



*U.S. v. Windsor, Hollingsworth v. Perry,*  
**Proposition 8 and the Defense of Marriage  
Act: Same-Sex Marriage Legislation and  
Litigation Resources**

(name redacted)

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May 13, 2013

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R43019

## Summary

On September 10, 1996, the Senate passed H.R. 3396, the Defense of Marriage Act (DOMA), which had been cleared on July 12 by the House. On September 21, 1996, President Clinton signed DOMA and it became P.L. 104-199.

On November 4, 2008, California citizens passed Proposition 8, which added new Section 7.5 to Article I of the California Constitution that reads “Only marriage between a man and a woman is valid or recognized in California.”

Petitions of certiorari have been granted by the United States Supreme Court in two cases resulting from these events.

This report contains resources for retrieving legislative and background information for the Defense of Marriage Act, as well as the Proposition 8 ballot initiative in California. It also contains selected legal materials relevant to the cases. In addition, it includes information on CRS products and experts to assist in understanding the related legislative, legal, and policy issues. This report will be updated as needed.

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**O**n September 21, 1996, Congress passed P.L. 104-199, the Defense of Marriage Act (DOMA).

Section 2 of the law states that no state, territory, or possession of the United States “shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.”

Section 3 of the law defines “marriage” for federal purposes as “only a legal union between one man and one woman as husband and wife,” and specifies that spouse “refers only to a person of the opposite sex who is a husband or a wife.”<sup>1</sup>

On November 4, 2008, California citizens passed Proposition 8,<sup>2</sup> adding new Section 7.5 to Article I of the California Constitution that reads “Only marriage between a man and a woman is valid or recognized in California.”<sup>3</sup>

Numerous legal challenges have been made to these laws, including petitions of certiorari that have been granted by the United States Supreme Court in two cases. This collection of resources is intended to assist in responding to a broad range of research questions and requests for assistance related to the same-sex marriage law, and its consequent litigation before the Supreme Court.

## Legislative History of DOMA

H.R. 3396 was introduced in the House of Representatives on May 7, 1996. The bill was approved by the Judiciary Committee on June 12, 1996, and the House as a whole on July 12, 1996. The legislation passed the Senate on September 10, 1996. It was signed by the President on September 21, 1996, and designated P.L. 104-199.

Below are links to selected legislative history documents from the 104<sup>th</sup> Congress on the Defense of Marriage Act.

### Statute

- *Defense of Marriage Act*, P.L. 104-199, 110 Stat. 2419 (1996).  
<http://www.gpo.gov/fdsys/pkg/PLAW-104publ199/pdf/PLAW-104publ199.pdf>

### Bills

- H.R. 3396, 104<sup>th</sup> Congress (as introduced May 7, 1996).  
<http://www.gpo.gov/fdsys/pkg/BILLS-104hr3396ih/pdf/BILLS-104hr3396ih.pdf>

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<sup>1</sup> The texts of Sections 2 and 3 are available at <http://www.gpo.gov/fdsys/pkg/PLAW-104publ199/pdf/PLAW-104publ199.pdf>.

<sup>2</sup> The text of Proposition 8 is available at <http://vig.cdn.sos.ca.gov/2008/general/text-proposed-laws/text-of-proposed-laws.pdf#prop8>.

<sup>3</sup> The text of Article I of the State Constitution of California is available at [http://www.leginfo.ca.gov/.const/.article\\_1](http://www.leginfo.ca.gov/.const/.article_1).

- H.R. 3396, 104<sup>th</sup> Congress (as reported by the House Committee on the Judiciary, July 9, 1996).  
<http://www.gpo.gov/fdsys/pkg/BILLS-104hr3396rh/pdf/BILLS-104hr3396rh.pdf>
- H.R. 3396, 104<sup>th</sup> Congress (as passed by the House, July 12, 1996).  
<http://www.gpo.gov/fdsys/pkg/BILLS-104hr3396eh/pdf/BILLS-104hr3396eh.pdf>
- H.R. 3396, 104<sup>th</sup> Congress (as placed on the Senate Calendar, July 17, 1996).  
<http://www.gpo.gov/fdsys/pkg/BILLS-104hr3396pcs/pdf/BILLS-104hr3396pcs.pdf>
- H.R. 3396, 104<sup>th</sup> Congress (as passed by the House and Senate).  
<http://www.gpo.gov/fdsys/pkg/BILLS-104hr3396enr/pdf/BILLS-104hr3396enr.pdf>
- H.Res. 474, 104<sup>th</sup> Congress (as passed by the House, July 11, 1996).  
<http://www.gpo.gov/fdsys/pkg/BILLS-104hres474eh/pdf/BILLS-104hres474eh.pdf>
- S. 1740, 104<sup>th</sup> Congress (as introduced May 8, 1996).  
<http://www.gpo.gov/fdsys/pkg/BILLS-104s1740is/pdf/BILLS-104s1740is.pdf>

## Reports

- *Defense of Marriage Act*, H.Rept. 104-664 (1996).  
<http://www.gpo.gov/fdsys/pkg/CRPT-104hrpt664/pdf/CRPT-104hrpt664.pdf>
- *Providing for the Consideration of H.R. 3396, Defense of Marriage Act*, H.Rept. 104-666 (1996).  
<http://www.gpo.gov/fdsys/pkg/CRPT-104hrpt666/pdf/CRPT-104hrpt666.pdf>

## Hearings and Other Committee Activity<sup>4</sup>

- *Defense of Marriage Act: Hearing on H.R. 3396 Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 104<sup>th</sup> Congress (1996), available at  
<http://www.gpo.gov/fdsys/pkg/CHRG-104hhrg25728/pdf/CHRG-104hhrg25728.pdf>
- *The Defense of Marriage Act: Hearing on S. 1740 Before the S. Comm. on the Judiciary*, ProQuest Congressional, 104<sup>th</sup> Congress, 1996, available at  
<http://congressional.proquest.com/congressional/docview/t29.d30.hrg-1996-sjs-0002?>
- *Lobbying, Homosexual Marriages, Constitution Subcommittee of the House Judiciary Committee Consideration and Mark-up*, CQ Markup and Vote Coverage, 104<sup>th</sup> Congress, 1996, available at <http://www.cq.com/doc/committees-COMM107050?wr=bzR2QWhQbmtjMGxPcU9zVWFaT25odw>
- *Pending Legislation, Full House Judiciary Committee Consideration and Mark-up*, CQ Markup and Vote Coverage, 104<sup>th</sup> Congress, 1996, available at

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<sup>4</sup> Please note, some of this material is from unofficial, secondary sources.

<http://www.cq.com/doc/committees-COMM108454?wr=bzR2QWhQbmtjMGxPcU9zVWFaT25odw>

- *Same-Sex Marriage, Full House Judiciary Committee Consideration and Markup*, CQ Markup and Vote Coverage, 104<sup>th</sup> Congress, 1996, available at <http://www.cq.com/doc/committees-COMM108594?wr=Q1U4djBRbm5MbW1FQkr4b1dQSXZLZw>
- Same-Sex Marriage Bill, House Rules Committee Mark-up on *H.Res. 474*, Rules for Floor Debate, CQ Markup and Vote Coverage, 104<sup>th</sup> Congress, 1996 available at <http://www.cq.com/doc/committees-COMM111319?wr=bzR2QWhQbmtjMGxPcU9zVWFaT25odw>

## Debate

- 142 *Cong. Rec.* S4869 (daily ed. May 8, 1996) (Statements on Introduced Bills and Joint Resolutions).  
<http://www.gpo.gov/fdsys/pkg/CREC-1996-05-08/pdf/CREC-1996-05-08-pt1-PgS4851-2.pdf>
- 142 *Cong. Rec.* S4947 (daily ed. May 9, 1996) (Additional Statements- Defense of Marriage Act).  
<http://www.gpo.gov/fdsys/pkg/CREC-1996-05-09/pdf/CREC-1996-05-09-pt1-PgS4947-3.pdf>
- 142 *Cong. Rec.* H7270 (daily ed. July 11, 1996) (Providing for the Consideration of H.R. 3396, Defense of Marriage Act).  
<http://www.gpo.gov/fdsys/pkg/CREC-1996-07-11/pdf/CREC-1996-07-11-pt1-PgH7270-4.pdf>
- 142 *Cong. Rec.* H7441 (daily ed. July 11, 1996) (Defense of Marriage Act).  
<http://www.gpo.gov/fdsys/pkg/CREC-1996-07-11/pdf/CREC-1996-07-11-pt1-PgH7441-2.pdf>
- 142 *Cong. Rec.* H7480 (daily ed. July 12, 1996) (Defense of Marriage Act).  
<http://www.gpo.gov/fdsys/pkg/CREC-1996-07-12/pdf/CREC-1996-07-12-pt1-PgH7480-5.pdf>
- 142 *Cong. Rec.* S9926 (daily ed. September 5, 1996) (The Defense of Marriage Act; Cloture Motion).  
<http://www.gpo.gov/fdsys/pkg/CREC-1996-09-05/pdf/CREC-1996-09-05-pt1-PgS9926-2.pdf>
- 142 *Cong. Rec.* S10100 (daily ed. September 10, 1996) (Defense of Marriage Act).  
<http://www.gpo.gov/fdsys/pkg/CREC-1996-09-10/pdf/CREC-1996-09-10-pt1-PgS10100-2.pdf>
- 142 *Cong. Rec.* S10129 (daily ed. September 10, 1996) (Defense of Marriage Act).  
<http://www.gpo.gov/fdsys/pkg/CREC-1996-09-10/pdf/CREC-1996-09-10-pt1-PgS10129.pdf>

## Roll Call Votes

- House Roll Call Vote 316 on H.R. 3396 (July 12, 1996).  
<http://clerk.house.gov/evs/1996/roll316.xml>
- Senate Roll Call Vote 280 on H.R. 3396 (September 10, 1996).  
[http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=104&session=2&vote=00280](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=104&session=2&vote=00280)

## Presidential Statements

- *Presidential Statement on Same-Gender Marriage*, 2 Pub. Papers 1635 (September 20, 1996).  
<http://www.gpo.gov/fdsys/pkg/PPP-1996-book2/pdf/PPP-1996-book2-doc-pg1635.pdf>

## History of California Same-Sex Ballot Initiatives

In March 2000, California citizens passed Proposition 22, adding Section 308.5 to the Family Code, which reads “Only marriage between a man and a woman is valid or recognized in California.”<sup>5</sup>

On May 15, 2008, the California Supreme Court found the statute to be unconstitutional and issued their opinion *In re Marriage Cases*, 183 P. 3d 384 (Cal. 2008).<sup>6</sup>

On November 4, 2008, California citizens passed Proposition 8, which added new Section 7.5 to Article I of the California Constitution, and reads “Only marriage between a man and a woman is valid or recognized in California.”<sup>7</sup>

Below are links to selected resources from the California secretary of state that offer history and further information on California Proposition 22 and Proposition 8.

### Primary Election—Proposition 22 (March 7, 2000)

- Official Title and Summary prepared by the Attorney General  
<http://primary2000.sos.ca.gov/VoterGuide/Propositions/22.htm>
- Text of Proposition 22  
<http://primary2000.sos.ca.gov/VoterGuide/Propositions/22text.htm>
- Analysis by the Legislative Analyst  
<http://primary2000.sos.ca.gov/VoterGuide/Propositions/22analysis.htm>

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<sup>5</sup> The current text of Cal. Fam. Code §308.5 is available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=00001-01000&file=300-310>.

<sup>6</sup> The text of the opinion of *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008) is available at <http://www.courts.ca.gov/documents/S147999.pdf>.

<sup>7</sup> The text of Cal. Const. art. 1, §7.5 is available at [http://www.leginfo.ca.gov/.const/.article\\_1](http://www.leginfo.ca.gov/.const/.article_1).



## General Election—Proposition 8 (November 4, 2008)

- Official Title and Summary prepared by the Attorney General  
<http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop8-title-sum.htm>
- Text of Proposition 8  
<http://vig.cdn.sos.ca.gov/2008/general/text-proposed-laws/text-of-proposed-laws.pdf#prop8>
- Analysis by the Legislative Analyst  
<http://voterguide.sos.ca.gov/past/2008/general/analysis/prop8-analysis.htm>

## Litigation

### *U.S. v. Windsor*

On November 9, 2010, Edith Windsor filed a complaint in the Southern District of New York over the estate tax levied on her after the death of her partner, whom she had married in Canada. The complaint stated that the estate tax should be refunded as it had been “levied on a married same-sex couple, which would not have applied to a married straight couple, and which consequently violates the United States Constitution.”<sup>8</sup>

On February 23, 2011, Attorney General Eric Holder sent a letter to congressional leadership informing them that “recent lawsuits that challenge the constitutionality of DOMA Section 3 have caused the President and the Department to conduct a new examination of the defense of this provision” and that the Department of Justice will cease defense of Section 3.<sup>9</sup> As a result, the Bipartisan Legal Advisory Group of the House of Representatives filed a motion to intervene in the case, “for the limited purpose of defending the constitutionality of Section III of the Defense of Marriage Act.”<sup>10</sup>

On June 6, 2012, the district judge ruled that “section 3 of the Defense of Marriage Act, 1 U.S.C. 7, is unconstitutional as applied to Plaintiff”<sup>11</sup> and the Second Circuit Court of Appeals subsequently upheld the lower court’s ruling, stating “Section 3 of DOMA violates equal protection and is therefore unconstitutional.”<sup>12</sup> On December 7, 2012, the Supreme Court granted certiorari in the case, *U.S. v. Windsor*, No. 12-307.<sup>13</sup>

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<sup>8</sup> A copy of the Complaint is available at <http://docs.justia.com/cases/federal/district-courts/new-york/nysdce/1:2010cv08435/370870/9/0.pdf?1303768111>.

<sup>9</sup> The letter from Attorney General Eric H. Holder, Jr., Att’y Gen., to John A. Boehner, Speaker, House of Representatives is available at <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>.

<sup>10</sup> A copy of the Unopposed Motion of the Bipartisan Legal Advisory Group of the U.S. House of Representatives to Intervene for a Limited Purpose, in *Windsor v. United States*, No. 10-8435 (S.D. N.Y. filed Nov. 9, 2010) is available at <http://docs.justia.com/cases/federal/district-courts/new-york/nysdce/1:2010cv08435/370870/12/0.pdf?1303768270>.

<sup>11</sup> A copy of the Order from the District Court is available at <http://www.clearinghouse.net/chDocs/public/PB-NY-0017-0002.pdf>.

<sup>12</sup> A copy of the Order from the 2<sup>nd</sup> Circuit is available at [http://www.ca2.uscourts.gov/decisions/isysquery/436f323b-5e40-411a-9026-98fa59ffb645/1/doc/12-2335\\_complete\\_opn.pdf](http://www.ca2.uscourts.gov/decisions/isysquery/436f323b-5e40-411a-9026-98fa59ffb645/1/doc/12-2335_complete_opn.pdf).

<sup>13</sup> A copy of the Order Granting Certiorari is available at <http://www.supremecourt.gov/docket/PDFs/120712zr.pdf>.

According to the petition for a writ of certiorari,

Section 3 of the Defense of Marriage Act (DOMA) defines the term ‘marriage’ for all purposes under federal law, including the provision of federal benefits, as ‘only a legal union between one man and one woman as husband and wife.’ 1 U.S.C. 7. It similarly defines the term ‘spouse’ as ‘a person of the opposite sex who is a husband or a wife.’ *Ibid.* The question presented is: whether Section 3 of DOMA violates the Fifth Amendment’s guarantee of equal protection of the laws as applied to persons of the same sex who are legally married under the laws of their State.<sup>14</sup>

Additionally, the order granting certiorari states that

in addition to the question presented by the petition, the parties are directed to brief and argue the following questions: Whether the Executive Branch’s agreement with the court below that DOMA is unconstitutional deprives this Court of jurisdiction to decide this case; and whether the Bipartisan Legal Advisory Group of the United States House of Representatives has Article III standing in this case.<sup>15</sup>

For a more detailed legal analysis of this case, see CRS Report RL31994, *Same-Sex Marriages: Legal Issues*, by (name redacted), and CRS Report R42976, *Same-Sex Marriage and the Supreme Court: United States v. Windsor and Hollingsworth v. Perry*, by (name redacted) and (name redacted).

Below are links to the documents related to this case before the Supreme Court and prior court history.

## Supreme Court

- Docket No. 12-307  
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-307.htm>
- Petition for a Writ of Certiorari  
[http://www.supremecourt.gov/docket/PDFs/12-307\\_Cert\\_Petition.pdf](http://www.supremecourt.gov/docket/PDFs/12-307_Cert_Petition.pdf)
- Response in Support of Writ of Certiorari Before Judgment  
[http://www.supremecourt.gov/docket/PDFs/Brief\\_in\\_Opposition\\_filed\\_by\\_Edith\\_Windsor.pdf](http://www.supremecourt.gov/docket/PDFs/Brief_in_Opposition_filed_by_Edith_Windsor.pdf)
- Brief in Opposition  
[http://www.supremecourt.gov/docket/PDFs/12-307\\_BIO\\_Blag.pdf](http://www.supremecourt.gov/docket/PDFs/12-307_BIO_Blag.pdf)
- Supplemental Brief for the United States  
[http://www.supremecourt.gov/docket/PDFs/Supplemental\\_Brief\\_For\\_The\\_United\\_States.pdf](http://www.supremecourt.gov/docket/PDFs/Supplemental_Brief_For_The_United_States.pdf)
- Supplemental Brief for Respondent *Windsor*  
[http://www.supremecourt.gov/docket/PDFs/Supplemental\\_Brief\\_for\\_Edith\\_Windsor.pdf](http://www.supremecourt.gov/docket/PDFs/Supplemental_Brief_for_Edith_Windsor.pdf)

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<sup>14</sup> The question presented can be found in the Petition for a Writ of Certiorari, available at [http://www.supremecourt.gov/docket/PDFs/12-307\\_Cert\\_Petition.pdf](http://www.supremecourt.gov/docket/PDFs/12-307_Cert_Petition.pdf).

<sup>15</sup> A copy of the Order Granting Certiorari is available at <http://www.supremecourt.gov/docket/PDFs/120712zr.pdf>.

- Supplemental Brief for Respondent the *Bipartisan Legal Advisory Group of the U.S. House of Representatives*  
[http://www.supremecourt.gov/docket/PDFs/12-307\\_Supp\\_BLAG.pdf](http://www.supremecourt.gov/docket/PDFs/12-307_Supp_BLAG.pdf)
- Reply Brief for the United States  
[http://www.supremecourt.gov/docket/PDFs/Reply\\_Brief\\_of\\_the\\_United\\_States\\_12-307.pdf](http://www.supremecourt.gov/docket/PDFs/Reply_Brief_of_the_United_States_12-307.pdf)
- Brief on the Merits for Respondent the *Bipartisan Legal Advisory Group of the U.S. House of Representatives*  
[http://www.supremecourt.gov/docket/PDFs/12-307\\_Brief\\_on\\_the\\_Merits\\_for\\_Respondent.pdf](http://www.supremecourt.gov/docket/PDFs/12-307_Brief_on_the_Merits_for_Respondent.pdf)
- Brief for Court-Appointed *Amica Curiae* Addressing Jurisdiction  
[http://www.supremecourt.gov/docket/PDFs/12-307\\_tsacCourtAppointed.pdf](http://www.supremecourt.gov/docket/PDFs/12-307_tsacCourtAppointed.pdf)
- Brief on the Jurisdictional Questions for Respondent *Edith Schlain Windsor*  
[http://www.supremecourt.gov/docket/PDFs/Brief\\_of\\_respondent\\_Edith\\_Windsor\\_%28Jurisdiction%29.pdf](http://www.supremecourt.gov/docket/PDFs/Brief_of_respondent_Edith_Windsor_%28Jurisdiction%29.pdf)
- Brief for the United States on the Jurisdictional Questions  
[http://www.supremecourt.gov/docket/PDFs/Brief\\_of\\_Petitioner\\_United\\_States\\_%28Jurisdiction%29.pdf](http://www.supremecourt.gov/docket/PDFs/Brief_of_Petitioner_United_States_%28Jurisdiction%29.pdf)
- Brief for the United States on the Merits Question  
[http://www.supremecourt.gov/docket/PDFs/Brief\\_of\\_Petitioner\\_United\\_States\\_%28Merits%29.pdf](http://www.supremecourt.gov/docket/PDFs/Brief_of_Petitioner_United_States_%28Merits%29.pdf)
- Brief on Jurisdiction for Respondent the *Bipartisan Legal Advisory Group of the U.S. House of Representatives*  
[http://www.supremecourt.gov/docket/PDFs/Brief\\_of\\_BLAG.pdf](http://www.supremecourt.gov/docket/PDFs/Brief_of_BLAG.pdf)
- Brief on the Merits for Respondent *Edith Schlain Windsor*  
[http://www.supremecourt.gov/docket/PDFs/Brief\\_of\\_Respondent\\_Edith\\_Merits.pdf](http://www.supremecourt.gov/docket/PDFs/Brief_of_Respondent_Edith_Merits.pdf)
- Reply Brief on Jurisdiction for Respondent the *Bipartisan Legal Advisory Group of the U.S. House of Representatives*  
[http://www.supremecourt.gov/docket/PDFs/No\\_12-307\\_rb\\_BLAG\\_jur.pdf](http://www.supremecourt.gov/docket/PDFs/No_12-307_rb_BLAG_jur.pdf)
- Reply Brief on the Merits for Respondent the *Bipartisan Legal Advisory Group of the U.S. House of Representatives*  
[http://www.supremecourt.gov/docket/PDFs/No\\_12-307\\_rb\\_BLAG\\_Merits.pdf](http://www.supremecourt.gov/docket/PDFs/No_12-307_rb_BLAG_Merits.pdf)
- Reply Brief for Court-Appointed *Amica Curiae* on Jurisdiction  
[http://www.supremecourt.gov/docket/PDFs/No-12-307\\_rb\\_ac.pdf](http://www.supremecourt.gov/docket/PDFs/No-12-307_rb_ac.pdf)
- Reply Brief on the Jurisdictional Questions for Respondent *Edith Schlain Windsor*  
[http://www.supremecourt.gov/docket/PDFs/12-307\\_bsrp\\_Windsor\\_%28jurisdiction%29.pdf](http://www.supremecourt.gov/docket/PDFs/12-307_bsrp_Windsor_%28jurisdiction%29.pdf)
- Reply Brief for the United States on the Jurisdictional Questions  
[http://www.supremecourt.gov/docket/PDFs/12-307\\_rb\\_UnitedStates.pdf](http://www.supremecourt.gov/docket/PDFs/12-307_rb_UnitedStates.pdf)

- Amicus Briefs (as compiled by the American Bar Association)  
[http://www.americanbar.org/publications/preview\\_home/12-307.html](http://www.americanbar.org/publications/preview_home/12-307.html)
- Calendar of Oral Arguments  
[http://www.supremecourt.gov/oral\\_arguments/argument\\_calendars/Monthly%20ArgumentCalMar2013.pdf](http://www.supremecourt.gov/oral_arguments/argument_calendars/Monthly%20ArgumentCalMar2013.pdf)
- Oral Arguments  
[http://www.supremecourt.gov/oral\\_arguments/argument\\_audio\\_detail.aspx?argument=12-307](http://www.supremecourt.gov/oral_arguments/argument_audio_detail.aspx?argument=12-307)

### **Appeals Court (U.S. Court of Appeals for the Second Circuit)**

- Decision, *Windsor v. United States*, F. 3d 169 (2d Cir. 2012).  
[http://www.ca2.uscourts.gov/decisions/isysquery/436f323b-5e40-411a-9026-98fa59ffb645/1/doc/12-2335\\_complete\\_opn.pdf](http://www.ca2.uscourts.gov/decisions/isysquery/436f323b-5e40-411a-9026-98fa59ffb645/1/doc/12-2335_complete_opn.pdf)

### **District Court (Southern District of New York)**

- Amended Complaint, *Windsor v. United States*, 833 F. Supp. 2d 394 (S.D. N.Y. 2010) (No. 10-8435).  
<http://docs.justia.com/cases/federal/district-courts/new-york/nysdce/1:2010cv08435/370870/9/0.pdf?1303768111>
- *Windsor v. United States*, 833 F. Supp. 2d 394 (S.D. N.Y.).  
<http://www.clearinghouse.net/chDocs/public/PB-NY-0017-0002.pdf>

### ***Hollingsworth, et al. v. Kristin M. Perry, et al.***

In 2008, California citizens voted on a proposed constitutional amendment titled “Eliminates Rights of Same-Sex Couples to Marry.” Better known as “Proposition 8” or “Prop 8,” the ballot initiative sought to add new Section 7.5 to Article I of the California Constitution, which reads “Only marriage between a man and a woman is valid or recognized in California.”<sup>16</sup> Voters passed the proposition on November 4.

On November 19, 2008, the California Supreme Court agreed to hear three cases: *Strauss v. Horton*, *Tyler v. California*, and *City and County of San Francisco v. Horton*.<sup>17</sup> On May 26, 2009, the court upheld the ban on same-sex marriage in *Strauss v. Horton*, concluding Prop 8 “constitutes a permissible constitutional amendment,” “does not violate the separation of powers doctrine,” and “does not apply retroactively.”<sup>18</sup>

On May 22, 2009, several plaintiffs filed a complaint in the Northern District of California to “enjoin, preliminarily and permanently, all enforcement of Proposition 8 and any other California

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<sup>16</sup> A copy of the text of Proposition 8 is available at <http://vig.cdn.sos.ca.gov/2008/general/text-proposed-laws/text-of-proposed-laws.pdf#prop8>.

<sup>17</sup> A copy of the Order granting Judicial Notice is available at [http://www.courts.ca.gov/documents/S168047\\_S168066\\_S168078-11-19-08\\_ORDER.pdf](http://www.courts.ca.gov/documents/S168047_S168066_S168078-11-19-08_ORDER.pdf).

<sup>18</sup> A copy of the decision for *Strauss v. Horton*, 207 P.3d 48, is available at <http://www.courts.ca.gov/documents/S168047.pdf>.

statutes that seek to exclude gays and lesbians from access to civil marriage.”<sup>19</sup> In August 2010, the District Judge ruled that Proposition 8 “fails to advance any rational basis in singling out gay men and lesbians for denial of a marriage license,” and “because Proposition 8 prevents California from fulfilling its constitutional obligation to provide marriages on an equal basis, the court concludes that Proposition 8 is unconstitutional.”<sup>20</sup> In February 2012, the Ninth Circuit Court of Appeals denied the petition for rehearing en banc, stating that the People of California “may not employ the initiative power to single out a disfavored group for unequal treatment and strip them, without a legitimate justification, of a right as important as the right to marry,” and “accordingly, we affirm the judgment of the district court.”<sup>21</sup> On July 30, 2012, the Supreme Court granted certiorari in the case, *Hollingsworth v. Perry*, No. 12-144.<sup>22</sup>

According to the petition for a writ of certiorari, the question presented by the case is whether the Equal Protection Clause of the Fourteenth Amendment prohibits the state of California from defining marriage as the union of a man and a woman.<sup>23</sup>

In addition, the order granting certiorari states that “in addition to the question presented by the petition, the parties are directed to brief and argue the following question: Whether petitioners have standing under Article III, § 2 of the Constitution in this case.”<sup>24</sup>

For a more detailed legal analysis of this case, see CRS Report RL31994, *Same-Sex Marriages: Legal Issues*, by (name redacted), and CRS Report R42976, *Same-Sex Marriage and the Supreme Court: United States v. Windsor and Hollingsworth v. Perry*, by (name redacted) and (name redacted).

Below are links to the documents related to this case before the Supreme Court and prior court history.

## **Supreme Court**

- Docket No. 12-144  
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-144.htm>
- Petition for a Writ of Certiorari  
[http://www.supremecourt.gov/docket/PDFs/12-144\\_Petition\\_for\\_Certiorari.pdf](http://www.supremecourt.gov/docket/PDFs/12-144_Petition_for_Certiorari.pdf)
- Brief in Opposition  
[http://www.supremecourt.gov/docket/PDFs/  
Brief\\_in\\_Opposition\\_of\\_Respondents\\_Perry.pdf](http://www.supremecourt.gov/docket/PDFs/Brief_in_Opposition_of_Respondents_Perry.pdf)

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<sup>19</sup> A copy of the complaint in *Perry v. Schwarzenegger*, No. 09-2292 (N.D. Cal. filed May 22, 2009), is available at <https://ecf.cand.uscourts.gov/cand/09cv2292/>.

<sup>20</sup> A copy of the Order from the District Court is available at [https://ecf.cand.uscourts.gov/cand/09cv2292/files/  
09cv2292-ORDER.pdf](https://ecf.cand.uscourts.gov/cand/09cv2292/files/09cv2292-ORDER.pdf).

<sup>21</sup> A copy of the Order from the 9<sup>th</sup> Circuit is available [http://cdn.ca9.uscourts.gov/datastore/opinions/2012/02/10/10-  
16696.pdf](http://cdn.ca9.uscourts.gov/datastore/opinions/2012/02/10/10-16696.pdf).

<sup>22</sup> A copy of the Order Granting Certiorari is available at <http://www.supremecourt.gov/docket/PDFs/120712zr.pdf>.

<sup>23</sup> The question presented can be found in the Petition for a Writ of Certiorari, available at [http://www.supremecourt.gov/docket/PDFs/12-144\\_Petition\\_for\\_Certiorari.pdf](http://www.supremecourt.gov/docket/PDFs/12-144_Petition_for_Certiorari.pdf).

<sup>24</sup> A copy of the Order Granting Certiorari is available at <http://www.supremecourt.gov/docket/PDFs/120712zr.pdf>.

- *City and County of San Francisco's* Brief in Opposition  
[http://www.supremecourt.gov/docket/PDFs/Brief\\_in\\_Opposition\\_of\\_Respondent\\_San%20Francisco.pdf](http://www.supremecourt.gov/docket/PDFs/Brief_in_Opposition_of_Respondent_San%20Francisco.pdf)
- Reply Brief for Petitioners  
[http://www.supremecourt.gov/docket/PDFs/Reply\\_Brief\\_for\\_Petitioners.pdf](http://www.supremecourt.gov/docket/PDFs/Reply_Brief_for_Petitioners.pdf)
- Brief of Petitioners  
[http://www.supremecourt.gov/docket/PDFs/12-144\\_Brief\\_of\\_Petitioners.pdf](http://www.supremecourt.gov/docket/PDFs/12-144_Brief_of_Petitioners.pdf)
- Brief for Respondents  
[http://www.supremecourt.gov/docket/PDFs/Brief\\_of\\_Respondents\\_Kristin\\_M.\\_Perry.pdf](http://www.supremecourt.gov/docket/PDFs/Brief_of_Respondents_Kristin_M._Perry.pdf)
- Brief of Respondent *City and County of San Francisco*  
[http://www.supremecourt.gov/docket/PDFs/Brief\\_of\\_Respondent\\_City\\_and\\_County\\_of\\_San\\_Francisco.pdf](http://www.supremecourt.gov/docket/PDFs/Brief_of_Respondent_City_and_County_of_San_Francisco.pdf)
- Reply Brief of Petitioners  
[http://www.supremecourt.gov/docket/PDFs/Reply\\_Brief\\_12-144.pdf](http://www.supremecourt.gov/docket/PDFs/Reply_Brief_12-144.pdf)
- Amicus Briefs (as compiled by the American Bar Association)  
[http://www.americanbar.org/publications/preview\\_home/12-144.html](http://www.americanbar.org/publications/preview_home/12-144.html)
- Calendar of Oral Arguments  
[http://www.supremecourt.gov/oral\\_arguments/argument\\_calendars/Monthly%20ArgumentCalMar2013.pdf](http://www.supremecourt.gov/oral_arguments/argument_calendars/Monthly%20ArgumentCalMar2013.pdf)
- Oral Arguments
- [http://www.supremecourt.gov/oral\\_arguments/argument\\_audio\\_detail.aspx?argument=12-144](http://www.supremecourt.gov/oral_arguments/argument_audio_detail.aspx?argument=12-144)

### **Appeals Court (U.S. Court of Appeals for the Ninth Circuit)**

- *Perry v. Brown*, 671 F. 3d 1052 (9<sup>th</sup> Cir. Cal. 2012).  
<http://cdn.ca9.uscourts.gov/datastore/opinions/2012/06/08/10-16696o.pdf>

### **District Court (Northern District of California)**

- *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010).  
<http://ecf.cand.uscourts.gov/cand/09cv2292/files/09cv2292-ORDER.pdf>

## **Other Supreme Court Petitions**

In addition to the cases above, information is provided on five other cases in which a petition for a writ of certiorari has been filed and that contain legal arguments related to the same-sex marriage question.

## ***Bipartisan Legal Advisory Group (BLAG) v. Gill***

In this petition for a writ of certiorari, the questions presented are “whether Section 3 of DOMA violates the equal protection component of the Due Process Clause of the Fifth Amendment,” and “whether the lower court erred by inventing and applying to Section 3 of DOMA a previously unknown standard of equal protection review.”<sup>25</sup>

### **Supreme Court**

- Docket No. 12-13  
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-13.htm>
- Petition for Writ of Certiorari  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/08/12-13-House-Cert-Petition.pdf>
- Response of the *Commonwealth of Massachusetts* in Support of Certiorari  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/08/12-13-12-15-BLAG-v-Gill-HHS-v-Massachusetts-Cert-Response-July-2012.pdf>
- Brief in Response of *Nancy Gill et al.*  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/08/12-13-12-15-08-02-2012-gill-v-opm-response-to-blag-cert-petition.pdf>
- Reply Brief for Petitioner  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/10/12-13-Reply-OK-TO-PRINT-9-11-12.pdf>
- List of Amicus Briefs  
<http://www.scotusblog.com/case-files/cases/bipartisan-legal-advisory-group-of-the-united-states-house-of-representatives-v-gill/>

### **Appeals Court**

- *Massachusetts v. U.S. Dept. of Health and Human Services*, 682 F. 3d 1 (1<sup>st</sup> Cir. 2012).  
<http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=10-2204P.01A>

### **District Court**

Docket No. 09-10309  
[http://www.gpo.gov/fdsys/pkg/USCOURTS-mad-1\\_09-cv-10309](http://www.gpo.gov/fdsys/pkg/USCOURTS-mad-1_09-cv-10309)

*Gill v. Office of Personal Management*, 699 F. Supp. 2d 374 (D. Mass. 2010).  
[http://www.gpo.gov/fdsys/pkg/USCOURTS-mad-1\\_09-cv-11156/pdf/USCOURTS-mad-1\\_09-cv-11156-4.pdf](http://www.gpo.gov/fdsys/pkg/USCOURTS-mad-1_09-cv-11156/pdf/USCOURTS-mad-1_09-cv-11156-4.pdf)

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<sup>25</sup> The questions presented can be found in the Petition for a Writ of Certiorari, available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2012/08/12-13-House-Cert-Petition.pdf>.

## ***Dept. of Health and Human Services, et al. v. Massachusetts, et al.***

In this petition for certiorari, the question presented is “whether Section 3 of DOMA violates the Fifth Amendment’s guarantee of Equal Protection of the laws as applied to persons of the same sex who are legally married under the laws of their State.”<sup>26</sup>

### **Supreme Court**

- Docket No. 12-15  
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-15.htm>
- Petition for Writ of Certiorari  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/08/12-15-Mass-Gill-Petition-final.pdf>
- Response of the *Commonwealth of Massachusetts* in Support of Certiorari  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/08/12-13-12-15-BLAG-v-Gill-HHS-v-Massachusetts-Cert-Response-July-2012.pdf>
- Brief in Response of *Nancy Gill et al.*  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/08/12-13-12-15-08-02-2012-gill-v-opm-response-to-blag-cert-petition.pdf>
- Brief in Opposition  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/09/12-15-Brief-in-Opp-OK-TO-PRINT-8-31-12.pdf>
- Reply Brief for the Federal Petitioners  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/11/12-15-Mass-Gill-cert-reply.pdf>

### **Appeals Court (U.S. Court of Appeals for the First Circuit)**

- *Massachusetts v. U.S. Dept. of Health and Human Services*, 682 F.3d 1 (1<sup>st</sup> Cir. 2012).  
<http://www.ca1.uscourts.gov/pdf.opinions/10-2204P-01A.pdf>

### **District Court (District of Massachusetts)**

- Docket No. 09-11156  
[http://www.gpo.gov/fdsys/pkg/USCOURTS-mad-1\\_09-cv-11156](http://www.gpo.gov/fdsys/pkg/USCOURTS-mad-1_09-cv-11156)
- *Massachusetts v. U.S. Dept. of Health and Human Services*, 698 F. Supp. 2d 234 (D. Mass. 2010).  
[http://www.gpo.gov/fdsys/pkg/USCOURTS-mad-1\\_09-cv-11156/pdf/USCOURTS-mad-1\\_09-cv-11156-4.pdf](http://www.gpo.gov/fdsys/pkg/USCOURTS-mad-1_09-cv-11156/pdf/USCOURTS-mad-1_09-cv-11156-4.pdf)

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<sup>26</sup> The questions presented can be found in the Petition for a Writ of Certiorari, available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2012/08/12-15-Mass-Gill-Petition-final.pdf>.



## ***Massachusetts v. Dept. of Health and Human Services***

This is a conditional cross-petition filed by the Commonwealth of Massachusetts in response to the First Circuit decision in *Massachusetts v. U.S. Dept. of Health and Human Services*. While the petitions in 12-13 (*BLAG v. Gill*) and 12-15 (*HHS v. Massachusetts*) seek review of whether DOMA violates equal protection, in this petition for certiorari, the questions presented are “whether Section 3 of the Defense of Marriage Act (DOMA), P.L. 104-199, 110 Stat. 2419 (1996) (codified at 1 U.S.C. § 7) violates the Tenth Amendment,” and “whether Section 3 of DOMA violates the Spending Clause, U.S. Const. art. I, § 8, cl. 1.”<sup>27</sup> Massachusetts filed the conditional cross petition “out of an abundance of caution, to ensure that there is no impediment to the Court’s consideration of the full scope of DOMA’s constitutional infirmities.”<sup>28</sup>

### **Supreme Court**

- Docket No. 12-97  
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-97.htm>
- Petition for Writ of Certiorari  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/09/12-97-DOMA-Mass.-cross-petition-7-20-121.pdf>
- Brief in Opposition  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/09/12-97-Brief-in-Opp-OK-TO-PRINT-8-23-12.pdf>
- Reply Brief for Conditional Cross-Petitioner  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/09/12-97-Reply-Mass-vs-HHS-OK-To-Print.pdf>

## ***Office of Personnel Management, et al. v. Karen Golinski***

In this petition for certiorari before judgment, the question presented is “whether Section 3 of DOMA violates the Fifth Amendment’s guarantee of equal protection of the laws as applied to persons of the same sex who are legally married under the laws of their State.”<sup>29</sup>

- Docket No. 12-16  
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-16.htm>
- Petition for Writ of Certiorari Before Judgment  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/08/12-16-Golinski-Petition-final.pdf>
- Brief of the Respondent in Support of Petition for Certiorari Before Judgment  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/08/12-16-Brief-of-the-Respondent-in-Support-of-Cert.pdf>

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<sup>27</sup> The questions presented can be found in the Petition for a Writ of Certiorari, available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2012/09/12-97-DOMA-Mass.-cross-petition-7-20-121.pdf>.

<sup>28</sup> *Ibid.*, p. 10.

<sup>29</sup> The questions presented can be found in the Petition for a Writ of Certiorari, available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2012/08/12-16-Golinski-Petition-final.pdf>.

- Brief in Opposition  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/09/12-16-Brief-in-Opp-OK-TO-PRINT-8-31-12.pdf>
- Reply Brief for the Federal Petitioners  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/11/12-16-Golinski-cert-reply.pdf>

### **Appeals Court**

- *Golinski v. U.S. Office of Personal Mgmt.*, Docket Nos. 12-15388, 12-15409.  
[http://www.ca9.uscourts.gov/content/view.php?pk\\_id=0000000591](http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000591)

### **District Court (Northern District of California)**

- *Golinski v. U.S. Office of Personal Mgmt.*, 824 F. Supp. 2d 968 (N.D. Cal. 2012).  
[http://www2.bloomberglaw.com/desktop/public/document/Golinski\\_v\\_US\\_Office\\_of\\_Personnel\\_Mgmt\\_No\\_C\\_1000257\\_JSW\\_2012\\_BL\\_4](http://www2.bloomberglaw.com/desktop/public/document/Golinski_v_US_Office_of_Personnel_Mgmt_No_C_1000257_JSW_2012_BL_4)

### ***Pedersen v. Office of Personnel Management***

In this petition for certiorari before judgment, the question presented is “whether Section 3 of DOMA violates the equal protection guarantee of the Fifth Amendment to the U.S. Constitution as applied to legally married same-sex couples.”<sup>30</sup>

### **Supreme Court**

- Docket No. 12-231  
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-231.htm>
- Petition for a Writ of Certiorari Before Judgment  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/11/12-231-Pedersen-petition-8-21-12.pdf>
- Brief for the Office of Personnel Management, et al.  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/11/12-231-OPM-BIO.pdf>
- Brief in Opposition  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/11/12-231-2012-10-19-Pedersen-I-Filing-Final-bio.pdf>
- Reply in Support of Petition for Writ of Certiorari Before Judgment  
<http://sblog.s3.amazonaws.com/wp-content/uploads/2012/11/12-231-12-302-Pedersen-Reply-ISO-CBJ-10-31-12.pdf>

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<sup>30</sup> The questions presented can be found in the Petition for a Writ of Certiorari, available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2012/11/12-231-Pedersen-petition-8-21-12.pdf>.

## **Appeals Court (U.S. Court of Appeals for the Second Circuit)**

- *Pedersen v. Office of Personnel Mgmt.*, No. 12-3273 (2<sup>nd</sup> Cir. filed August 21, 2012).

## **District Court (District of Connecticut)**

- *Pedersen v. Office of Personnel Mgmt.* (D. Conn. 2012).  
[http://www2.bloomberglaw.com/desktop/public/document/Pedersen\\_v\\_Office\\_of\\_Personnel\\_Mgmt\\_No\\_310cv01750VLB\\_2012\\_BL\\_1941](http://www2.bloomberglaw.com/desktop/public/document/Pedersen_v_Office_of_Personnel_Mgmt_No_310cv01750VLB_2012_BL_1941)

## **Selected Federal Legal Resources**

The following are selected links to statutes, laws, and cases that are relevant to the issues before the Court.

## **Constitution of the United States**

### **The Constitution of the United States of America: Analysis and Interpretation**

<http://crs.gov/analysis/Pages/constitutionannotated.aspx?source=QuickLinks>

Also known as “The Constitution Annotated” or “CONAN,” this resource contains legal analysis and interpretation of the United States Constitution, based primarily on Supreme Court case law. It is especially useful when researching the constitutional implications of a specific issue or topic. Some of the commonly referenced constitutional provisions related to DOMA are below:

#### *Constitution of the United States, Amendment V*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

#### *Constitution of the United States, Amendment X*

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people

#### *Constitution of the United States, Amendment XIV, Section 1*

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Constitution of the United States, Article I, Section 8, Clause 1*

The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises to pay the Debts and provide for the common Defence and general Welfare of the United States.

*Constitution of the United States, Article III*

*Section 1*

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

*Section 2*

*Clause 1.* The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party;—to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States,— between Citizens of the same State claiming Land under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

*Clause 2.* In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall have original Jurisdiction. In all other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

*Clause 3.* The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

*Section 3*

*Clause 1.* Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the testimony of two Witnesses to the same overt Act, or on Confession in open court.

*Clause 2.* The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

## **Selected CRS Products**

Listed below are existing CRS products on the Defense of Marriage Act, litigation, and related policy issues. Additional titles are available on the CRS.gov website, <http://www.crs.gov>, by searching or browsing the Civil Rights and Discrimination Issues in Focus page.

## Same-Sex Marriage Litigation

CRS Report RL31994, *Same-Sex Marriages: Legal Issues*, by (name redacted).

CRS Report R42976, *Same-Sex Marriage and the Supreme Court: United States v. Windsor and Hollingsworth v. Perry*, by (name redacted) and (name redacted).

CRS Report WSLG349, *Same-Sex Marriage and the Supreme Court: Does the House Bipartisan Legal Advisory Group have standing to Challenge the DOMA Ruling?*, by (name redacted).

CRS Report WSLG344, *Same-Sex Marriage and The Supreme Court: Is the Defense of Marriage Act Unconstitutional?*, by (name redacted).

CRS Report WSLG342, *Same-Sex Marriage and The Supreme Court: Do Proponents of California's Proposition 8 Have Standing to Challenge the Ruling Below?*, by (name redacted).

CRS Report WSLG340, *Same-Sex Marriage and The Supreme Court: Is California's Proposition 8 Unconstitutional?*, by (name redacted).

CRS Report WSLG53, *First Circuit Strikes Down DOMA*, by (name redacted).

## Same-Sex Marriage Policy Issues

CRS Report R41998, *Same-Sex Marriage and Employee Benefit Plans: Legal Considerations*, by Jennifer Staman.

CRS Report R42873, *Federal Benefits and the Same-Sex Partners of Federal Employees*, by (name redacted) and (name redacted).

CRS Report RS21897, *The Effect of State-Legalized Same-Sex Marriage on Social Security Benefits, Pensions, and Individual Retirement Accounts (IRAs)*, by (name redacted).

CRS Report WSLG239, *DOMA (the Defense of Marriage Act) Meets the IRC (Internal Revenue Code)*, by (name redacted).

CRS Report WSLG89, *Religious Freedom and Solemnization of Same-Sex Marriages*, by Cynthia Brougher.

## Selected Secondary Sources

Listed below are useful secondary sources related to same-sex marriage. Please note, CRS has not verified the information in these resources.

### National Conference of State Legislatures

- Defining Marriage: Overview of Defense of Marriage Acts and Same-Sex Marriage Laws (Updated February 2013)

- <http://www.ncsl.org/issues-research/human-services/same-sex-marriage-overview.aspx>
- State Survey of Same-Sex Marriage Laws (Updated February 14, 2013)  
<http://www.ncsl.org/issues-research/human-services/same-sex-marriage-laws.aspx>
  - State Survey of Civil Union and Domestic Partnership Statutes (Updated February 2013)  
<http://www.ncsl.org/issues-research/human-services/civil-unions-and-domestic-partnership-statutes.aspx>
  - Same-Sex Marriage and Domestic Partnerships on the Ballot- Statewide Votes on Same-Sex Marriage, 1998-Present (Updated November 7, 2012)  
<http://www.ncsl.org/legislatures-elections/elections/same-sex-marriage-on-the-ballot.aspx>

## Glossary of Common Litigation Terms

In researching these cases, those less accustomed with court proceedings may encounter unfamiliar terms. Below are definitions, taken from *Black's Law Dictionary, Ninth Edition*, for some common words used in litigation.

<b>Brief</b>	A written statement setting out the legal contentions of a party in litigation, esp. on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them.
<b>Amicus brief</b>	A brief, usually at the appellate level, prepared and filed by an amicus curiae with the court's permission. Sometimes shortened to <i>amicus</i> . Also termed <i>friend-of-the-court brief</i> .
<b>Appellate brief</b>	A brief submitted to an appeals court; specif., a brief filed by a party to an appeal pending in a court exercising appellate jurisdiction.
<b>Reply brief</b>	A brief that responds to issues and arguments raised in the brief previously filed by one's opponent; esp., a movant's or appellant's brief filed to rebut a brief in opposition.
<b>Certiorari Petition</b> (or a <i>Petition for a Writ of Certiorari</i> )	A formal written request presented to a court or other official body.
<b>Decision</b>	A judicial or agency determination after consideration of the facts and the law; esp., a ruling, order, or judgment pronounced by a court when considering or disposing of a case.
<b>Docket</b>	A formal record in which a judge or court clerk briefly notes all the proceedings and filings in a court case.
<b>Petitioner</b>	A party who presents a petition to a court or other official body, esp. when seeking relief on appeal.
<b>Respondent or Appellee</b>	The party against whom an appeal is taken. In some appellate courts, the parties are designated as petitioner and respondent. In most appellate courts in the United States, the parties are designated as <i>appellant</i> and <i>appellee</i> .

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