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Judge Topples U.S. Rejection of Gay Unions

By **ABBY GOODNOUGH** and **JOHN SCHWARTZ**

BOSTON — A federal judge in Massachusetts found Thursday that a law barring the federal government from recognizing [same-sex marriage](#) is unconstitutional, ruling that gay and lesbian couples deserve the same federal benefits as heterosexual couples.

Judge Joseph L. Tauro of United States District Court in Boston sided with the plaintiffs in two separate cases brought by the state attorney general and a gay rights group.

Although legal experts disagreed over how the rulings would fare on appeal, the judge's decisions were nonetheless sure to further inflame the nationwide debate over same-sex marriage and gay rights.

If the rulings find their way to the [Supreme Court](#) and are upheld there, they will put same-sex marriage within the constitutional realm of protection, just as interracial marriage has been for decades. Seeking that protection is at the heart of both the Massachusetts cases and a federal case pending in California over the legality of that state's ban on same-sex marriage.

Tracy Schmalzer, a spokeswoman for the Justice Department, said federal officials were reviewing the decision and had no further comment. But lawyers for the plaintiffs said they fully expected the Obama administration to appeal. An appeal would be heard by the First Circuit, which also includes Rhode Island, Maine, New Hampshire and Puerto Rico.

In the case brought by [Attorney General Martha Coakley](#), Judge Tauro found that the 1996 law, known as the Defense of Marriage Act, or DOMA, compels Massachusetts to discriminate against its own citizens in order to receive federal money for certain programs.

The other case, brought by [Gay and Lesbian Advocates and Defenders](#), focused more narrowly on equal protection as applied to a handful of federal benefits. In that case, Judge Tauro agreed that the federal law violated the equal protection clause of the Constitution by denying benefits to one class of married couples — gay men and lesbians — but not others.

Neither suit challenged a separate provision of the Defense of Marriage Act that says states do not have to recognize same-sex marriages performed in other states. But if the cases make their way to the Supreme Court and are upheld, gay and lesbian couples in states that recognize same-sex marriage will be eligible for federal benefits that are now granted only to heterosexual married couples.

“This court has determined that it is clearly within the authority of the commonwealth to recognize same-sex marriages among its residents, and to afford those individuals in same-sex marriages any benefits, rights and privileges to which they are entitled by virtue of their marital status,” Judge Tauro wrote in the case brought by Ms. Coakley. “The federal government, by enacting and enforcing DOMA, plainly encroaches upon the firmly entrenched province of the state.”

Proponents of gay rights embraced the rulings as legal victories.

“Today the court simply affirmed that our country won’t tolerate second-class marriages,” said Mary Bonauto, civil rights project director for Gay and Lesbian Advocates and Defenders, who argued the case. “This ruling will make a real difference for countless families in Massachusetts.”

Chris Gacek, a senior fellow at the Family Research Council, a leading conservative group, said he was disappointed by the decision.

“The idea that a court can say that this definition of marriage that’s been around forever is irrational is mind-boggling,” Mr. Gacek said. “It’s a bad decision.”

Massachusetts has allowed same-sex couples to marry since 2004, and while more than 15,000 have done so, they are denied federal benefits like [Social Security](#) survivors’ payments, the right to file taxes jointly and guaranteed leave from work to care for a sick spouse.

In the Coakley case, the judge held that that federal restrictions on funding for states that recognize same-sex marriage violates the 10th Amendment, the part of the Constitution that declares that rights not explicitly granted to the federal government, or denied to the states, belong to the states.

The Obama administration’s Justice Department was in the position of defending the Defense of Marriage Act even though [Barack Obama](#) had called during the 2008 presidential campaign for repealing it. Scott Simpson, when arguing the case on behalf of the government in May, opened by acknowledging the administration’s opposition to the act, but saying he was still obliged to defend its constitutionality.

“This presidential administration disagrees with DOMA as a matter of policy,” Mr. Simpson said at the time. “But that does not affect its constitutionality.”

Some constitutional scholars said they were surprised by Judge Tauro’s opinions in the two cases.

“What an amazing set of opinions,” said Jack M. Balkin, a professor at Yale Law School. “No chance they’ll be held up on appeal.”

Professor Balkin, who supports the right to same-sex marriage, said the opinions ignored the federal government’s longstanding involvement in marriage issues in areas like welfare, tax policy, health care, Social Security and more. The opinion in the advocacy group’s case applies the Constitution to marriage rights, he said, undercutting the notion that the marriage is not a federal concern.

“These two opinions are at war with themselves,” he said.

The arguments concerning the 10th Amendment and the spending clause, if upheld, would “take down a wide swath of programs — you can’t even list the number of programs that would be affected,” he said.

By citing the 10th Amendment and making what is essentially a states’ rights argument, Professor Balkin said Judge Tauro was “attempting to hoist conservatives by their own petard, by saying: ‘You like the 10th Amendment? I’ll give you the 10th Amendment! I’ll strike down DOMA!’ ”

Erwin Chemerinsky, the dean of the [University of California, Irvine](#), School of Law, was more supportive of the logic of the two opinions, and said they worked together to establish a broad right of marriage for same-sex couples.

“The key issue in this case, and in all litigation about marriage equality for gays and lesbians, is, Does the government have a rational basis for treating same-sex couples differently from heterosexual couples?” he said. “Here, the court says there is no rational basis for treating same-sex couples differently from heterosexual couples. Therefore, DOMA is unconstitutional, and conditioning federal funding on compliance with DOMA is unconstitutional.”

A central issue in the fight over the constitutionality of California’s same-sex marriage ban is whether laws restricting gay rights should be held to a tougher standard of review than the “rational basis” test, and so Judge Tauro’s decision takes a different path that would eliminate the need for that line of argument, Professor Chemerinsky said.

“There’s no need to get to higher scrutiny if it fails rational basis review,” he said.

Katie Zezima contributed reporting.