

The Supreme Court considers the equal rights of gay couples

The Law and Politics of Same-Sex Marriage

On March 26 and 27, the U.S. Supreme Court heard oral argument in two potential landmark cases on the rights of same-sex couples. *U.S. v. Windsor*—a challenge to the constitutionality of the Defense of Marriage Act (DOMA)—involves the case of one woman required to pay \$363,053 in federal estate taxes after her partner died, due to the fact that the Internal Revenue Service does not recognize her as a surviving spouse. *Hollingsworth v. Perry* represents a state-level challenge to California's Proposition 8 ban on gay marriage.

Is the United States moving toward legal equality between gay and straight couples? The Cato Institute has joined the Constitutional Accountability Center in filing joint amicus briefs in both *Windsor* and *Perry*, highlighting that such laws deny certain citizens "ordinary civic life in a free society."

At a Policy Forum held in the F. A. Hayek Auditorium in March, two of the nation's best-known advocates on the issue came together to delve deeper into this continuing battle.

Evan Wolfson, widely seen as the master strategist behind the movement for same-sex marriage, argued that "the single best way" to achieve marriage equality is to "continue winning over hearts and minds." He noted in particular that a substantive justification for DOMA was not offered once during oral arguments. "The strategy that has brought us to this moment of hope is the strategy that will bring us the freedom to marry nationwide," he concluded.

As a key figure in Republican rethinking of the issue, former Republican national chairman Ken Mehlman added, "The whole reason we have a Constitution and courts is that some things are not polled and some things are not put up to a vote." In explaining that certain rights are reserved to individuals and should be protected by the government, he added that large-scale change doesn't happen linearly. "Nevertheless, history is on our side," Mehlman concluded.

The two panelists were joined by Ilya Shapiro, senior fellow in constitutional



At a Cato Policy Forum following the Supreme Court's oral arguments on the rights of same-sex couples, **KEN MEHLMAN** (left), former chairman of the Republican National Committee, joined **EVAN WOLFSON**, founder and executive director of Freedom to Marry, to examine the shifting politics of marriage equality.

studies at the Cato Institute, who said that the intricacies of the legal arguments make it difficult to predict what the Court will decide. "We're in for a real cliffhanger of a ruling," he noted.

The Cato Institute has long argued that gay couples should be entitled to the same rights, respect, and dignity accorded to all Americans. Cato chairman Robert A. Levy currently co-chairs the advisory board of

the American Foundation for Equal Rights, the sole sponsor of the federal court challenge to California's Proposition 8.

"One would hope, in the coming months and years," Levy said in 2010, "that more enlightened federal and state legislators will have the courage and decency to resist morally abhorrent and constitutionally suspect restrictions based on sexual orientation." ■

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