

3.4 THE SUPREME COURT AND THE RIGHT TO MARRY

Essential Question(s): What were the multiple perspectives of the Justices of the U.S. Supreme Court based on during the repeal of DOMA? According to the Supreme Court decision, who has the right to marry? What assurances do we have that the Justices of the U.S. Supreme Court are able to be non-partisan and avoid bias when deciding a case?

Overview

The Judicial branch of the U.S. government is headed by the Supreme Court. This court analyzes and judges cases that impact the entire nation. Justices of the U.S. Supreme Court are nominated by the President and confirmed by the Senate which allows the Justices to focus on cases, rather than on campaigning to get elected. It is a life-time appointment and Justices are expected to serve until retirement, death or they are found to be unfit for the position. Justices of the U.S. Supreme Court are expected to be non-partisan even though they are nominated by the President and confirmed by the Senate.

Understanding how the Supreme Court reacts to and judges cases is key to understanding many of the laws that the U.S. has today.

Teacher Note: Your students may have strong views about the definition of marriage for different reasons, including their religious beliefs. Remind your students about the separation of Church and State. It may remove a barrier to civil discourse if you emphasize that while there are many different religious views on marriage, no one religious understanding should be used to define marriage recognition and rights under civil law.

Snapshot

What Students Will Learn:

In this lesson, students will analyze the repeal of the Defense of Marriage Act (DOMA). They will do this by reading the multiple perspectives found on the Supreme Court of the United States and by analyzing the history of DOMA and marriage equality in the United States.

Standard(s):

D2.Civ.12.9-12

CCSS.ELA-Literacy.RH.9-10.3

Time: 50 minutes



Objectives

- Understand how the Justices of the U.S. Supreme Court engage in discourse to decide cases and interpret the law.
- Analyze the multiple perspectives of the Justices of the U.S. Supreme Court.
- Create a timeline of DOMA and its repeal.
- Explain who has the right to marry according to the Supreme Court of the United States.

Differentiation

Students can work independently or in pairs. Considering partnering students in advance.

What's Needed

- Writing utensil and paper or 1:1 technology
- WiFi, internet, computer, screen or projector, speakers
- Prepare the group discussion questions in step #1 to be projected for whole class viewing.
- Prepare “A Global Snapshot of Same-sex Marriage” map for whole class viewing.
- “The Passage of DOMA Timeline” (Consider making posters of the information and post, in chronological order, around the room and having students walk the timeline.)
- Make copies of “Multiple Perspectives on DOMA,” one for each student.

Classroom Setup

Students will work independently or in pairs. Desks should be arranged for independent or pair work.

Direct Teaching

1. Have students answer the following questions in pairs, individually on paper or as a whole group discussion.
 - What is marriage?
 - What are the benefits to getting married?
 - Who has the right to marry in the U.S.?
 - Who has the right to marry in other countries?

Key Vocabulary

Defense of Marriage Act (DOMA)
gay marriage
jurisdiction
justice
marriage
marriage equality
non-partisan
repeal
spouse
Supreme Court



2. Display the following information for students:

Marriage is the legal or formal recognition of two people as partners in a personal relationship. Those who are legally or formally married can receive mutual healthcare benefits, hospital visitation rights, child custody rights, rights of inheritance or money if the other passes away, tax benefits, etc. Those who are not married do not have the same rights.

Same-sex marriage is legal in all 50 states as of 2015. In 2004, it was legal in only one state (MA) for same-sex couples to get married.

The Pew Research Center found that along with the U.S., 30 other countries and territories have legalized same-sex marriage. This information, released in 2019, continues to change. For instance, in September of 2018, India decriminalized homosexuality; a huge move for LGBTQ rights in India and a possible next step for legalizing marriage equality (see map below to display).

3. Ask students, “What was the Defense of Marriage Act (DOMA)?” Elicit answers from students. After a few students have responded, share the following information:

The Defense of Marriage Act, or DOMA, was signed by President Bill Clinton in 1996 after three same-sex couples in Hawaii tried to obtain marriage licenses. DOMA contains only two actions. The first action is that it is not required to legally recognize a relationship that is treated as a marriage under laws of another “state, territory, or Indian tribe.” The second action states that the term “marriage” only refers to a legal union between a man and a woman. The term “spouse” then refers to the partner of the opposite sex in the marriage.

4. Explain to students that they are going to create a timeline for the passage of DOMA and its repeal through the courts. Ask students to draw a timeline and write “1972” at one end and “Today” on the other end.
5. Share the information on “[The Passage of DOMA Timeline](#)” with your class either orally, by projecting it or as posters displayed in chronological order around the room. Instruct students to complete their timeline by summarizing the information of each event that was shared.
6. After students are done taking notes, ask, “What about the information on the timeline stands out to you? Why?”
7. Distribute the “[Multiple Perspectives on DOMA](#)” to each student. Instruct students to work independently or in pairs to analyze the dialogue and summarize each perspective.
8. Have students reflect on the different perspectives of the Justices of the U.S. Supreme Court by answering the following questions. Students can answer individually on paper, in pairs or as part of a whole group discussion.

Ask students, “What kind of impact could multiple perspectives have on the governing process?”

9. Connect the following questions to further reflection.
 - Is the process of having the Supreme Court vote on DOMA a fair process? If not, what would be a fairer process?
 - Are the Justices of the U.S. Supreme Court able to rule without bias?
 - If the U.S. Supreme Court were made of different Justices, how could that affect DOMA and other cases?

Closing

Share with students the following information about how cases reach the Supreme Court:

The Supreme Court hears cases in two ways. The first way is through original jurisdiction, meaning they are the first and only court to hear the case. The second way is through appellate jurisdiction, which means that the Supreme Court reviews the decisions of lower courts. If this is the case, those who are not satisfied with the lower court's decision, must petition the U.S. Supreme Court to hear their case. Just because a petition has been filed does not mean that the Supreme Court must hear the case. Of the more than 7,000 court cases petitioned, the Supreme Court accepts only 100–150 total. Four of the nine Justices have to accept a case in order for it to go through.

A GLOBAL SNAPSHOT OF SAME-SEX MARRIAGE



Source: Pew Research Center analysis. Map classifications as of October 2019.

Pew Research Center 

THE PASSAGE OF DOMA TIMELINE

- 1972** ● The United States Supreme Court dismisses *Baker v. Nelson*, a case filed by a gay couple in Minnesota seeking to marry.
- 1993** ● The Hawaii Supreme Court states that denying marriage to same-sex couples violates the Equal Protection Clause of the state Constitution.
- 1996** ● President Clinton signs the Defense of Marriage Act (DOMA).
- 2000** ● In Vermont, civil unions for same-sex couples become legal.
- 2003** ● *Goodridge v. Department of Health* is voted on by the Massachusetts Supreme Court legalizing same-sex marriage in MA.
- 2004** ● In 11 states, Constitutional amendments denying same-sex marriage are passed.
- 2005 & 2007** ● Gov. Arnold Schwarzenegger vetoes same-sex marriage bill in California which was passed by legislators.
- 2006** ● In 7 more states, Constitutional amendments denying same-sex marriage are passed
- 2008** ● The California Supreme Court strikes down a law denying same-sex marriage. Same-sex couples begin marrying the next month.
- 2008–2010** ● Multiple states pass laws that legalize same-sex marriage.
- 2011** ● The Obama administration states that it will no longer defend the Defense of Marriage Act.
- 2012** ● President Obama is the first president in office to share his support for same-sex marriage.
- 2012** ● In December, the U.S. Supreme Court agrees to hear information about the Defense of Marriage Act.
- 2013** ● March 26–27, the U.S. Supreme Court hears oral arguments that challenge DOMA.
- 2013** ● In June, the U.S. Supreme Court rules a section of DOMA down .
- 2013–2015** ● Multiple states continue to fight for same-sex marriage .
- 2015** ● In June, the U.S. Supreme Court legalizes same-sex marriage across the U.S. in the case *Obergefell v. Hodge*.

MULTIPLE PERSPECTIVES ON DOMA

Directions: Analyze the dialogue and summarize each perspective.



“DOMA singles out a class of persons deemed by a State entitled to recognition and protection to enhance their own liberty. It imposes a disability on the class by refusing to acknowledge a status the State finds to be dignified and proper. DOMA instructs all federal officials, and indeed all persons with whom same-sex couples interact, including their own children, that their marriage is less worthy than the marriages of others. The federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State by its marriage laws, sought to protect in personhood and dignity. By seeking to displace this protection and treating those persons as living in marriages less respected than others, the federal statute is in violation of the Fifth Amendment. This opinion and its holding are confined to those lawful marriages.”

— Justice Anthony Kennedy

What Justice Kennedy means is...

“The problem is if we are totally for the States’ decision that there is a marriage between two people, for the Federal Government then to come in to say no joint return, no marital deduction, no Social Security benefits; your spouse is very sick but you can’t get leave; people – if that set of attributes, none might well ask, what kind of marriage is this?”

— Justice Ruth Bader Ginsburg



What Justice Ginsburg means is...

MULTIPLE PERSPECTIVES ON DOMA

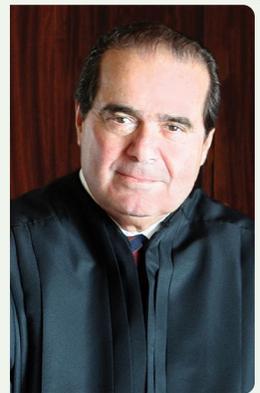


“I hope that the Court will ultimately permit the people of each State to decide this question for themselves. Unless the Court is willing to allow this to occur, the whiffs of federalism in the today’s opinion of the Court will soon be scattered to the wind.”

— Justice Samuel Alito

What Justice Alito means is...

“As far as this Court is concerned, no one should be fooled; it is just a matter of listening and waiting for the other shoe. By formally declaring anyone opposed to same-sex marriage an enemy of human decency, the majority arms well every challenger to a state law restricting marriage to its traditional definition. Henceforth those challengers will lead with this Court’s declaration that there is “no legitimate purpose” served by such a law, and will claim that the traditional definition has “the purpose and effect to disparage and to injure” the “personhood and dignity” of same-sex couples, see ante, at 25, 26. The majority’s limiting assurance will be meaningless in the face of language like that, as the majority well knows. That is why the language is there. The result will be a judicial distortion of our society’s debate over marriage—a debate that can seem in need of our clumsy “help” only to a member of this institution.”



— Justice Antonin Scalia

What Justice Scalia means is...

MULTIPLE PERSPECTIVES ON DOMA

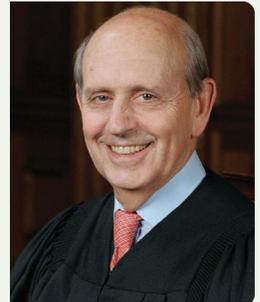


“But what gives the Federal Government the right to be concerned at all at what the definition of marriage is? Sort of going in a circle. You’re saying—you’re saying, we can create this special category—men and women—because the States have an interest in traditional marriage that they’re trying to protect. How do you get the Federal Government to have the right to create categories of that type based on an interest that’s not there, but based on an interest that belongs to the States?”

— Justice Sonia Sotomayor

What Justice Sotomayor means is...

“What—what do you think of his—the argument that I heard was, to put the other side, at least one part of it as I understand it said: Look, the Federal Government needs a uniform rule. There has been this uniform one man—one woman rule for several hundred years or whatever, and there’s a revolution going on in the States. We either adopt the resolution—the revolution or push it along a little, or we stay out of it. And I think Mr. Clement was saying, well, we’ve decided to stay out of it—and the way to stay out of it is to go with the traditional thing. I mean, that—that’s an argument. So your answer to that argument is what?”



— Justice Stephen Breyer

What Justice Breyer means is...

MULTIPLE PERSPECTIVES ON DOMA



“So we have a whole series of cases which suggest the following: Which suggest that when Congress targets a group that is not everybody’s favorite group in the world, that we look at those cases with some—even if they’re not suspect—with some rigor to say, do we really think that Congress was doing this for uniformity reasons, or do we think that Congress’s judgment was infected by dislike, by fear, by animus, and so forth?”

— Justice Elana Kagan

What Justice Kagan means is...

Based on the above quotes, who do you think voted for or against the repeal of DOMA?

| | Voted FOR Repeal | Voted AGAINST Repeal |
|-----------------------------|--------------------------|-----------------------------|
| Justice Anthony Kennedy | <input type="checkbox"/> | <input type="checkbox"/> |
| Justice Ruth Bader Ginsburg | <input type="checkbox"/> | <input type="checkbox"/> |
| Justice Samuel Alito | <input type="checkbox"/> | <input type="checkbox"/> |
| Justice Antonin Scalia | <input type="checkbox"/> | <input type="checkbox"/> |
| Justice Sonya Sotomayor | <input type="checkbox"/> | <input type="checkbox"/> |
| Justice Stephen Breyer | <input type="checkbox"/> | <input type="checkbox"/> |
| Justice Elana Kagan | <input type="checkbox"/> | <input type="checkbox"/> |