



## Summary of *United States v. Windsor* Decision

In *United States v. Windsor*, the Supreme Court held Section 3 of the Defense of Marriage Act (DOMA) unconstitutional because it violated principles of Equal Protection by treating relationships that had equal status under state law differently under federal law. The majority opinion was authored by Justice Kennedy and joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan. Chief Justice Roberts and Justices Scalia, Thomas, and Alito dissented.

Section 3 of DOMA defines marriage as the union of one man and one woman for purposes of all federal laws.

The issues before the Court were (1) 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, and (2) whether the parties before the Court had standing to appeal to the Court.

Justice Kennedy, writing for the Court, held that the parties had standing to appeal to the Court. On the merits, the Court held that by treating some persons that the state has recognized as married differently than other persons that the state has also recognized as married, the federal government violated the Equal Protection principles guaranteed by the Fifth Amendment. In effect, the Court held that DOMA resulted in treating a subset of state sanctioned marriages as unequal to other state sanctioned marriages.

Justice Kennedy noted that regulation of domestic relations is within states' traditional authority, and that the sweeping nature of DOMA as applying to all federal laws had the purpose and necessary effect of treating differently a relationship that the state treated the same. This "demeans" the married couple that is treated differently. In concluding, the Court made it clear that "[t]his opinion and its holding are confined to those lawful marriages" under state law.

Chief Justice Roberts, dissenting, wrote that the Court lacked convincing evidence to conclude that President Clinton, who signed, and 342 representatives and 85 senators, who voted for, DOMA were motivated by a desire to harm others. "Interests in uniformity and stability amply justified Congress' decision to retain the definition of marriage that, at that point, had been adopted by every State in our Nation, and every nation in the world." The Chief Justice noted that the Majority's holding is clearly limited by its analysis and does not address "the distinct question whether the States in the exercise of their 'historic and essential



authority to define the marital relation’ may continue to utilize the traditional definition of marriage.” In addition, the Chief Justice wrote that the Court lacked jurisdiction to decide the case and that it should not have reached the merits.

Justice Scalia, joined by Justice Thomas, and by the Chief Justice, in part, agreed with the Chief Justice that the Court had “no power under the Constitution to invalidate this democratically adopted legislation. The Court’s errors . . . spring forth from the same diseased root: an exalted conception of the role of this [Court] in America.”

Under Article III of the Constitution, federal courts may only hear cases in which there is an actual “case or controversy.” Because the United States (through the President and the Attorney General) agreed with the trial court’s conclusion that DOMA’s application to the Plaintiff (Windsor) was unconstitutional, there was no case or controversy to appeal. In effect, all the real parties in interest agreed with each other, so there was no case. It is unprecedented in history for the Court to address the merits of a case where there was no actual controversy before the Court. “The Majority can cite no case in which this Court entertained an appeal in which both parties urged us to affirm the judgment below.” Thus, the Court overstepped its constitutional boundaries by deciding the case on the merits.

Furthermore, Justice Scalia noted that the Court’s merits analysis is unsupported by the Constitution’s text or the Court’s historic jurisprudence. Congress clearly had a rational basis for desiring uniformity in application of federal laws. In creating a uniform definition, Congress “did no more than codify an aspect of marriage that had been unquestioned in our society for most of its existence—indeed, had been unquestioned in virtually all societies for virtually all of human history. It is one thing for a society to elect change; it is another for a court of law to impose change by adjudging those who oppose it *hostes humani generis*, enemies of the human race.”

Justice Alito also dissented, joined in part by Justice Thomas. Justice Alito would have found that Congress had standing to defend DOMA and that “the Constitution does not guarantee the right to enter into a same-sex marriage. Indeed, no provision of the Constitution speaks to the issue.” Same-sex marriage is clearly not a fundamental right since “it is beyond dispute that [it] is not deeply rooted in this Nation’s history and tradition.” In sum, “[s]ame-sex marriage presents a highly emotional and important question of public policy—but not a difficult question of constitutional law.”