

# THE ORANGE COUNTY REGISTER

## Why DOMA went down

2013-06-26 16:32:57



**Editor's note:** *Following are reactions to the Supreme Court decision Wednesday to strike down a portion of the federal Defense of Marriage Act.*

**Adam Winkler**, UCLA law professor: The majority went out of its way to limit the scope and reach of its decision – and, as a result, few other laws discriminating on the basis of sexual orientation, like bans on LGBT adoption or same-sex marriage, are likely to fall because of it.

Moreover, the majority refused to say that all LGBT discrimination should be treated to heightened judicial scrutiny – in the way that race and sex discrimination are – and thus keeps the door open for courts to uphold

other discriminatory laws. The ruling might be likened to a shotgun wedding: the justices went along reluctantly and without embracing a full commitment to full citizenship regardless of sexual orientation.

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**Erwin Chemerinsky**, dean, UC Irvine law school: Justice Kennedy's majority opinion was clear that there is no legitimate government purpose served by denying gays and lesbians of equality in marriage. This certainly paves the way to challenges to laws in states that prohibit same-sex marriage. After today, it is clear that it is only a matter of time before marriage equality exists everywhere in the United States.

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**Courtney Joslin**, UC Davis law professor: Justice Kennedy explains that DOMA "brings financial harm to children of same-sex couples," by denying those families critical spousal Social Security benefits, along with many other critical protections. In addition to these tangible injuries, Justice Kennedy also makes clear that marriage bans cause real and constitutionally cognizable dignitary harms. Such laws, he explains, mark same-sex relationships as being "less worthy." And, most importantly, Justice Kennedy reaffirms the principle that where the purpose of such a law is to harm a politically unpopular group, it fails constitutional review.

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**John Yoo**, UC Berkeley law professor: The [majority] cannot quite hold that Congress is not allowed to adopt definitions of words like "marriage" for federal law purposes, so instead it says that the federal definition shows an intent by Congress to harm gays. The conclusion assumes, without explicitly saying so, that 342 members of the House, 85 senators and President Bill Clinton were all guilty of anti-gay bias in 1996, when DOMA was enacted. As Chief Justice Roberts said, "I would not tar the political branches with bigotry."

There is little doubt that Congress had other, legitimate motives as well that did not have to do purely with discrimination, such as standardizing federal law across the nation, reducing federal costs, and so on.

On this score, gays have become a constitutionally protected class due higher protections than even racial minorities – which shows how the [DOMA case] majority has contorted the Constitution to reach its preferred result.

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**Kevin Snider**, chief counsel, Pacific Justice Institute: Was the law stricken because the court determined there is a right found in the Constitution to gay marriage? Actually – no. Instead, the case involves the more than 1,000 federal laws for which being married is a precondition. Federal law typically borrows the definition of the state of residence of someone seeking a federal benefit. In this suit, it was a \$300,000 estate-tax liability that a lesbian wanted to avoid.

Justice Anthony Kennedy determined that DOMA was an attempt by the federal government to interfere with a state's prerogative on how it will define marriage. In sum, the decision does not pave the way to require states to recognize homosexual matrimony. Quite the opposite is true. Rather, the decision makes it clear that states can decide what marriage is, and is not.

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**Ilya Shapiro**, Cato Institute: The court upheld the equal liberty and dignity of all individuals, regardless of sexual orientation. This represents a major victory for gay rights, of course, but, more broadly, vindicates a robust view of individual liberty as protected by the Constitution.

It should be axiomatic that the federal government has to treat all people equally, that it has to accept the several states' sovereign laws on marriage (and many other subjects), and today there were five votes at the Supreme Court for that proposition.

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