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The Courts, Not President Obama, Will Decide Same-Sex Marriage

President Barack Obama grabbed the headlines last week in his support of same-sex marriage. The political pundits dominated the evening news with talk about the national political ramifications, and politicians defined each other's position on the subject. However, few news accounts or talking heads considered the significant [legal issues](#), or what might happen to people directly affected by the President's position.

In the end, it will be the courts of law and not the courts of public opinion that will decide whether same-sex marriage will be legal. Same-sex marriage and civil union legislation is being passed and challenged across the country. Some states have adopted laws that recognize same-sex marriage, while a larger number have adopted laws that specifically prohibit it.

As detailed by the National Conference of State Legislatures, Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, New York and the District of Columbia allow same-sex marriages. In Massachusetts, Connecticut, and Iowa, the courts ruled that the state constitution required that gay couples be accorded the same marriage privileges given to heterosexual couples. In Vermont, New Hampshire, the District of Columbia and New York, state legislatures passed amended state marriage laws to include same-sex marriages. Similar measures have been approved in Maryland and Washington, but have not yet taken effect.

Many other states have adopted the opposite position. Thirty eight states have enacted bans on gay marriage, primarily by adopting "defense of marriage" language in their state constitutions and/or state laws that defines marriage as only between a man and a woman. Voters in North Carolina recently approved a similar constitutional amendment.

Some states have taken an alternative approach. They do not allow same-sex marriage, but they do recognize civil unions and domestic partnerships. New Jersey allows both civil unions and domestic partnerships under the state's domestic partnership law, [Chapter 103](#).

Domestic partnerships, available in states such as California, provide some level of state spousal rights to unmarried couples of the same or opposite sex. Common protections include rights to make health care decisions, inheritance without a will, and the ability to extend health insurance coverage to a partner. Civil unions, available in states such as Delaware, legally recognize same-sex relationships and afford the same legal rights and

responsibilities as those enjoyed in marriage, with the exception of those provided by federal law (i.e., social security benefits, immigration rights, joint tax filing, etc.).

On the federal level, the biggest hurdle to same-sex marriage is the Defense of Marriage Act (DOMA) of 1996. It states that “the word 'marriage' means only a legal union between one man and one woman as husband and wife.” Although the Obama Administration has decided not to defend DOMA in court, the law still ensures that President Obama cannot single-handedly legalize gay marriage by executive order. As a result, challenging it through the court system is likely the only way to legalize gay marriage throughout the United States.

To learn more on this subject please read "[When Will Same-Sex Marriage Litigation Reach the Supreme Court?](#)"