

Current Events and Federalism:

Same-sex marriage is moving up the court system very fast and will be in the news all year. Here are the facts:

- Colorado does not allow gay marriage
- This spring, SCOTUS (the Supreme Court of the United States) said that discrimination in regards to marriage rights violated the US Constitution.
- Marriage regulations and marriage law is a Reserved Power; it cannot legally be regulated by the federal government under the Tenth Amendment.
- Supremacy Clause: When state and federal law do not agree, the federal government wins.
- Not so fast! Under the 'laboratories of democracy' principle, states have the obligation to tinker around with laws and policies so that other states (or the federal government) may view them from afar to see if they work, and eventually adopt/reject them. (example: medical marijuana)

Putting aside your moral obligations, should the federal government be able to *force* Colorado into allowing gay marriage? Write the first things that come into your mind in the space below, then read the article.

Same-sex marriage advocates, opponents agree: Time for Supreme Court to settle it

By The Associated Press September 9, 2014 - 07:27 pm

WASHINGTON (AP) - Both sides in the gay marriage debate agree on one thing: It's time for the Supreme Court to settle the matter. Even a justice recently said she thinks so, too.

The emerging consensus makes it likely that the justices soon will agree to take up the question of whether the Constitution forbids states from defining marriage as the union of a man and a woman. A final ruling isn't likely before June 2015, but a decision to get involved could come as soon as the end of this month.

"I don't see a lot of reasons for them to wait," says Dale Carpenter, a gay rights expert at the University of Minnesota law school. "You have almost no one at this point opposed to **certiorari**," the legal term for high court review.

Officials in five states in which marriage bans were struck down by federal courts have rushed their appeals to the Supreme Court, in time for consideration by the justices when they meet in private on Sept. 29. Moving at breakneck speed, at least for the legal system, Indiana and Wisconsin filed appeals on Tuesday, just five days after the federal appeals court in Chicago struck down their state bans. The Chicago decision itself came just nine days after judges heard arguments, extremely fast for a process that usually is measured in months. Officials in Oklahoma, Utah and Virginia also have appealed to the Supreme Court. Adding to the momentum, the winners in all those cases - who typically want to preserve their lower court victories and would normally oppose Supreme Court review - want the justices to weigh in. As expected, so do the losers.

In all, 36 states, encompassing both those that allow same-sex marriage and those that don't, want the justices to join the fray. Thirty businesses, including Alcoa, Amazon, eBay, General Electric, Intel, NIKE, Pfizer and Target, say the Supreme Court should extend same-sex marriage nationwide because the "current patchwork of state laws causes employees justifiable uncertainty about how their employers and governments will treat their familial relationships."

The range of cases seems to meet the standard set by Justice Ruth Bader Ginsburg when she predicted in an interview with The Associated Press in July that the court would not look for ways to avoid ruling on same-sex marriage, as it did for many years on interracial marriage bans.

"I think the court will not do what they did in the old days when they continually ducked the issue of miscegenation," Ginsburg said. "If a case is properly before the court, they will take it."

The speed at which gay marriage has moved through the courts stems from the Supreme Court's decision less than 15 months ago in U.S. v. Windsor to strike down a provision of the federal Defense of Marriage Act that denied a range of tax, health and veterans benefits to legally married gay couples.

Since that decision, nearly two dozen judges have relied on Justice Anthony Kennedy's opinion for the court to extend the Windsor decision to strike down state same-sex marriage bans in every region of the country. Only one federal trial judge, Martin Feldman in Louisiana, has upheld a state anti-gay marriage law. Elsewhere, two appellate judges have dissented from rulings in favor of same-sex marriage.

"We all know this is going to be decided one step up," attorney Monte Stewart said Monday in his court presentation in support of gay marriage bans in Idaho and Nevada.

"And we all know by whom," said appellate Judge Stephen Reinhardt. Reinhardt was referring to Kennedy, the deciding vote in the Windsor case and the author of all three major gay rights decisions at the Supreme Court stretching back to 1996.

"Justice Kennedy has built himself quite a legacy on gay rights issues," said the University of Minnesota's Carpenter, doubting that Kennedy would repudiate that legacy by casting a likely decisive vote against the right to marry.

The Windsor decision expressly left open the question of whether states could limit marriage to a man and a woman, yet "courts are all looking to the Supreme Court's Windsor precedent as the rule of decision for challenges to state marriage laws," Colorado and 16 other states that do not allow same-sex marriage told the court in support of the state appeals.

Gay and lesbian couples can now get married in 19 states and the District of Columbia. Judges in an additional 14 states have struck down prohibitions but put the rulings on hold pending appeals. The federal appeals court in Cincinnati could issue a decision at any time affecting Kentucky, Michigan, Ohio and Tennessee. Appellate judges in San Francisco heard arguments Monday over bans in Idaho and Nevada.

The situation is strikingly different from the last time a state's same-sex marriage ban came to the Supreme Court - and that was only two years ago. Same-sex marriage then was legal in just six states.

"Talk about a journey. It's a movement that took a long time to get going, but it has really snowballed in the last two years," said James Esseks of the American Civil Liberties Union, which represents gay couples seeking to marry in Indiana, Virginia and Wisconsin.

Then, supporters and opponents of gay marriage squared off over whether the justices should even hear the case. Opponents urged Supreme Court review, while supporters pleaded with the justices to stay out of it. After all, they had won what they wanted in the lower courts, the invalidation of California's Proposition 8.

The court eventually agreed to hear the California case as well as the federal Defense of Marriage Act case. The justices issued a technical ruling in the California case that eliminated Prop 8 but left for another day whether same-sex couples elsewhere have a constitutional right to marry.

The prevailing view is that day will soon arrive.

Your take-away: Summarize the point of the article in a one-sentence statement below. Be ready to share that statement to the class. Finish early? Share this statement with a neighbor.