



Why the Supreme Court will recognize gay marriage

By: Conn Carrol March 26, 2013

Today, the Supreme Court will hear oral arguments in the case of *Hollingsworth v Perry*, which challenges California's prohibition on recognizing same-sex marriages. Tomorrow, the Court will hear *United States v Windsor*, which challenges the 1996 Defense of Marriage Act's (DOMA) definition of marriage as only a union of one man and one woman. Never has gay marriage received so much attention from the Supreme Court, prompting Politico, to ask this morning, "Can gay marriage survive SCOTUS loss?"

But this is almost certainly the wrong question. As Obamacare taught us, Politico almost certainly has this question backward. Remember, Chief Justice John Roberts initially voted to overturn Obamacare on the merits of the case and the law. But he then switched his vote for entirely political reasons to protect his legacy as Chief Justice. In other words, the legal arguments that lawyers will make this week and the legal questions the justices will ask, are all almost entirely irrelevant. The only question on Chief Justice Roberts mind when deciding these cases will be, "Can SCOTUS survive a gay marriage loss?"

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And it almost certainly can not. According to a new Pew poll published this week, the Supreme Court's favorability is already at historic lows. Meanwhile, the popularity of gay marriage has never been higher. The latest CNN poll shows 53 percent of Americans think marriages between gay and lesbian couples should or be recognized by the law. Fifty-eight percent of Americans told *The Washington Post* the same thing. Even Fox News' latest poll shows that 53 percent of Americans believe same-sex couples have a constitutional right to marry.

There simply is zero chance that Roberts would put his Court on the wrong side of history by upholding California's Proposition 8 or DOMA. At best, Roberts will take a weaselly way out and find ways of skirting the substance of the issue on each case. But even that is unlikely. Instead, same-sex marriage opponents should begin preparing themselves now for the high likelihood that gay marriage is about to become a constitutional right.

The Wall Street Journal, *Bailout Strains European Ties*: A deal reached Monday in Brussels may have saved Cyprus from becoming the first country to crash out of the euro, but it came at the cost of widening the political mistrust between the strong economies of Europe's north and the weaklings of the south.

The Washington Post, *Health law could boost use of temp workers*: Experts say the Affordable Care Act's exceptions for temporary employees could undercut the goal of expanding coverage to more American workers. Starting in January, employers with at least 50 workers must offer affordable coverage or pay a penalty. To stay under this limit, some are considering outsourcing jobs.

The Los Angeles Times, *State urged to turn over parks to local governments, nonprofits*: A government oversight agency says that state parks are in such disarray and disrepair that officials should cede control of many of them to cities, counties or private operators.

Reuters, *Senate banking chair Johnson to announce retirement*: Senator Tim Johnson, the Democratic chairman of the powerful banking committee, does not plan to run for re-election when his current term ends in 2014.

ABC News, *Michele Bachmann's Presidential Campaign Investigated By Ethics Watchdog*: Federal investigators are probing allegations that Rep. Michele Bachmann, or members of her staff, inappropriately used money raised during her presidential campaign, her lawyer and former campaign staffers said today.