

Station 5 - *United States v. Windsor*

As a group, analyze the below document. Then, answer the questions at the end of the handout.



**Congressional
Research Service**

Informing the legislative debate since 1914

Same-Sex Marriage: A Legal Background After *United States v. Windsor*

Alison M. Smith

Legislative Attorney

October 10, 2014

Congressional Research Service

7-5700

www.crs.gov

R43481



Summary

The issue of same-sex marriage generates debate on both the federal and state levels. Either legislatively or judicially, same-sex marriage is legal in more than a dozen states. Conversely, many states have statutes and/or constitutional amendments limiting marriage to the union of one man and one woman. These state-level variations raise questions about the validity of such unions outside the contracted jurisdiction and have bearing on the distribution of state and/or federal benefits. As federal agencies grappled with the interplay of the Defense of Marriage Act (DOMA) and the distribution of federal marriage-based benefits, questions arose regarding DOMA's constitutionality and the appropriate standard (strict, intermediate, or rational basis) of review to apply to the statute.

In *United States v. Windsor*, a closely divided U.S. Supreme Court held that Section 3 of DOMA, which prohibited federal recognition of same-sex marriage, violated due process and equal protection principles. As such, federal statutes that refer to a marriage and/or spouse for federal purposes should be interpreted as applying equally to legally married same-sex couples recognized by the state. However, the Court left unanswered questions such as (1) whether same-sex couples have a fundamental right to marry and (2) whether state bans on same-sex marriage are constitutionally permissible.

In the aftermath of the *Windsor* decision, lower federal courts have begun to address the constitutionality of state statutory and constitutional bans on same-sex marriage. To date, appellate courts in the Fourth, Seventh, Ninth and Tenth Circuits have upheld lower courts' decisions striking down such bans. The Fourth and Tenth Circuit Courts have concluded that the bans in three states (Utah, Oklahoma, and Virginia) violate both the equal protection and due process guarantees of the Fourteenth Amendment by impermissibly infringing on the fundamental right to marry. Relying on a series of "marriage" cases, these courts have taken a broad or expansive view of the fundamental right to marry and found that this right encompasses same-sex marriage and the recognition of these unions across state lines. While district courts were split as to the appropriate level of judicial review, both appellate courts concluded that strict scrutiny is appropriate as a fundamental right is implicated.

Although arriving at the same result as its sister circuits—striking down same-sex marriage bans (Indiana, Wisconsin, Idaho and Nevada)—the Seventh and Ninth Circuits took a different approach. They declined to address the issue of whether the fundamental right to marry encompasses same-sex unions. Instead, they limited their analysis to the equal protection challenge. The courts concluded that discrimination based on sexual orientation warrants heightened scrutiny and that the states' proffered justifications failed to further any legitimate purpose.

Appeals are pending in other circuits. The Sixth Circuit held oral arguments concerning the constitutionality of four states' (Kentucky, Michigan, Ohio, and Tennessee) bans. Some commentators believe that there is a possibility that the Sixth Circuit may uphold one or more of these bans. Recently, the Supreme Court denied review of petitions from the Fourth, Seventh, and Tenth Circuits (covering Indiana, Oklahoma, Utah, Virginia, and Wisconsin). It remains uncertain whether the U.S. Supreme Court will decline to intervene until a circuit split occurs.



Thea Spyer & Edith Windsor



Edith Windsor



Questions

1. Where in the United States did this take place? When?
2. What level of government was involved (city, state, federal)?
3. What branch of government was involved (legislative, executive, judicial)?
4. Who were the plaintiffs in the case?
5. Who was the defendant in the case?
6. What was the issue involved in the case?
7. What was the decision of the case?
8. How did the decision affect the civic process and history of the Marriage Equality debate?