

## EDITORIAL: Gay marriage is a fundamental right



This artist rendering shows Tennessee Associate Solicitor General Joseph Walen arguing before the U.S. Supreme Court hearing on same-sex marriage, on Tuesday, April 28, 2015, in Washington. Justices, from left are, Sonia Sotomayor, Stephen Breyer, Clarence Thomas, Antonin Scalia, Chief Justice John Roberts, Anthony Kennedy, Ruth Bader Ginsburg, Samuel Alito Jr. and Elena Kagan. DANA VERKOUTEREN — AP Photo

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Two years ago in California's Proposition 8 case, the U.S. Supreme Court sidestepped a chance to establish the fundamental right for gay couples to marry. It can't miss the opportunity it has now to do what's right on the great civil rights issue of our time.



Court watchers believe that the court will issue a definitive ruling in June in the case it heard Tuesday because there's a split among federal appeals courts on whether state bans on same-sex marriage are constitutional.



Often, the court is wary of getting far ahead of the American people on social change. On gay marriage, however, the court is a step behind.

It wasn't until 2003 that gay marriage became legal in any state. Since then, public opinion has shifted dramatically, with a clear majority now in support (59% in a poll last month).

When the high court ruled on Proposition 8 — using the narrowest legal grounds to leave standing a federal judge's ruling that it was unconstitutional — only 12 states and the District of Columbia allowed gay couples to marry. In just two years, that number has jumped to 37 states. The Supreme Court itself added five states to that list by refusing

last October to hear appeals.

While it's always dicey to interpret too much into what justices say during oral arguments, they appeared deeply divided Tuesday.

Justice Anthony Kennedy — who is expected to be the swing vote and could very well write this historic opinion, as he has every other major ruling on gay rights for the past two decades — appeared conflicted in his thinking.

He said that the definition of marriage as between a man and a woman “has been with us for millennia.” But he also expressed concerns about excluding gay Americans from the noble institution of marriage.

Kennedy and the other justices will deliberate the constitutional principles at stake. But they should also think about the same-sex couples in the cases before them, the many Americans they represent and the real-life impact of the ruling they're about to make.

Among the plaintiffs are two nurses from Detroit who worry that if one of them died, their adopted children could be separated because Michigan law doesn't allow unmarried couples to adopt jointly.

There's the 30-year couple who married in Canada, but whose union isn't recognized in Kentucky. And there's the Ohio man who wants to be buried with his husband, who died from Lou Gehrig's disease, in a family plot that allows only spouses and relatives.

They all want only to be treated like other married couples in America. The time has come for our most powerful judges to grant them that fundamental equality.