



## US Supreme Court prepares to tackle gay marriage

By: Chantal Valery - November 29th, 2012

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WASHINGTON – The US Supreme Court meets on Friday to decide how it will handle challenges to the status of gay marriages, at a time when thousands of American same sex couple have already tied the knot.

The court has been asked to judge the 1996 Defense of Marriage Act, which defines a marriage under federal law as a “union between a man and a woman.”

President Barack Obama’s government does not support this view of marriage and would like the law to be overturned, but conservative campaigners are urging the court to rule that the act is constitutional.

In the meantime, the federal government is obliged to enforce a law that prevents it from according homosexuals the same immigration, welfare, tax and employee insurance rights as heterosexual couples.

“Everybody recognizes it’s time for the Supreme Court to step in,” Thomas Keck, political science professor at Syracuse University, New York, told AFP.

As a country, the United States appears to be slowly moving towards tolerating same-sex unions.

Nine of the 50 states and the federal capital district already recognize gay marriages. A recent opinion poll by the Pew Institute found that 48 percent of the population accepts the idea, up from 39 percent four years ago.

And among those to have changed his mind over this period, publicly at least, is Obama himself, who was against homosexual marriage in his 2008 campaign but came out in favor shortly before seeking re-election this year.

On Friday, the judges will study eight motions concerning the law, and as Justice Ruth Ginsburg has said it is “more than likely” that they will rule on one or more of them before the court’s term ends in June.

Unusually, the federal government has opted not to defend its own act – which was signed into law by former president Bill Clinton – and Obama is on record as regarding it as discriminatory and unconstitutional.

Nevertheless, Keck warned: “It’s extremely unlikely that there will be a sweeping decision legalizing same-sex marriage nationally.”

Instead, the case is likely to concern the federal government’s right to treat gay couples married by state authorities differently from heterosexual partners in the same position in states that have legalized gay marriage.

“No impact on gays and lesbians in Texas and Mississippi,” Keck said, citing two jurisdictions where conservative Christians dominate the legislature. Things could change in California, however.

A case has been brought by supporters of “Prop 8”, a referendum that passed in the country’s most populous state in 2008 that defined marriage as being between a “man and a woman” but which was overturned by a court of appeal.

If the Supreme Court throws out their appeal, California will in effect become the 10th state to permit gay marriage.

But Prop 8 may not be picked up by the judges right away.

Lyle Denniston of the closely-followed Scotusblog wrote that the judges would most likely choose the case of Edith Windsor, who was legally married to her partner in Canada but told to pay tax on inheriting her estate.

According to Denniston, this case would be one on which Justice Elena Kagan – who as Obama’s former solicitor general has recused herself on some of the cases in which she had played a prior role – could take part.

“If she is out of a case, there is always the risk that the other justices would split four to four, which would not result in a definitive ruling on the constitutionality of DOMA,” he said, of the nine-member bench.

Kagan, for example, would not be able to rule on Arizona’s attempt to outlaw gay marriage, having worked on the administration’s challenge to that law.

The Californian Prop 8 case may also not prove suitable for a general verdict, since it only deals with a one-state issue.

But whichever case comes up first, according to constitutional studies scholar Ilya Shapiro of the Cato Institute, progress will be made.

“The court may not wish to confront the issue of whether a state can be forced to recognize another state’s gay marriage,” he told AFP.

“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,” he explained.

Once the court decides which case or cases to address, it will consider rival arguments, and give a judgment, probably in June.