

Same-Sex Marriage Case Generates Wide-Ranging Amicus Briefs

by Donald Scarinci

The U.S. Supreme Court will hear two [same-sex marriage](#) cases on March 26-27, 2013. In addition to considering arguments raised by the parties to each case, the justices will also consider a number of *amicus curiae* briefs submitted by so-called “friends of the court.”

In prominent cases, groups and individuals that are not parties to the lawsuit will often submit information in the form of [amicus curiae briefs](#) for the court’s consideration. Under Rule 37(1) of the Rules of the Supreme Court, “An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored.”

In many cases, *amicus curiae* briefs analyze legal issue not fully addressed by the parties or discuss of the broader legal implications of a particular decision. Others may simply attempt to lobby the justices to adopt a particular position.

Not surprisingly, [United States v. Windsor](#), which challenges the federal Defense of Marriage Act, and [Hollingsworth v. Perry](#), which challenges California’s voter-approved measure defining marriage as the union of a man and a woman, have both garnered significant attention from outside parties, most arguing in favor of same-sex marriage. Below are several *amicus curiae* briefs of note:

- **Republican Politicians:** More than 100 Republican politicians signed on to an *amicus* brief arguing in favor of overturning California’s Proposition 8. Prominent signees include former New Jersey governor Christine Todd Whitman, former Presidential candidate Jon Huntsman, and current Senator Rob Portman of Ohio. It is said to argue that same-sex marriage promotes two-parent households and advances conservative values of “limited government and maximizing individual freedom.”
- **President Obama:** The Department of Justice filed a brief in *Hollingsworth v. Perry*, urging the Court to overturn Proposition 8. The Administration argues that states that already confer the rights and privileges of marriage through civil unions should be required to take the next step by legalizing marriage.
- **NAACP Legal Defense Fund:** The civil rights organization references the shared struggle for civil rights between the African Americans and lesbian, gay, bisexual and transgender (LGBT) community. It argues that like “separate but equal” laws of the past, judicial review of DOMA mandates the strictest scrutiny.
- **The American Psychological Association:** The APA argues that denying same-sex couples the right to marry creates a social stigma and further cites that there is no empirical scientific evidence suggesting that same-sex couples do not make good parents. The American Academy of Pediatrics, the American Medical Association, and the American Psychiatric Association joined the brief.

- **NFL Players:** The most unlikely brief arguably comes from Minnesota Vikings punter Chris Kluwe and Baltimore Ravens linebacker Brendon Ayanbadejo. The two NFL players voice their support for same-sex marriage, citing their influence as professional athletes.

Ultimately, it will be up to the Supreme Court to determine how much weight, if any, to give each of the *amicus* briefs. If nothing else, the justices can't complain that they don't have enough information to consider.