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*Freedom of Religion and Gay Marriage*  
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Poll results released Tuesday indicate that 50 percent of American citizens think that the United States' Constitution guarantees gay couples the right to marry. The poll, conducted by the Washington Post and ABC News, shows that Americans are increasingly accepting the logic laid out by the Supreme Court in the June 26, 2013, decision ruling unconstitutional the ban on gay marriage found in the Defense of Marriage Act (DOMA).

Lower courts around the country, from Utah to Oklahoma to Virginia, also have adopted the Supreme Court's logic. These courts have held that state bans on gay marriage and its recognition, like the federal ban, are unconstitutional.

These rulings have been based on the Equal Protection clause of the Constitution's 14th Amendment. That amendment prevents states from passing laws treating some classes of citizens differently from others. The 14th Amendment holds that a state may not "deny to any person ... the equal protection of the laws." Its intent was to prevent Southern states from passing laws that deprived black citizens of rights, such as the right to own property or to enter into contracts.

There has been a lot of reaction to the Supreme Court's striking down of DOMA, but it is interesting to note that nearly all of the negative reaction has been of a religious nature. Whether in public comments or in legal briefs, the arguments against allowing homosexual marriage have nearly all been based on appeals to religious scripture or religious theology. Protestant perspectives have largely been Bible-based, while remarks by Catholic Church officials have been based more on theology. (Note that many religious groups perform, permit or are in favor of gay marriage.)

The acute interest by different branches of Christianity in restricting marriage to one man and one woman raises the question of whether the government enforcement of heterosexual marriage violates the constitution. Do these state laws on marriage violate the First Amendment restriction against the establishment of religion?

The First Amendment says that laws cannot be made "respecting an establishment of religion, or prohibiting the free exercise thereof." The argument could be made that laws prohibiting gay marriage violate a couple's "free exercise" of religion.

To determine whether a law violates the freedom of religion clause, courts devised the Lemon Test. A law must pass all three components of it to be valid. First, does the law have a secular purpose? Second, is the primary effect either to advance religion or to inhibit religion? Third, does the law foster an excessive governmental entanglement with religion? If the study of a law results is a "no" to the first question or "yes" to the second or third, then that law is unconstitutional.

In the months since the Supreme Court's ruling on DOMA, it has become more and more clear that the main arguments in favor of restricting marriage to heterosexual couples are religious ones. In that light, the present laws not only "entangle" the government in enforcing a religious belief; they also set up the government as the primary enforcer of a religious belief as the sole practice allowed.

This is clearly "excessive entanglement" and violates the third Lemon Test. We as a society may not have realized this before now, but the debate on the question of homosexual marriage since June 2013 has made it clear.

At this point in time, any Supreme Court ruling against gay marriage would violate the second standard of the Lemon Test. It would promote the religious standard for marriage over that of any other standard. This would violate the second of the Lemon Tests. It would constitute government advancement of religious interests.

So, even though marriage law originally was designed with a secular intent -- to have one standard for all marriages in the United States, whether religious or not -- it is now apparent that the standard that was set violates the constitutional guarantee of religious freedom.

Despite -- no, because of -- the strong support of churches and other religious institutions for permitting only heterosexual marriage, it is now clear in American society that the restrictions against gay marriage violate our guarantee of religious freedom.