

## *United States v. Windsor* and DOMA

### Background

In *United States v. Windsor*, the Supreme Court heard a challenge to section 3 of the federal Defense of Marriage Act (DOMA). Signed into law by President Clinton in 1996, DOMA defined marriage as a male-female union for federal purposes.<sup>1</sup> The issue originated when Windsor was barred from claiming federal estate tax exemption after her female spouse died in 2009; at the time of her death, the State of New York recognized same-sex marriages. However, the IRS denied her federal refund claim since the federal government, under DOMA, established she was not a surviving spouse.

### The Decision

In a 5-4 decision, the Supreme Court held that DOMA was unconstitutional in violation of the Equal Protection Clause of the Constitution because it undermined the laws of New York and 11 other states by rejecting a lawful status conferred upon same-sex couples in those states.<sup>2</sup> The majority opinion detailed that “[T]he states, at the time of the adoption of the Constitution, possessed full power over the subject of marriage and divorce... [and] the Constitution delegated no authority to the Government of the United States on the subject of marriage and divorce.”<sup>3</sup>

The Court’s decision reinforces the separation between state and federal responsibilities with respect to lawmaking. The Court recognized that “regulation of domestic relations” is “an area that has long been regarded as virtually exclusive province of the States.” Section 2 of DOMA was not challenged; it permits states to refuse to recognize same-sex marriages performed under the laws of other states.<sup>4</sup> Thus, states do not have to recognize same-sex marriages performed in other states as being valid in their state.

### ISSUE SNAPSHOT

The Defense of Marriage Act (DOMA) was signed into law by President Clinton in 1996. The Act itself defined “marriage” and “spouse,” effectively excluding same-sex partners.

In 2013 the Supreme Court struck down federal DOMA but determined that “regulation of domestic relations” is “an area that has long been regarded as virtually exclusive province of the States.”

While the Court did not establish a constitutional right to same-sex marriage, Justice Kennedy characterized congressional support for traditional marriage as “the bare desire to harm” another group.<sup>5</sup> In his dissent, Justice Scalia reprimanded Justice Kennedy for tainting the Court’s legal conclusion by including Justice Kennedy’s personal perspectives on marriage.<sup>6</sup>

### Conclusion

The Court’s opinion does not appear to force Alabama and [the other 37 states](#)<sup>7</sup> affirming marriage as the union of a man and a woman to recognize homosexual marriage. The ultimate result of the decision will likely be further litigation designed to force the Supreme Court to hear a challenge to state laws restricting to heterosexual couples the definition of marriage and associated privileges. In Alabama, State Representative Patricia Todd (D-Birmingham) has already indicated [her willingness to fight Alabama’s law in court](#).<sup>8</sup> Similar efforts across the nation will likely result in splits between the federal appellate courts and push the Supreme Court to again address the issue in relatively short order.

# GUIDE TO THE ISSUES

<sup>1</sup> 1 U.S.C.A. § 7 (West);

<http://www.govtrack.us/congress/bills/104/hr3396/text/rh>.

<sup>2</sup> *United States v. Windsor*, 570 U.S. 12 (2013), (slip. Op. at 3); *Sosna v. Iowa*, 419 U.S. 393, 404, 95 S.Ct. 553, 42 L.Ed.2d 532.

[http://www2.bloomberglaw.com/public/desktop/document/United States v Windsor No 12307 2013 BL 168683 US June 26 2013 C/1](http://www2.bloomberglaw.com/public/desktop/document/United_States_v_Windsor_No_12307_2013_BL_168683_US_June_26_2013_C/1).

<sup>3</sup> *United States v. Windsor*, 570 U.S. 17 (2013); *Haddock v. Haddock*, 201 U.S. 562, 575 (1906); see also *In re Burrus*, 136 U.S. 586, 593-594 (1890).

<sup>4</sup> See 28 U. S. C. §1738C;

<http://www.govtrack.us/congress/bills/104/hr3396/text/rh>.

<sup>5</sup> *United States v. Windsor*, 570 U.S. 20 (2013); *Department of Agriculture v. Moreno*, 413 U.S. 528, 534-535 (1973).

<sup>6</sup> *Id.*

<sup>7</sup> Sarah Torre, The Facts on Marriage Laws in America, THE HERITAGE FOUNDATION (June 25, 2013),

[http://blog.heritage.org/2013/06/25/the-facts-on-marriage-laws-in-america/?roi=echo3-16097000571-13407073-a77eb64fdb9a8bdea2a257e9c3be96d6&utm\\_source=heritagefoundation&utm\\_medium=email&utm\\_campaign=morningbell130627&utm\\_content=&utm\\_source=Newsletter&utm\\_medium=Email&utm\\_campaign=Morning%2BBell](http://blog.heritage.org/2013/06/25/the-facts-on-marriage-laws-in-america/?roi=echo3-16097000571-13407073-a77eb64fdb9a8bdea2a257e9c3be96d6&utm_source=heritagefoundation&utm_medium=email&utm_campaign=morningbell130627&utm_content=&utm_source=Newsletter&utm_medium=Email&utm_campaign=Morning%2BBell).

<sup>8</sup> Kyle Whitmire, After DOMA decision, Rep. Patricia Todd ready to take same-sex marriage fight to court, AL.COM (June 26, 2013),

[http://blog.al.com/spotnews/2013/06/after\\_doma\\_decision\\_rep\\_patric.html](http://blog.al.com/spotnews/2013/06/after_doma_decision_rep_patric.html).