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Gay marriage opponents make their case to Supreme Court

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Foes of same-sex marriage are warning the Supreme Court that lifting state or federal restrictions would threaten their own economic and religious freedoms and lead to social and political upheaval.

In about three dozen briefs filed in recent weeks, groups ranging from U.S. Catholic bishops and evangelicals to state attorneys general and university professors argue that upholding gay marriage could lead to penalties against objecting employers, military officials and others.

Briefs from supporters of gay marriage are due by early March.

"If the Constitution were construed to require government affirmation of same-sex relationships as marriage, it would seem a short step to requiring such affirmation as a condition of receiving government contracts, participating in public programs or being eligible for tax exemption," the U.S. Conference of Catholic Bishops said in its brief.

"Those who disagree with the government's moral assessment of such relationships would find themselves increasingly marginalized and denied equal participation in American public life and benefits."

Organizations that certify chaplains for the armed forces phrase it in stark terms. If gay marriage is recognized by the federal government, they say, chaplains and other military officers will face conflicts between duty and religious conviction, forcing them "to serve God or country."

Those are among the many arguments made by opponents as two landmark cases testing barriers to same-sex marriage approach their days in court in late March.

The case getting the most attention from opponents focuses on California voters' 2008 ban on gay marriage, known as Proposition 8, which was declared unconstitutional by two lower courts. More briefs have been filed in that case, *Hollingsworth* v. *Perry*, because the threshold issue is the right of gays and lesbians to marry.

The other case, *U.S.* v. *Windsor*, involves a challenge to the federal Defense of Marriage Act, which, while more likely to have national implications, applies to the benefits available to same-sex couples who already are married.

Several trends appear to be working against gay marriage opponents: Recent public opinion polls, lower court rulings, voter initiatives and policy declarations by President Barack Obama and others have given gays and lesbians momentum as the high court prepares to hear the two cases.

For that reason, the arguments raised by opponents in friend-of-the-court briefs could be critical. They break down into several categories:

Procreation and child-rearing: Groups defending Proposition 8, led by California's ProtectMarriage.com, argue

that marriage is intended largely for having children and raising them with a mother and father.

"Recognition of same-sex marriages would not promote either of the principal interests on the basis of which opposite-sex marriage is a protected institution," says a brief submitted by the conservative Family Research Council.

Several briefs criticize the original ruling of the Federal District Court of the Northern District of California for its emphasis on marriage as a commitment among adults. The Catholic bishops labeled that definition "incoherent" and "wildly over-inclusive."

Special legal protections: Opponents will have a tough time winning if the justices decide that laws based on sexual orientation deserve heightened scrutiny, as have those dealing with race.

Although the high court declared bans on interracial marriage unconstitutional in its 1967 *Loving* v. *Virginia* decision, opponents of same-sex marriage such as the Coalition of African-American Pastors say that doesn't set a precedent.

Others argue that gays' sexual orientation is a choice, rather than genetically immutable. One brief tells the stories of four "ex-gays" now in heterosexual relationships.

Long arm of history: Several briefs recite centuries of scholarly and religious literature defining marriage as between a man and a woman. The California petitioners quote British jurist William Blackstone's 18th-century writings and cite others ranging from John Locke to Noah Webster. Among the books most often quoted: the Bible.

"Before 2003, same-sex marriage had never existed in the United States, and it still is comparatively rare," says a brief from the Marriage Law Foundation, representing a variety of university professors. "Indeed, before 2000, it had never existed in human history."

States vs. courts: Changing the definition of marriage should be left up to the democratic process, such as Congress' 1996 law defining marriage for federal purposes and California voters' 2008 initiative.

Because 37 states have banned gay marriage and nine have legalized it in recent years, opponents say, the court should let the national debate continue rather than set a sweeping precedent in favor of gay marriage.

Nineteen Republican attorneys general argue that the court should defer to "states' historical, near-absolute dominion over marriage." And 37 law professors and government scholars argue that the court should "respect the role of the states as laboratories of democracy in the development of emerging conceptions of liberty and equality."

After gays, the deluge: The Catholic bishops' brief says that if the Supreme Court declares a constitutional right to gay marriage, "it is unclear where the logical stopping point would be." They suggest legalizing marriage among minors, relatives or polygamists could follow.

"If this Court mandates genderless marriage," a brief from the Coalition for the Protection of Marriage, a Nevada group, says, "the resulting social divisions and political contentions will probably equal and may surpass those resulting from *Roe* v. *Wade*."

[Richard Wolf writes for USA Today.]

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