



Marriage for All?

The Supreme Court is considering whether all 50 states must allow same-sex marriage BY PATRICIA SMITH

By this summer, Americans may know once and for all whether same-sex marriage is a right protected under the Constitution.

Same-sex marriage remains a politically divisive issue, even as many states have legalized it and courts have overturned bans approved by voters. Federal courts are in disagreement over the issue; some say yes, some say no. That's why the Supreme Court has decided to weigh in.

A year ago, same-sex marriage was legal in only 17 states. It's now legal in 36 of the 50 states and the District of Columbia (see maps). That means that more than 70 percent of Americans live in places where gay couples can wed.

"The landscape for marriage equality is changing lightning fast," says Suzanne Goldberg, a law professor at Columbia University in New York. "It is rare in American history that any civil rights change has moved as quickly as this."

If the Supreme Court does legalize same-sex marriage nationwide, it would be its most significant ruling on marriage since it struck down state bans on interracial marriage, in *Loving v. Virginia*, in 1967.

Proponents of same-sex marriage see it as a civil rights issue: Gay people, they argue, should have the same right to marry as everyone else, especially since many legal rights and family protections are tied to marriage. Opponents say allowing same-sex couples to marry undermines the institution of marriage, which many see as a religious rite going back thousands of years. They also object to courts overturning voter-approved bans.

"There is nothing in the Constitution that empowers the courts to silence the people and impose a nationwide redefinition of marriage," says Tony Perkins of the Family Research Council, a conservative policy group.

State laws regarding same-sex

marriage have come about in three different ways: In some states, the courts have mandated the legalization of same-sex marriage. In others, the state legislature has legalized it. Finally, there are state referendums, in which voters have banned gay marriage. Almost all those bans have been challenged in court, and some have been overturned.

The Supreme Court has already given same-sex-marriage advocates a partial victory. In 2013, in *United States v. Windsor*, the Court overturned the federal Defense of Marriage Act. That 1996 law barred the federal government from giving benefits tied to marriage, such as tax breaks, to same-sex couples.

But the *Windsor* ruling didn't address whether state bans on gay marriage were constitutional. Since then, in a string of more than 40 lower-court rulings, federal and state judges have ruled that state bans violate the Constitution's guarantees of due process and equal protection

Download a timeline of same-sex-marriage laws at www.upfrontmagazine.com

under the 14th Amendment. In October, for example, the Ninth Circuit Court of Appeals* in San Francisco struck down same-sex-marriage bans in Idaho and Nevada.

But in November, another court reached a far different conclusion: The Sixth Circuit Court of Appeals in Cincinnati upheld bans in Kentucky, Michigan, Ohio, and Tennessee, saying that voters and legislators, not judges, should decide the issue.

That decision created the split that prompted the Supreme Court to step in. The cases the Court has agreed to hear were brought by more than a dozen same-sex couples in the four states where the bans were upheld. The plaintiffs argue that they have a right to marry like opposite-sex couples, and that the bans harm them and their children.

Shifting Attitudes

When it weighs the issue, the Supreme Court will likely consider changing attitudes about same-sex marriage. In 1996, 27 percent of Americans supported gay marriage. A 2014 Gallup poll found

55 percent in favor of legalizing it. Among young people, support is stronger: 80 percent of Americans ages 18 to 29 support gay marriage, an ABC News poll found.

The shift is reflected in popular culture. Starting in the 1990s, the popularity of TV shows like *Ellen* and *Will & Grace* demonstrated that many Americans would accept gay characters. Today, ABC's hit comedy *Modern Family* features a gay couple.

Athletes may also be shaping perceptions. Last year, Jason Collins of the Brooklyn Nets became the first openly gay player in the NBA; and Michael Sam, who played football for the University of Missouri, announced that he's gay. Sam was drafted by the NFL but soon cut.

After long favoring only civil unions (which grant the rights of marriage under a different name), President Obama

announced in 2012 that he supports same-sex marriage.

It's possible that the Supreme Court, which will hear oral arguments in April, will try to keep its ruling narrow. Harvard law professor Laurence Tribe wonders if the justices might avoid deciding whether gay marriage must be allowed everywhere by simply requiring states to recognize same-sex marriages performed in other states.

But it's more likely, Tribe says, that the ruling, which is expected by the end of June, will be decisive.

"It will be the *Brown v. Board of Education* for a very substantial community in the United States," says Tribe, adding, "This is the civil rights issue of our era." •

With reporting by Adam Liptak of The Times.



BOB D'AMICO/AMERICAN BROADCASTING COMPANIES, INC. (MODERN FAMILY); JIM McMAHON (MAP)

A Changing Landscape

Same-sex marriage is now legal in 36 states and the District of Columbia; a year ago, it was legal in 17 states and D.C. (see inset).



■ SAME-SEX MARRIAGE LEGAL
 □ SAME-SEX MARRIAGE BANNED



Alaska and Hawaii are not drawn to scale or placed in their proper geographic positions.

*The U.S. has 11 Circuit Courts of Appeals that each cover a group of states. They are the highest federal courts below the Supreme Court.