



Same-Sex Marriage and the Supreme Court: United States v. Windsor and Hollingsworth v. Perry

Alissa M. Dolan, Jody Feder

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Recently, the Supreme Court agreed to weigh in on an issue that has long been a subject of controversy in the United States, namely, what types of restrictions, if any, may the government place on the ability of gay couples to enter legal marriages. The origin of the debate over same-sex marriage can be traced back to 1993, when the Hawaii Supreme Court issued a ruling that appeared likely to lead to recognition of same-sex marriage under the state's constitution. In response, Congress enacted the Defense of Marriage Act (DOMA). Section 3 of DOMA created a new federal definition for the terms "marriage" and "spouse" that includes heterosexual couples only. Thus, any federal law that uses those terms automatically excludes same-sex couples from any rights, benefits, or protections that flow from the statute.

Meanwhile, in the nearly two decades since DOMA was enacted, the state legislatures and courts have become increasingly enmeshed in questions about the extent to which marital rights and benefits can or must be offered to same-sex couples. Currently, nine states and the District of Columbia permit same-sex couples to marry, while the vast majority of the remaining states have statutes or constitutional provisions that bar such marriages. (For a detailed discussion of these state laws, see CRS Report RL31994, Same-Sex Marriages: Legal Issues, by Alison M. Smith.) One such provision is California's Proposition 8, which amended the state constitution to prohibit same-sex marriage. Proposition 8 was adopted shortly after the California Supreme Court ruled that the state's ban on same-sex marriage violated the state constitution.

On December 7, 2012, the Supreme Court agreed to hear challenges to two laws that impose restrictions on same-sex marriage. The first case, *United States v. Windsor*, involves questions about the constitutionality of DOMA. The second case, *Hollingsworth v. Perry*, involves a similar challenge to California's Proposition 8. These cases are discussed in detail below.

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