

Legislative Brief

SAME SEX MARRIAGE

Nov. 14, 2014

SIXTH CIRCUIT UPHOLDS SAME-SEX MARRIAGE BAN

SUMMARY:

- On Nov. 6, 2014, the 6th Circuit Court of Appeals upheld bans on same sex marriage in Michigan, Kentucky, Ohio and Tennessee.
- Since the 6th Circuit's decision creates a split among the federal courts, it is likely that the U.S. Supreme Court will review the same sex marriage issue.

On Nov. 6, 2014, the U.S. Court of Appeals for the 6th Circuit [upheld](#) bans on same-sex marriage in four states. In a 2-1 decision, the 6th Circuit overturned lower court rulings in **Kentucky, Michigan, Ohio and Tennessee** that were in favor of same-sex marriage. The 6th Circuit ruled that the same-sex marriage issue should be decided in each state through the regular political process, and not through the court system.

The 6th Circuit is the first federal appeals court to uphold state bans on same-sex marriage since the U.S. Supreme Court struck down part of the federal Defense of Marriage Act (DOMA) in 2013. This decision directly conflicts with same-sex marriage decisions from the 4th, 7th, 9th and 10th Circuits, where the federal appeals courts struck down state bans on same-sex marriage.

Because there is a split in decisions from the federal appeals courts, it is likely that the U.S. Supreme Court will review the same-sex marriage issue in the future. A Supreme Court decision on same-sex marriage could be issued as early as next summer. This decision could resolve the constitutional issue surrounding same-sex marriage laws once and for all.

Same-sex Marriage Decisions

Following the Supreme Court's DOMA ruling, a number of courts have addressed same-sex marriage laws. So far, 5 out of the 13 federal appeals courts have issued decisions on this issue.

- State laws prohibiting same-sex marriage have been invalidated by the 4th Circuit, 7th Circuit, 9th Circuit and 10th Circuit.
- State laws prohibiting same-sex marriage have been upheld by the 6th Circuit.
- Currently, same-sex marriage is available in 32 states and the District of Columbia.

6th Circuit Decision

Kentucky, Michigan, Ohio and Tennessee have laws prohibiting same-sex marriage. These four states also do not recognize same-sex marriages that are legally entered into in other states. Earlier this year, federal district courts struck down laws against same-sex marriage in these four states, but these rulings were put on hold pending appeal.

The 6th Circuit's ruling overturned the lower court decisions in Kentucky, Michigan, Ohio and Tennessee. Based on the growing number of states that have legalized same-sex marriage, the 6th Circuit's decision recognizes that it is likely that same-sex marriage will eventually become legal throughout the United States. However, according to the 6th Circuit, the decision to legalize same-sex marriage should be made through the regular political process, and not through the judicial process.

Because the 6th Circuit overturned the lower court decisions, laws against same-sex marriage in Kentucky, Michigan, Ohio and Tennessee remain in effect.

Supreme Court Review

Before the 6th Circuit's decision was issued, the Supreme Court announced that it would not hear appeals in the other same-sex marriage cases. Supreme Court Justice Ruth Bader Ginsburg indicated that the main reason the Supreme Court decided not to review the same-sex marriage cases was that there was not a split in decisions among the federal appeals courts at that time.

The 6th Circuit's decision conflicts with the decisions from the other appeals courts, which creates a split between the federal appeals courts. As a next step, the challengers to the same-sex marriage laws in Kentucky, Michigan, Ohio and Tennessee can ask the full 6th Circuit to reconsider the case, or the challengers can proceed directly to the U.S. Supreme Court. The Supreme Court justices would have to agree to hear the case, but the split between the appeals courts makes it likely that they would decide to resolve the same-sex marriage issue.

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