

Immediate effect of DOMA decision profound

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The Supreme Court today struck down the federal Defense of Marriage Act (DOMA), ruling that the law violated fundamental constitutional rights by denying same-sex couples equal liberty under the law. Justice Anthony Kennedy's opinion held that DOMA rested on an irrational, constitutionally impermissible animus against same-sex couples.

The Court in a separate case rejected a challenge to a lower [court](#) ruling that invalidated California's ban on same-sex marriage, known as Proposition 8. In that case, where California's government refused to defend the ban, the Court ruled that citizen advocates for the ban lacked the necessary legal interest to defend it.

In neither case did the Court address the question whether the U.S. Constitution guarantees a right to same-sex marriage.

Gregory Magarian, JD, constitutional law expert and professor of law at Washington University in St. Louis, says that the immediate effects of these decisions for same-sex couples will be profound.

"The demise of DOMA means that the federal government must treat same-sex couples, legally married under state laws, just like opposite-sex [married couples](#) for purposes of federal benefits, tax status, etc," he says.

"The nullification of Proposition 8 appears to make marriage available to same-sex couples in the nation's largest state, under a prior marriage law that Proposition 8 had purported to invalidate."

Magarian notes that legally, these decisions are unremarkable. "Many of us have been predicting precisely these results for months," he says.

Magarian's comments on today's decisions follow:

The DOMA decision, *United States v. Windsor*, almost exactly echoed two prior decisions (*Romer v. Evans* and *Lawrence v. Texas*) that struck down anti-gay laws as impermissibly grounded in animus.

Lawrence, the more recent of those two decisions, came down ten years ago today.

As in those decisions, both also written by Justice Kennedy, the Court today refused to announce whether it would review future gay rights cases uniformly under a tough standard of review. As in those cases, Justice Scalia dissented with barely submerged rage against gays, liberals, and his fellow Justices. None of this is remotely new.

The Proposition 8 decision, *Hollingsworth v. Perry*, has nothing to do with gay rights as a legal matter. It's all about the legal doctrine of standing – who has a right to bring a suit or an appeal in federal court. Standing is very important; it's an underpinning of our legal system.

This case raised a difficult standing issue that divided the Court 5-4 (although, notably, the decision did not break down along predictable "liberal"- "conservative" lines). But even by the standards of standing, the issue in this case was narrow, and no one outside law schools and courthouses would be talking about it if not for its factual setting.

In the wake of yesterday's voting rights decision, *Shelby County v. Holder*, some "centrist" commentators will criticize liberals who love *Windsor* but hate *Shelby County*, and conservatives who hold the opposite views, for hypocrisy.

Both decisions, those commentators will note, struck down federal laws; you can't accuse the Court of "judicial activism" in one while defending the other. This is exactly why I resist the narrative of "judicial activism" and "judicial restraint."

Shelby County killed a longstanding, effective protection of a core constitutional right to political participation, which Congress had carefully considered and repeatedly reauthorized.

Windsor struck down a novel, contentious law, based on nothing more than bias and fear, which denied people a core constitutional right to equal liberty. The two decisions could hardly be more different, and they warrant opposite responses.

The same-sex marriage war will rage on for a while, but demographics already assure its outcome. In fifty years, the idea that same-sex couples were once forbidden to marry will seem bizarre.

The Supreme Court today, as it has at its best moments in the past, moved the law along a trail of progress marked that brave advocates have blazed and the common sense of the people has broadened. Today is an exceedingly rare thing in the age of Chief Justice John Roberts and his right-wing majority: a great day for justice.

Provided by Washington University in St. Louis

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