

# US Supreme Court decides gay marriage cases

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The US Supreme Court Wednesday decided two cases on the right of gay couples to marry.

In *U.S. v. Windsor*, the court ruled that couples who are married in states that recognize gay marriage cannot be denied federal benefits that are otherwise available to heterosexual spouses. The court struck down as a violation of the constitutional right to equal liberty the Defense of Marriage Act (DOMA), which defines marriage under federal law as heterosexual union.

The second case, *Hollingsworth v. Perry*, involved an appeal from a lower federal court decision that had thrown out, as a violation of the due process and equal protection clauses of the 14th Amendment to the US Constitution, California's Proposition 8, a voter initiative narrowly passed in 2008. Proposition 8 had amended the California Constitution to limit marriages to heterosexual unions, in order to overturn a California Supreme Court ruling that a prior state law banning gay marriages was unconstitutional.

The State of California declined to defend Proposition 8 in the lower federal court case, or on appeal to the Ninth Circuit Court of Appeals. The Supreme Court Wednesday let the lower federal court decision stand, on the technical procedural ground that the parties appealing, who merely had been proponents of putting Proposition 8 on the ballot, had no standing to pursue an appeal.

This means that same sex marriages are now lawful in California.

As a result, the court's two rulings do not reach the broader issue as to whether laws in states that ban gay marriage are constitutional, leaving them in force. The decision in *Windsor* in fact suggests the court is not yet ready to strike them down.

Before DOMA was passed in 1995 and then signed into law by President Bill Clinton, the federal government recognized a marriage if it was recognized by a state. With the prospect that state courts might recognize same sex marriage, right-wing Republicans sought to exploit the issue by drafting DOMA. The law restricted "marriage" to "a legal union between one man and one woman as husband

and wife" and limited the word "spouse" to only "a person of the opposite sex." The legislation was passed with the support of overwhelming majorities of Democrats in both the House and Senate.

The law effectively excluded gay couples from all rights the government otherwise affords "married" couples, including couples married in the 12 states that would later come to legalize same sex marriage.

In the *Windsor* case, the lesbian plaintiff filed a case in federal court seeking a refund of tax she paid to the federal government on her inheritance from her female partner after the Internal revenue Service denied the refund based on DOMA. Because the couple was lawfully married under New York law, the plaintiff challenged DOMA under the equal protection component of the due process clause of the Fifth Amendment to the US Constitution.

The Supreme Court agreed with the plaintiff Wednesday in a 5-4 opinion authored by conservative "swing vote" Justice Anthony Kennedy, and joined in by the four moderate justices.

Approaching the issue from the perspective of federalism—balancing powers between the federal and state governments—the majority opinion emphasized the longstanding policy in the law of ceding to the states virtually exclusive control over domestic relations such as marriage and custody over children. Thus, it reasoned, federal interference with a state's determination can only be done for non-discriminatory and compelling reasons, especially given that the marital relation implicates an intimate zone of privacy.

Instead, in enacting DOMA Congress was admittedly motivated by an improper animus towards gay unions—the House Report on the law stressed that it was passed "to defend the institution of traditional heterosexual marriage" and express "moral disapproval of homosexuality." The majority opinion stressed how this treatment stigmatizes gay couples and their children.

The majority concludes that DOMA violates the due process clause of the Fifth Amendment to the Constitution

and its equal protection component, given that it improperly discriminates between straight and gay marriages, despite recognition of both as valid by several states.

The four extreme right-wing justices dissented from the court's ruling, arguing that Congress is entitled to promote what they call the "traditional" definition of marriage.

The dissenters also went out of their way to stress that given the principles of federalism relied on by the majority opinion, nothing in the court's decision can be employed to overturn bans on gay marriage in other states, as was done in the case of the lower federal court that invalidated California's Proposition 8.

Justice Kennedy and the majority would appear to confirm that observation, as would the court's having ducked a ruling as to whether Proposition 8's ban on gay marriage was constitutional. For now, the Supreme Court as a whole remains reluctant to interfere with the political processes of the states on the issue, which are in flux, as is the sentiment of the populace, which polls show increasingly favors gay marriage.

Same sex marriage does present a clear issue of democratic rights. There is no doubt that gays historically suffered discrimination. Laws discriminating against gays, including in the marriage context, are backward, unjustifiable and undemocratic.

People have a right to marry whomever they choose. Marriage is a legal and civil institution, and any benefits that derive from being married should be available to all spouses, regardless of their sexual orientation.

Moreover, the desire to discriminate against gays are based on irrational assumptions, such as that they will not make good parents, or even the backward fear that gays raise their children to be gay or lesbian.

Arguments against gay marriage are ultimately derived from religious dogma, and should have no legal standing, especially given the First Amendment separation of church and state.

It is thus not surprising that in the arguments this week the four members of the Court's four-Justice reactionary right wing, who have repeatedly favored imposing Christian fundamentalism and the views of the Catholic Church on society through the state, balk at gay marriage.

Like prior cases involving discrimination on racial grounds, cases involving discrimination against gays should be easily decided, and such restrictions should be struck down without equivocation. Were the bourgeoisie capable of consistent defense of basic democratic rights, the issue would not even be present.

All that being said, claims that recognizing same-sex marriage somehow signifies a new flowering of democratic rights—summed up in the media refrain that gay marriage is

the civil rights movement of today—lack any credibility.

Issues of gender discrimination are decidedly of secondary importance to most of the population, as compared to critical issues of jobs, attacks on living standards, and the drive toward war.

In fact, the shift of large sections of the political and media establishment behind such issues coincides with an unprecedented assault on democratic rights and the erection of the legal scaffolding of a police state.

The embrace of gay marriage by the Obama administration, large sections of the Democratic Party and even a growing number of Republicans and conservative business groups underscores the degree to which identity and lifestyle politics in its various forms—race, gender, sexual orientation—has become a vital element of bourgeois politics.

This serves as a mechanism for diverting attention from the assault on democratic rights, the expansion of war, the growth of poverty and the widening chasm between rich and poor.

Pro-Democratic Party organizations have promoted issues of identity and lifestyle as a means of obscuring these basic class issues, as a means of diverting attention from the reactionary policies of the Obama administration. The Democratic Party uses general support for equality to obscure its fundamental agreement with the Republicans on attacking the working class all down the line.

It is quite telling that bourgeois politicians and media are devoting so much attention to the Supreme Court's gay rights rulings, while the court's outrageous and wholesale attack on basic democratic rights, embodied in its decision striking down the Voting Rights Act earlier this week, garners dwindling attention.



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