

Federal Benefits and Same Sex Couples: DOMA

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Terminology

Use 2 terms interchangeably

- Same sex marriage (SSM)
- Marriage Equality

Trends

- Democracies & developed countries (Europe) more likely to support marriage equality than under-developed countries (Africa)
- Young people more likely to support marriage equality than the elderly
- Liberals are more likely to support marriage equality than conservatives

Global Context

Support

- 13 countries + Mexico city legalized marriage equality
- 9 European countries legalized SSM
- Marriage Equality pending in New Zealand and Uruguay, proposals in United Kingdom

Marriage Equality in 14 Countries

- Argentina
- Belgium
- Canada
- Denmark
- Brazil
- Iceland
- the Netherlands
- Norway
- Portugal
- South Africa
- Spain
- Sweden
- France
- Mexico city

Global context continued

According to [International Lesbian, Gay, Bisexual, Trans & Intersex Association \(ILGA\)](#)

- 5 countries have death penalty (Iran, Somalia, Saudi Arabia, Sudan, Mauritania)
- 73 countries have imprisonment

http://old.ilga.org/Statehomophobia/ILGA_map_2013_A4.pdf World Map

Pending Legislation

- Nigeria parliament passed ban on SSM, imposes 10-14 year sentence
- illegal to form gay organizations & participants can be sentenced up to 10 years.
- Gay couples displaying public affection can get up to 10 years in prison

continued

- Uganda legislators proposed death penalty for gays, amended 11/2012 no executions
- South Africa – although SSM is legal, lesbians are attacked (some murdered), “corrective rapes”

US Public Opinion

- Over half (51%) of Americans support gay marriage (5 distinct polls support this)
- 70% of Americans born after 1980 support marriage equality
- 66% of senior citizens oppose it
- 80% of conservatives oppose it

http://www.huffingtonpost.com/2012/11/14/gay-marriage-support-majority-americans-poll_n_2130371.html

Framing the Issue

- Sharp ideological divide over gay rights in US regarding role of govt in securing:
 1. marriage equality
 2. domestic partner benefits
 3. Non-discrimination in work place

Political Divide

Opponents

- Based on religion – anti Christian
- Traditional family values
- Marriage is for procreation
- Harms children
- Restricts definition of marriage

Proponents

- Based on US Constitution, equal protection clause
- Fairness
- Civil Rights umbrella
- Rely on litigation partner benefits, work discrimination

2 US Supreme Court Cases

Marriage Equality Decisions – June 2013

1. *U.S. versus Windsor* – challenges DOMA, oral arguments March 27, 2013
2. *Hollingsworth v. Perry* – challenges California's Proposition 8, oral arguments March 26, 2013

US Gay Rights Policy

- Slow process due to marginalization of homosexuality (demonized – AIDS)
- Prior to 1973, homosexuality considered a mental illness by American Psychiatric Association (APA)
- Historically, fought at local & state level

Policy Issue Emergence

- The Mattachine Society (formed 1951) first advocacy group for LGBT community, transformed into Janus Society
- Police raid on Stonewall Inn (1969), triggering event, collective action
- Gay liberation movement
 - 50 in 1969, to 800 gay organizations in 4 years

LGBT Non Discrimination Rights

1st Wave: local level

- 1971 NYC Mayor issued exec order prohibiting discr in selection & promotion
- 1977 Dade county Florida overturned discr policy which protected gays (Anita Bryant)
- 1978 CA proposition 6 failed (prevent gays from teaching in public schools)
- 1978 Mayor Harvey Milk (SF) passed policy

Domestic Partner Benefits

2nd Wave: rights extended to domestic partners

- 1984 Berkeley, CA extended benefits
- Today, 151 localities and 15 states provide domestic partner benefits
- San Francisco requires city contractors to provide benefits to domestic partners
- 29 states provide NO protection to LGBT

Legalized Marriage Equality

3rd Wave: (1990s to present), mostly fought at state level

- 9 states & DC legalized same sex marriage
- 30 states ban SSM, define marriage as between man and woman
- 11 states provide for civil unions or domestic partnership
- 7 states recognize same sex marriage from other states

12 States & DC Legalized SSM

Connecticut

Delaware - 2013

District of Columbia

Iowa

New Hampshire

New York

Maine

Maryland - 2012

Massachusetts

Minnesota – 2013

Rhode Island - 2013

Vermont

Washington

Majority in East Coast

Fight moved to Federal Level

Federal Level:

Defense of Marriage Act of 1996 (DOMA) –
defined marriage as between man & woman.

Impact: denies 1,100 + benefits (taxes, social security) to SS couples.

Right to Marry

- In US, liberty protected under the Due Process and Equal Protection Clauses of 5th & 14th Amendment
- Marriages performed in 1 state, recognized in all other 50 states through Full Faith & Credit Clause of Article IV, Section 1

4th Wave: Executive Power

- 2011, President Obama repealed “Don’t Ask Don’t Tell” policy banning homosexuals from US military service
- In 2011, Obama states DOMA is unconstitutional, Justice Dept no longer defend it
- In 2012, Obama publicly announced support for marriage equality
- March 2013, Obama & Justice Dept filed brief w/ Supreme Court stating unconstitutional to deny marriage between same sex couples

DOMA of 1996

Defense of Marriage Act of 1996 (Pub L. 104-199)

Defines marriage as:

“legal union between one man and one woman as husband and wife, and the word `spouse' refers only to a person of the opposite sex who is a husband or a wife.” (Public L 104-199, Section 3).

Conclusion

- Shift in US public opinion supporting marriage equality
- Supreme Court deliberating on 2 critical cases
- Will the Court's decisions comport with public opinion or embrace “separate but equal” marriage system for LGBT citizens?

President Obama

Stated in his second inaugural address:

“our journey is not complete until
‘the love we commit to one
another’ is equal as well.”

References

Wyatt-Nichol, Heather and Lorenda A. Naylor. “The Policy Landscape of Sexual Orientation,” *Journal of Public Management and Social Policy* (JPMSP), Notice of acceptance for publication on October 31, 2012