



Gay & Lesbian Advocates & Defenders
30 Winter Street, Suite 800
Boston, MA 02108
Tel: 617.426.1350
Fax: 617.426.3594
www.glad.org

U.S. Supreme Court Support
for State Sovereignty Over Family Law

1996 Law Known As “Section 3” of the “Defense of Marriage Act”

“In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.” 1 U.S.C. §7(3).

Federalism Basics

- “The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals.”

New York v. United States, 505 U.S. 144, 181 (1992).

“The Tenth Amendment likewise restrains the power of Congress...[T]he Tenth Amendment confirms that the power of the Federal Government is subject to limits that may, in a given instance, reserve power to the states. The Tenth Amendment thus directs us to determine, as in the case, whether an incident of state sovereignty is protected by a limitation on an Article I power.”

New York v. United States, 505 U.S. at 156-57.

Federalism and Family Law

- “We disclaim altogether any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony.”

Barber v. Barber, 62 U.S. 582 (1858) (regarding federal diversity lawsuit brought by a woman against her former husband asking for enforcement of a divorce decree).

- “The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States.”

Ex Parte Burrus, 136 U.S. 586, 593-94 (1890) (rejecting jurisdiction to hear a father’s federal habeas corpus petition requesting that custody of his child be restored to him instead of with the child’s grandfather).

- “Commerce depends upon population, but Congress could not, on that ground, undertake to regulate marriage and divorce.”
Northern Sec. Co. v. United States, 193 U.S. 197, 402 (1904) (Holmes, J., dissenting).
- “If when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the State, there is no difficulty in construing the instrument accordingly and not much in dealing with the statutes.”
Ohio ex rel. Popvisi v. Angler, 280 U.S. 379 (1930) (favoring state over federal jurisdiction in divorce suit by Romanian Vice-Consul).
- “[D]omestic relations . . . has long been regarded as a virtually exclusive province of the States.”
Sosna v. Iowa, 419 U.S. 393, 404 (1975) (upholding constitutionality of Iowa statute requiring that a petitioner for a divorce action be a resident of the state for one year prior to the filing of the petition).
- “Family relations are a traditional area of state concern.”
Moore v. Sims, 442 U.S. 415, 435 (1979) (finding that federal district court should have abstained pending state child abuse proceeding).
- “[T]he laws of marriage and domestic relations are concerns traditionally reserved to the states.”
Trammel v. United States, 445 U.S. 40, 49-50 (1980) (holding that apart from confidential communications, a witness spouse alone has the privilege to refuse to testify adversely and may be neither compelled to testify nor foreclosed from testifying).
- “[Domestic relations] has been left to the States from time immemorial, and not without good reason.”
Santosky v. Kramer, 455 U.S. 745, 770 (1982) (holding that due process requires that the state prove child neglect by at least a clear and convincing evidence standard before severing parental rights).
- Under the Government’s faulty reasoning, “Congress could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example.”
United States v. Lopez, 514 U.S. 549, 564 (1995). See also id., at 624 (Breyer, J., dissenting) (“To hold this statute constitutional is not to . . . hold that the Commerce Clause permits the Federal Government to . . . regulate ‘marriage, divorce, and child custody.’”)
- “Petitioners’ reasoning . . . will not limit Congress to regulating violence but may, as we suggested in Lopez, be applied equally as well to family law and other areas of traditional state regulation since the aggregate effect of marriage, divorce and childbearing on the national economy is undoubtedly significant.”
United States v. Morrison, 529 U.S. 598, 615-16 (2000) (finding civil remedy portion of the Violence Against Woman’s Act unconstitutional due to lack of Congressional authority).
- “One of the principal areas in which this Court has customarily declined to intervene is the realm of domestic relations.”
Elk Grove Unified School District v. Newdow, 542 U.S. 1, 12 (2004) (finding that non-custodial father of elementary school student lacked standing to bringing constitutional challenges to the recital of the pledge of the allegiance in the school).