



Will Supreme Court recognize my marriage?

I was almost a California bride in 2004 but had to marry in Canada.

By: Judith E. Schaeffer – March 26, 2013

Back in 2004, when San Francisco Mayor Gavin Newsom ordered the city clerk to start issuing marriage licenses to same-sex couples, Eileen Ryan, my partner of nearly 26 years, and I wanted to jump on the next plane to California. Coming of age as gay people not long after the Stonewall clash with police in 1969, the idea that we could ever get married anywhere, in our lifetimes, had pretty much been unthinkable. That these San Francisco marriages probably were not authorized by California law, and certainly would never be recognized in our home state of Virginia, didn't really matter then. At that point, to us at least, what mattered was that we could do it, that an actual city government would give us a marriage license.

We weren't the only ones who felt this way. Day after day, thousands of gay and lesbian couples lined the sidewalks around City Hall, patiently waiting their turn to marry, showing an entire nation that love and commitment are not the exclusive preserve of heterosexual couples.

Legal strangers

Unfortunately, Eileen and I could only watch on TV as this joy unfolded a continent away that February. Because Eileen is an accountant, our lives revolve around IRS filing deadlines, and the looming deadline of April 15 trumped a quick trip to the West Coast, even for something as important as marriage. So we made an appointment with the San Francisco city clerk to obtain a marriage license right after tax day. The lawyer in me doubted the courts would allow the city's marriages to continue that long, and my instincts were correct. The state Supreme Court put an end to Mayor Newsom's noble endeavor in March. No California wedding for us.

We were disappointed, but we were saved by our great neighbor to the north, as Canada soon began allowing same-sex couples to marry. And so, a few months later, we drove up to Toronto and married on our 26th anniversary. Elated that an entire country recognized our marriage, the wedding announcement joyfully expressed our "gratitude to the enlightened people of Canada."

Now, however, nearly a decade later, our own country, where we have lived together as a committed couple for almost 35 years, still considers us to be legal strangers. This is frightening. Over the years, I've had to argue with hospitals about Eileen's relationship with me, and, as we approach retirement, we worry about not being recognized as spouses under our pension plans and by Social Security. It's harmful, unjust and, here's

the lawyer in me again, unconstitutional. Which is why, from both a personal and a professional standpoint, the two marriage equality cases before the U.S. Supreme Court are among the most important in our lifetimes.

In a historic two days that started Tuesday, the court in *Hollingsworth v. Perry* heard arguments over the constitutionality of California's Proposition 8, which prohibits same-sex couples in that state from marrying. Today, in *United States v. Windsor*, the court will take up the constitutionality of Section 3 of the so-called Defense of Marriage Act (DOMA), which defines marriage under federal law as consisting only of opposite-sex couples, thereby denying same-sex couples legally married under state law more than 1,000 federal rights, benefits and protections.

Not if, when

Perry and *Windsor* have arrived at the court on a tidal wave of cultural and legal change. Polls show increasingly broad and growing support for marriage equality, while nine states and Washington, D.C., now allow same-sex couples to marry. That's a minority of states, to be sure, but it is clear where our country is headed and how the fight for marriage equality will play out. The only question is, how long it will take. I was in the courtroom Tuesday morning for the *Perry* argument and was struck by the inability of those arguing against marriage equality to identify any legitimate reason for excluding same-sex couples from marriage.

What the court will now determine is whether our country will continue for an unknown number of years to subject same-sex couples to discrimination, depending on where we live. Can our transient society function efficiently, properly or fairly when couples are considered married in some states but not in others, and not at all by the federal government?

On a more personal level, will Eileen and I continue to be respected as a married couple during the day when we are at work in Washington but not after we drive home in the evening across the Potomac River into Virginia? Or will the Supreme Court do what it should — enforce the Constitution's guarantee of the equal protection of the laws and ensure that gay men and lesbians enjoy marriage equality across our nation?

A few weeks ago, after Eileen filed my federal tax return, she told me the same thing she has told me every year since we've been married: "If the government recognized our marriage, we'd each pay a lot more in taxes." It's a price we'd willingly pay.

Judith E. Schaeffer is vice president of the Constitutional Accountability Center, which joined the Cato Institute in filing briefs in the two cases.