes?

-The Court recognizes gays and lesbians as a protected class (Both)

-All state constitutional and statutory gay marriage bans are invalidated (Prop 8)

-Gay marriages qualify for full benefits under federal law (DOMA)

-States may not take away gay marriage once it has been granted (Prop 8)

-States can still ban gay marriage but must recognize marriages performed elsewhere (DOMA)

What are potential negative outcomes?

-The Court finds there is a rational basis to support treating gay marriage differently (Both)

-States have the specific authority to define marriage (Prop 8)

-States may refuse to recognize gay marriages performed elsewhere (DOMA)

-Federal government may limit benefits awarded to gay marriage (DOMA)

-States may not pass new statutes or constitutional amendments, but old ones stand (Prop 8)

What is Schmidt's prediction?



Legal experts have speculated what could happen, and Schmidt said she's not going to, except to say that whether they go in favor of same-sex marriage or against it, they're likely to do so in a big way. "There were a few cases that they could have taken, and they picked these ones carefully. It means they

are likely to make a firm statement either way. Though they could make the decisions narrowly if they wanted.”

She pointed out that most people anticipate it will be a split decision, with Justice Anthony Kennedy being the “swing” vote.”

When will the cases be decided?

Both cases are scheduled to be heard in late March, with the decisions expected to come out in late June or early July.

Where can we learn more?

Freedom to Marry is an organization at the forefront of the same-sex marriage movement, with plenty of resources for those who want to learn more and get involved. Their website is <http://www.freedomtomarry.org/>.

Schmidt is a private-practice attorney who handles civil rights, criminal and family law. Her next presentation will be about gun control. Find out more on her website at <http://schmidtlawservices.com>.

