

# THE ARIZONA REPUBLIC

## Court should back equality

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Public views on same-sex marriage have shifted so rapidly that acceptance of these unions is a matter of time, no matter what the Supreme Court says.

Nevertheless, there are constitutional questions the court should settle for the sake of fairness and inclusion for all Americans.

This view resonates across the political spectrum. Doug Kendall of the progressive Constitutional Accountability Center and Ilya Shapiro of the libertarian Cato Institute wrote for Huffington Post:

“The constitutional case for marriage equality begins with the sweeping and universal text of the Fourteenth Amendment’s equal protection clause, which guarantees ‘equal protection of the laws’ to ‘any person.’ ”

California’s Proposition 8, a ban on same-sex marriage that will be argued before the court today, denies marriage — and its many legal and social benefits — to people based solely on the fact they are homosexual. Arizona’s constitutional ban on same-sex marriage does the same.

Nearly 18,000 same-sex couples were married in California before Proposition 8 re-imposed a ban on gay marriage. Two lower courts found Proposition 8 unconstitutional.

The Supreme Court could dodge a decision by ruling those who appealed those decisions do not have legal standing. Or it could issue a narrow ruling with little reach beyond California.

We hope the court takes this opportunity to speak to a nation clearly ready for a fresh breeze of equality.

Americans understand it is time for a change. Republican strategist Karl Rove told “Fox News Sunday” that he could imagine the next GOP presidential candidate supporting same-sex marriage. Democratic former President Bill Clinton now opposes the Defense of Marriage Act he signed into law.

DOMA will be argued before the high court Wednesday. While the 14th Amendment applies to what states can do, the Fifth Amendment is read to apply the same equal-protection rule to the federal government.

In defining marriage as between a man and woman, DOMA denies same-sex couples equal treatment in such matters as income tax, estate tax and Social Security survivors’ benefits.

DOMA also creates an odd and unsustainable inconsistency in the military, which now allows gay and lesbian Americans to serve their country openly. The life partners of gay

and lesbian service members are unequal partners under the law. This means not being notified as next of kin when a soldier-spouse is killed, and not being honored with the flag that draped the casket.

That's wrong, and America knows it.

A recent *Washington Post*/ABC poll found that 58 percent of Americans support same-sex marriage, up from 32 percent nine years ago. Support among adults under 30 stands at 81 percent.

In November, voters in Maine, Maryland and Washington approved same-sex marriage, bringing the number of states where it is legal to nine, plus the District of Columbia. Voters in Minnesota rejected a ban on same-sex marriage.

The momentum for wide-spread acceptance of same-sex marriage is powerful and unstoppable.

It is not the Supreme Court's role to legitimize popular sentiment. In these two cases, however, the court can reflect shifting public opinion and honor the Constitution's promise of equal protection.