



NATIONAL CENTER FOR LESBIAN RIGHTS

Everything You Want to Know About the LGBT Cases In Front of the US Supreme Court

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LGBT Equality Cases in the Supreme Court's October 2012 Term: Frequently Asked Questions

This year's Supreme Court term includes some of the most important LGBT equality cases the Supreme Court has ever been asked to consider. Here are answers to some of the most often asked questions about the cases.

Which LGBT equality cases has the Supreme Court been asked to review?

There are currently six important LGBT equality cases that the Supreme Court has been asked to review this term. The first is *Hollingsworth v. Perry*, in which the supporters of Proposition 8 have asked the Court to overturn the decision of the Ninth Circuit court of appeals earlier this year upholding Judge Vaughn Walker's 2010 ruling striking down that ballot measure, which stripped same-sex couples in California of the right to marry. The case, which is sponsored by the American Foundation for Equal Rights and was filed on behalf of two same-sex couples by the well-known attorneys Ted Olson and David Boies, was called *Perry v. Brown* in the Ninth Circuit, and it will continue to be known by that name if the Supreme Court decides not to review it.

Next, there are four separate cases before the Court that challenge the unfair and discriminatory federal law known as the Defense of Marriage Act (DOMA), which says that the federal government will not recognize the marriages of same-sex couples for any purpose, even if they can legally marry in their home state. DOMA means that legally married same-sex couples are denied all federal spousal benefits, such as Social Security, estate tax exemptions, and the right to file joint tax returns.

Like *Perry*, as a result of procedural rules, the four cases have different names in the Supreme Court than they had in the lower courts, but they are generally known by the names they had when originally filed. The cases are: *Gill v. Office of Personnel*

Management (OPM), filed in Massachusetts by Gay and Lesbian Advocates and Defenders (GLAD) along with a companion case filed on behalf of the Commonwealth of Massachusetts by Attorney General Martha Coakley; **Golinski v. OPM**, which was filed in California by Lambda Legal; **Windsor v. United States**, which was filed in New York by the ACLU; and **Pedersen v. OPM**, which was filed in Connecticut by GLAD.

Finally, there is **Diaz v. Brewer**, a case filed by Lambda Legal that challenges Arizona's 2009 law stripping state employees of equal health benefits coverage for their same-sex domestic partners. The Ninth Circuit court of appeals ruled that this law is very likely unconstitutional and that Governor Jan Brewer cannot enforce the ban on benefits until the federal courts issue a final decision in the case. Brewer is asking the Supreme Court to reverse that decision and allow the discriminatory law to go into effect.

Does the Supreme Court have to review these cases?

No. The Supreme Court is not required to accept the cases it is asked to review. In fact, it rarely accepts more than 100 or so of the thousands of cases it is asked to hear each year.

How does the Supreme Court decide whether to take a case?

The justices hold a **conference** several times a month at which they vote on whether or not to accept cases that they have been asked to review. If they take a case, they set the case for argument within a few months and generally issue their decision no later than the last day of the term, in June. If they take any of the LGBT cases before them this term, we can expect they will issue a decision no later than the end of June 2013.

What happens if the Supreme Court doesn't take a case?

If the Court does not accept a case, the decision of the lower court stands and becomes the final ruling on the issues raised in the appeal.

When will the Supreme Court decide whether to take these cases?

Monday, September 24, was the first conference of the new term. Three of this year's potential landmark LGBT equality cases were on that September 24 agenda: *Perry* (the challenge to Prop 8), *Windsor* (one of the challenges to DOMA), and *Diaz* (the challenge to Arizona's law stripping employees of domestic partner benefits). The Court has not yet accepted or declined any of these cases. Instead, the Court decided to postpone its decision about whether to take these cases and will consider them at a later conference. The date of that conference has not yet been announced.

The other three DOMA cases have not yet been scheduled for a conference, because the parties have not yet completed filing their briefs arguing why the Court should or

should not take those cases. Based on the current schedule, those cases will be ready for consideration on various dates in October and November. It is quite possible that the Court will delay consideration of some or all of these cases, including the three cases that were originally on the agenda for September 24, until all of the DOMA cases are ready for consideration at a conference. Based on the current schedule – which can change depending on when the parties file their briefs – the latest-filed of the DOMA cases would not be ready for consideration until the Court’s November 20 conference.

When will we find out whether the Supreme Court will take the cases considered at a conference?

Conferences are usually held on Fridays and take place most weeks during the term. The Court announces which cases it has accepted and which cases it has rejected at 9:30 a.m. Eastern time on the Monday following the Friday conference. If a case does not appear on the Monday order list, that means it has been postponed and will be considered at a later conference. The Court can postpone cases multiple times, so the fact that a particular case has been rescheduled once does not necessarily mean that the Court will decide whether or not to take it on the rescheduled conference date.

What will happen if the Supreme Court takes the LGBT cases?

If the Court accepts any of the LGBT cases on its calendar this fall, the Court will ask the parties to file written briefs and schedule the case for oral argument within several months. The Court will then issue its decision in the case by July of 2013.

What will happen if the Supreme Court decides not to take the Prop 8 case?

If the Court issues an order declining to review the Prop 8 case, the decision of the Ninth Circuit that Prop 8 is unconstitutional will be the final decision in the case, and same-sex couples will regain the freedom to marry in California. That decision will not take effect immediately upon issuance of the Supreme Court’s order, however. The case will first have to return to the Ninth Circuit, where that court will issue the “mandate,” which is a document indicating that the decision is final. The Ninth Circuit has stated that its decision will not go into effect until the mandate is issued.

If the Supreme Court decides not to take the Prop 8 case, when will same-sex couples be able to marry in California?

Probably not for several days after the Supreme Court officially declines to take the case. Once the Supreme Court denies review, the case goes back to the Ninth Circuit. The court of appeals’ decision does not go into effect until it issues the “mandate,” a document saying that the case is over. That would likely happen within several days

after the Supreme Court's ruling. At that point, Judge Walker's injunction prohibiting state officials from enforcing Prop 8 would go into effect.

We are hopeful that by the time the Supreme Court decides whether to take the case, more information will be available from state and county officials about when they plan to start issuing marriage licenses if the Supreme Court declines to review the Prop 8 case.

What will happen if the Supreme Court decides not to take the DOMA cases?

First of all, the fact that the Supreme Court declines to review one of the DOMA cases does not mean that it won't decide to take another DOMA case. It could decide to take only one of them, more than one, or all of them.

If the Supreme Court declines to review all four of the DOMA cases, an odd situation would result. The *Windsor*, *Golinksi*, and *Pederson* cases will move forward in their respective courts of appeals, since the Supreme Court was asked to take them before the appeals courts issued their decisions. But *Gill* would become final, meaning that DOMA will have been declared unconstitutional by the First Circuit court of appeals (encompassing the New England states), but that appellate courts in other regions of the country will not yet have decided its constitutionality. This possible lack of uniformity in different regions of the country is one of the reasons that most observers believe that the Supreme Court is very likely to accept one or more of the DOMA cases and issue a final decision on its constitutionality that is effective throughout the country.

What will happen if the Supreme Court decides not to take the Arizona domestic partner case?

If the Court declines to review the *Diaz* domestic partner benefits case, the Ninth Circuit's decision will become final. However, because the Ninth Circuit's decision took place at a preliminary phase of the case, the case will have to go back to the district court in Arizona for a final determination on whether the challenged law is unconstitutional. The losing party at the district court will then be able to file another appeal of that final decision, and the case potentially could come back to the Supreme Court again.