

# AGENCE FRANCE PRESSE

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## Same-sex marriage heads for US Supreme Court

Same-sex marriage is headed for consideration by the US Supreme Court ahead of November's presidential vote in which the hot-button issue pits President Barack Obama against Mitt Romney.

"There are multiple cases that are all showing up at the same time," said Syracuse University constitutional law professor Thomas Keck.

"The lower courts have had their chances to resolve the legal issues but everybody recognizes it's time for the Supreme Court to step in."

The first test will come on September 24, when the justices will return from their summer recess for their conference to choose cases for review during the next term that starts in October.

But Keck cautioned that despite the high-profile nature of what could be the Supreme Court's first ruling on same-sex marriage, any change would be incremental.

"It's extremely unlikely that there will be a sweeping decision legalizing same-sex marriage nationally," he said.

Among the appeals piling up before justices is a filing by a group of Republican lawmakers asking that the high court declare a US federal law on marriage constitutional.

The 1996 law known as the Defense of Marriage Act defines marriage as the legal union between a man and a woman. Republicans reject criticism that it violates the due process clause of the Fifth Amendment of the US Constitution.

A federal appeals court has awarded a victory to gay marriage supporters in the case, saying DOMA discriminates against same-sex couples by denying them benefits -- including inheritance, tax breaks, joint tax filings and residency -- granted to heterosexual couples.

The case is particularly urgent for the Supreme Court to address as it concerns a federal law -- DOMA -- that appears to contradict a state law that legalizes gay marriage in Massachusetts.

In its brief, Massachusetts said it "recognizes that DOMA's unconstitutionality is a question of national significance and is likely to be addressed by this (Supreme) Court at some point."

"It is important that the court address the matter in a case that presents the full complement of DOMA's constitutional infirmities," Massachusetts Attorney General Martha Coakley added in the petition.

Veteran legal journalist and author Lyle Denniston noted that the case "confronts all constitutional questions -- discrimination under the Fifth Amendment, intrusion upon state powers protected by the 10th Amendment and going beyond Congress's legitimate powers under the Constitution's spending clause."

In a rare move, the federal government has no plans to defend the law before the high court as the Obama administration has defended gay rights and considers DOMA discriminatory and unconstitutional.

Constitutional lawyer Elizabeth Papez said the Justice Department's decision to not seek review was a "wild card" that allowed lawmakers to file a petition instead.

After long side-stepping the issue, Obama put his reelection bid on the line by publicly endorsing gay marriage in May in a surprise move designed to draw a sharp contrast with Romney, his Republican rival who opposes same-sex unions.

But openly fighting to repeal the act ahead of November's election could be politically problematic for Obama as he tries to woo conservative Democrats and independent voters in some key swing states.

Obama said his statement was a personal position and that states should decide the issue, rather than the federal government drawing up a new policy.

Legal marriage between two men or two women is not recognized by the US federal government but is now allowed in

six of the 50 US states and in the federal capital city, Washington.

A federal appeals court has also refused to reconsider a request to reconsider its ruling striking down California's voter-approved ban on gay marriage.

The group that sponsored the measure has said it plans to take the case to the high court.

Ilya Shapiro of the Cato Institute said it was "unlikely" the Supreme Court would take up the California case because of the appellate court's narrow opinion, but expected the justices to take up at least one of the DOMA cases on its docket.

"The court may not wish to confront the issue of whether a state can be forced to recognize another state's gay marriage, it cannot avoid tackling the equally thorny issue of whether the federal government can deny benefits to gay couples married in states where that is already legal," said Shapiro.