

MARRIAGE CASES BEFORE THE SUPREME COURT

Proposition 8

- Proposition 8 (Prop 8) is a state constitutional amendment passed by a popular vote of the citizens of California in 2008 that defines marriage for state purposes as the union of one man and one woman.
- California citizens voted for this definition of marriage after the California Supreme Court issued an activist decision redefining marriage in the state *even though the state had civil unions for same-sex couples that afforded them all the same rights and benefits*.
- By passing Prop 8, the citizens of California rejected the court's decision, insisting that marriage is unique for a reason.
- But a federal district court, and the 9th Circuit Court of Appeals, subsequently declared California's constitutional amendment to violate the U.S. Constitution.
- This case is under review by the U.S. Supreme Court to decide whether this state constitutional amendment is unconstitutional.
- What's at stake? The freedom of citizens to make marriage policy in their state.

Defense of Marriage Act (DOMA)

- DOMA is a federal law passed by overwhelming majorities in both houses of Congress and signed into law by President Bill Clinton in 1996. It defines marriage for the purposes of federal law as the union of one man and one woman. It also ensures that each state is free to make its own marriage policy and does not have to recognize another state's revision of marriage policy.
- Congress passed this law to make explicit what was implicit at the time of our Founding and implicit when Congress exercised its duly



delegated authority under Article I of the U.S. Constitution to pass various federal laws that contain references to marriage.

- Just as the states have constitutional authority to make state policy about marriage, so too the Congress has constitutional authority to define what marriage is for federal purposes when it exercises Article I powers in making laws that touch on marriage.
- Several federal trial and appellate courts have declared the federal definition of marriage portion of DOMA (Section 3) unconstitutional. The Supreme Court is currently reviewing that question.
- What's at stake? The constitutional authority of Congress to make marriage policy for federal purposes.