

## Granting Certiorari:

### The Supreme Court and Same-Sex Marriage Post-Windsor

In late June 2013 the Supreme Court struck down the Defense of Marriage Act (DOMA) because it violated the due process and equal protection clauses of the Constitution. The case, *U.S. v. Windsor*, was the first major ruling related to the issue of same-sex marriage. Since *Windsor*, some federal courts have relied on the ruling in *Windsor* to support their decisions to find state bans on same-sex marriage unconstitutional. On October 6, 2014, the Supreme Court denied seven petitions for certiorari from states appealing U.S. court of appeals decisions that resulted in the overturning of same-sex marriage bans.

#### A Representative Petition

In 1997 Indiana passed a law defining marriage as between a man and a woman. This law also prohibited the state from recognizing a same sex marriage even if that marriage was valid in the state where it was entered into. Two women in Indiana applied for a marriage certificate from a county clerk. The clerk relied on Indiana law and denied their request. The women sued in federal court.

The federal trial court found the Indiana law to be an unconstitutional violation of both the equal protection and due process clauses of the 14th amendment. The federal court of appeals affirmed the ruling of the trial court. Both the state and the women sought review in the U.S. Supreme Court. The state claimed that the lower courts had misapplied the 14th Amendment and the women - who had prevailed - maintained that the Court should take this case to clarify the state of the law nationwide. This is the case of *Bogan v. Baskin*. The Court denied review on October 6.

#### Rule 10 – Reviewing Conflicts, Not Correctness

The Supreme Court has written rules that guide its practice. One of those rules – Rule 10 – sets forth the reason the Court accepts cases. This decision to hear a case is called granting a petition for a writ of certiorari. Four justices must agree to hear the case in order to grant a writ of certiorari. The Court has almost complete discretion as to which cases it agrees to hear. By far the most important reason you can give to persuade the Court to hear your case is to show that the case presents a legal issue over which there is conflict among the lower courts. In other words, different federal courts of appeal or state courts of last resort have ruled differently on this same issue. By reviewing cases that present conflicts among the lower courts, the Supreme Court helps ensure a certain degree of uniformity in federal law.

#### Late Breaking News

On November 6 – exactly one month after the Supreme Court denied review in a group of cases overturning same-sex marriage bans -- the U.S. Court of Appeals for the 6<sup>th</sup> Circuit ruled 2 – 1 and reversed federal trial court decisions from Michigan, Ohio, Kentucky and Tennessee finding that state laws prohibiting same sex marriage did not violate the Constitution.

**Should They or Shouldn't They?**

Based on what you know about *Bogan*, Rule 10, and the table below, list the two best reasons why the Court should grant certiorari in a same sex marriage case. Then, list the two best reasons why the Court should not grant certiorari in a same sex marriage case.

<b>Post-<i>Windsor</i> (June 2013) Same-Sex Decisions</b>	<b>State Court</b>	<b>U.S. District Court</b>	<b>U.S. Court of Appeals</b>
Overtured a Same-Sex Marriage Ban	5	16	4
Upheld a Same-Sex Marriage Ban	1	2	1