Beat: Politics

Same Sex Marriage front and center in our nations highest court

What is at stake and what does it mean?

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USPA NEWS - As the United States Supreme Court considers the constitutionality of same sex marriage this week, Justices will not only be addressing the largest social issue to come before the Court in 40 years, but they will also be taking a major step in defining their own legacy, as well as that of the Court.

On Tuesday and Wednesday, our nations highest court will hear arguments in two landmark cases; both dealing with same sex marriage. These two cases place the high court in the midst of uncharted waters .

Prior gay-rights disputes tested a Texas criminal law against intimate homosexual relations and a Colorado prohibition on any anti-discrimination policy tied to sexual orientation. Both were struck down by 6-3 votes, in 2003 and 1996, respectively.

Tuesday's issue is whether a state - California - may define marriage as only between a man and a woman. Supporters of California's Proposition 8 have implored the court to consider society's interests in procreation and childrearing by a man and woman. Opponents of the 2008 California ballot measure counter that the loving relationships of all couples deserve equal respect under the law, citing constitutional guarantees of equal protection and due process.

Wednesday's issue will focus on whether the federal government is legally permitted, under the 1996 Defense of Marriage Act (DOMA), to deny benefits to married same sex couples that are a right of their heterosexual counterparts.

Below are answers to some of the key questions being asked about these two cases before the Court -- which could have material and far reaching implications for hundreds of thousands of gay men and women, same sex families, as well as thousands of individual state laws, and potentially the national political landscape.

Could the Supreme Court legalize same sex marriage in all 50 states?

In the case involving DOMA, the justices also could address the constitutionality of same sex marriage or they could simply find that the federal government should not be in the marriage business at all and instead leave it up to states to regulate.

The court could go many ways in its ruling on the California case. It could maintain the narrow focus that a federal court had in overturning Proposition 8, when it ruled that a fundamental right like marriage can't be granted and then taken away (referencing same sex couples ability to briefly marry in 2008 in California before voters approved Prop. 8, ending the practice).

Alternatively, the high court could say state prohibitions of same-sex marriage are unconstitutional, opening the door for same sex couples to marry in states where it has been banned.

Another possibility is that the justices could simply overturn the lower court's decision and reinstate the ban on same sex marriage.

They could also find that the group bringing the challenge doesn´t have standing.

We are a legally married same sex couple from Maryland, should we be worried?

NO. It's highly unlikely, and would be unprecedented for the Supreme Court to make any ruling that negatively affects laws in the nine states and the District of Columbia that allow same sex marriage. There´s mostly upsides for already married couples.

If the court decides DOMA is unconstitutional, married couples would receive all the rights and benefits that have been denied to them under that federal law, such as the right to file joint taxes, the protections of the Family Medical and Leave Act, and the ability of

surviving spouses to access veterans´ benefits.

Why has the Supreme Court decided to hear these cases now?

The Time is Now:

Several challenges to DOMA and the California Proposition 8 case have slowly wound their way through lower courts over the years. Many observers and constitutional scholars have predicted justices would take one of the DOMA challenges, but few expected them to take the Prop. 8 case, as well. The thinking is that the justices feel it´s time to address the question of same-sex marriage, so they now have a state as well as a federal challenge (interestingly, the DOMA case they selected, United States v. Windsor, was the most recent of the cases).

Why are they being heard on consecutive days?

One answer is court discretion. In reality, the cases are related, as they involve the rights of same sex couples to marry.

The federal case which challenges DOMA focuses primarily on the benefits that same sex couples are denied due to the 1996 Defense of Marriage Act, while the California Prop. 8 focuses on the right to marry, and whether same sex couples have that right.

Ultimately, though, both cases come down to whether gay and lesbian Americans are treated constitutionally different because of their sexual orientation. This is the common thread in both cases.

What about civil unions? Could states not legalize these instead of Marriage?

Currently six states do allow Civil Unions, and California allows Domestic Partnerships, however, marriage by any other name is constitutionally not the same.

The Obama administration, in its amicus brief submitted to the Court, called for the end of Prop. 8, saying, creating a parallel system was only meant to deny the “marriage“ label and was therefore discriminatory against same sex couples.

Opponents to same sex marriage contend that civil unions and California's domestic partnership law guarantee the same rights and responsibilities as marriage to same sex couples while preserving the preserving the sanctity of traditional marriage.

Marriage advocates argue that civil unions create another separate and unequal class of Americans.

What is the opposition argument against same sex marriage?

In the most simplistic of terms, they contend the tradition of marriage is thousands of years old and defines a man and woman's union. They also contend that the state has an inherent interest in promoting traditional families, and that procreation can only happen between a man and a woman.

Finally, they contend that decisions about marriage should be left up to the voters, not judges or lawmakers.

Unfortunately for that argument, the United States Constitution does not subject the Supreme Court to the will of the voters, and their decisions are virtually unchallengeable.

Is paralelling same sex marriage to Roe v. Wade reasonable?

Those opposing same-sex marriage have invoked the aftermath of Roe as they warn the justices against going too far too fast. They say that if the court forces all 50 states to accept same sex marriage, the same as for abortion rights four decades ago, it will only prolong the gay-rights conflict.

Supporters of same sex marriage declare the comparison to Roe inapt and highlight the court's historic role of protecting minorities against bias. They believe it would be wrong to wait to declare a constitutional right until more states, beyond the current nine and the District of Columbia, legalize same sex marriage.

With such cultural and judicial crosscurrents, the controversy naturally draws a comparison to one of the court's most defining cases in the past 40 years. The 1973 Roe v. Wade decision made abortion legal nationwide just as states were weighing related legislation. The ruling generated a social and political backlash that endures today.

When the court declared a fundamental right to abortion, it preempted more permissive abortion laws that were emerging in some states. The ruling also fortified political conservatism and the religiously based "right to life" movement.

The final say...

Carrie Evans, Executive Director of Equality Maryland, one of the country's most successful civil rights organizations for LGBT issues is ready for the Supreme Court to strike down DOMA. "Now that we have marriage equality in Maryland, the continuing presence of the federal so-called "Defense of Marriage Act" is even more striking. We have same-sex couples in Maryland enjoying the state-level rights and responsibilities of marriage but remain legal strangers under federal law. The time has come for this federal law to become a vestige of U.S. history."

The Obama administration is hoping the court will agree with him and their ruling will provide a level of constitutional protection for gay men and woman that will likely lead to same-sex marriage nationwide.

Whether the court is ready to take that leap is uncertain. As a group, these nine justices are more conservative than the court of the 1970s and more concerned about judges encroaching on the realm of legislators.

Despite our say, the Justices of the United States Supreme Court have the final word, and we will know what they say in June.

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483 Green Lanes
UK, London N13NV 4BS

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