

# Bill Schuette wants Supreme Court to let states keep gay marriage bans

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Michigan Attorney General Bill Schuette - photo from Peter Ross

WASHINGTON (Gannett Washington Bureau) -- Gay couples can be wonderful parents but they can never be ideal parents, Michigan Attorney General Bill Schuette has told the Supreme Court in arguing to preserve the state's ban on same-sex marriages.

"Michigan's definition simply acknowledges the reality that same-sex relationships are different in that they lack the natural capacity to bear children and the ability to provide a biologically-connected role model of both womanhood and manhood," Schuette wrote in a brief to the high court in advance of next week's oral arguments on two gay marriage cases. Such briefs are filed by those who are not part of the litigation and won't appear in court, but who believe the court's decision could affect them.

The first case considers California's ban on gay marriage and the second examines a 1996 federal law defining marriage as the union between a man and a woman. It's the first time the high court will consider the issue.

Schuette is among 21 state attorneys general -- all Republican -- who have argued to the court that they should be able to ban gay marriage.

Fifteen Democratic attorneys general have weighed in against the federal or state bans.

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"It's a political football and Michigan is really one of the most conservative states right now in trying to push that agenda," said Peter Hammer, director of the Damon J. Keith Center for Civil Rights at Wayne State University. "It's a basic issue of fairness and I think, over time, fairness wins in this country. That's at least my hope."

In addition to prohibiting gay marriage by law and in the state's constitution, Michigan law prohibits some public employees from providing health insurance and other benefits to domestic partners. Before that law was passed in 2011, Schuette sued the Michigan Civil Service Commission for providing health care benefits to same-sex partners of state employees.

Public opinion on gay marriage is changing swiftly.

When Massachusetts became the first state to allow same-sex marriage in 2003, 56 percent of Americans felt that allowing gays and lesbians to marry would undermine the traditional American family, according to the Pew Research Center. Today, only 46 percent of Americans agree with that view.

A majority of Michiganders surveyed last year by Michigan State University's Institute for Public Policy and Social Research supported gay marriage. Just two years earlier, a majority opposed it.

The increasing support for same-sex marriage is one of the largest changes in public opinion on any policy issue over the past decade, according to Pew.

Because of that, constitutional law expert Ira Lupu said it's possible the Supreme Court will rule in a way that will allow states to continue to decide for themselves whether to allow gay couples to marry.

"Everybody now thinks that (legalizing gay marriage) is inevitable, that this will get approved state-by-state. It will just take time," said Lupu, a professor at George Washington University. For that reason, he said, many argue that it would be "healthier, more politically legitimate, to let this work through a state at a time, rather than for the Supreme Court to decide for all 50 states at once."

Michigan makes that argument in its brief to the court.

"Deeply rooted cultural definitions of marriage are best left to the political arena where the full discourse of public debate can occur," Schuette wrote.

Michigan voters amended the state constitution in 2004 to ban same-sex marriages or civil unions, and a 1996 state law also bans gay marriage. A total of 38 states ban gay marriages either through their constitutions, a state law or both. Nine states, mostly in the Northeast, have legalized gay marriage. Three states -- New Jersey, Rhode Island and New Mexico -- have no laws banning or legalizing gay marriage. And New Jersey and Rhode Island are among the 11 states that allow civil unions or domestic partnerships for same-sex couples.

Michigan argues in its brief supporting California's ban that the primary justification for such bans is that they "extol virtues that are in the best interest of children." That's because only heterosexual couples have the natural capacity to bear children, to provide both male and female role models, and to enable a child to have a biological relationship with each parent.

"To be sure, single mothers, single fathers, and same-sex couples can be wonderful parents, while opposite-sex couples can be inadequate parents," Schuette wrote. "But there is nothing unconstitutional about a state choosing to honor the mother-father-child relationship as an ideal familial structure."

The states, led by Massachusetts, that joined a brief countering Michigan's argument say gay marriage bans don't encourage biological parents to raise their kids together; they just prevent same-sex couples from being able to provide their children with stable family environments. And the argument that same-sex couples are less suitable parents is not only contradicted by scientific studies, but is also similar to the argument the Supreme Court rejected in 1967 when it struck down laws preventing blacks and whites from marrying, the Massachusetts attorney general argues.

The day after the Supreme Court takes up the California case, it will hear oral arguments challenging the part of the federal Defense of Marriage Act that prevents the federal government from recognizing same-sex unions allowed by states. That restrictions applies to more than 1,000 federal laws and programs, including Social Security benefits and tax law. For example, the woman challenging the law, Edith Windsor of New York, had to pay \$360,000 in federal inheritance taxes when her female partner died.

Michigan is among the states that signed onto an Indiana-led brief arguing that there's a legitimate government purpose for conferring exclusive benefits on heterosexual married couples.

"Opposite-sex couples are the only procreative relationships that exist, which means that such couples are the only ones the government has a need to encourage," the states argued.

If that argument isn't valid, the states continued, then they won't have any justification for denying marriage status to "any number of persons who desire a committed relationship with each other."

Massachusetts and its coalition of states counter that they've continued to place other restrictions on marriage while allowing same-sex unions. For example, they said, there are still appropriate and constitutionally permissible restrictions on consent ages, the number of spouses someone can have, and whether close relatives can marry.

"Thus, even after gender is removed from consideration, other state regulations continue to advance important governmental interests and remain valid," the states wrote in their brief in the California case.

States are not the only interests that have contributed to the more than 170 briefs submitted in hopes of influencing the Supreme Court's decisions.

Among those offering their views are current and former members of Congress, former administration officials, former intelligence officers, religious organizations, social science professors and historians, human rights groups, conservative activists, a group of 100 American companies, a group representing those who have made the "personal decision to leave homosexuality," and a group who said they've survived "dangerous and discredited therapies and treatments" to make them straight.

Lupu said so many groups are weighing in because gay marriage is "the civil rights issues of our generation."

"On the government's side, certainly on all the states' side, it's one where the politics is very visible, very intense and people are paying attention," Lupu said. "People who are politically active want to know, what's our state attorney general doing? Are we in this? Are we out of it? Are we sticking up for ourselves? Are we sticking up for the side that we believe in? So it's highly visible."

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