

## **“DOMA”: Federal Discrimination Against Same-Sex Married Couples**

### **What is DOMA and Why Is It a Problem?**

The federal government historically has always stayed out of the marriage business – that is until, it looked like same-sex couples might start legally marrying. In 1996, when it seemed Hawaii would be the first state in the country to end the exclusion of same-sex couples from marriage, Congress passed, and President Clinton signed, the federal “Defense of Marriage Act” (DOMA), placing marriage discrimination against only one group of people into the federal laws for the first time ever.

DOMA has two parts. “Section 2” of DOMA says that states may disrespect the marriages of same-sex couples if they choose to do so as a matter of their own public policy. This is the part of DOMA most familiar to people, because it puts their marital status into jeopardy every time they cross state lines – whether for work, vacation, or because they relocated.

Yet, states have always had the power to decide what marriages to respect, as long as their decision is consistent with state and federal constitutional guarantees. For the federal government to go out of its way to affirm states’ ability to disrespect marriages of same-sex couples was essentially an invitation to states to do so.

In addition, “Section 3” of DOMA denies valuable federal rights and protections to married same-sex couples – simply because they are gay or lesbian. It limits “marriage” to one man and woman and “spouse” to a person of the opposite sex, for purposes of all of federal laws. These limitations on who counts as married directly impact more than 1,138 federal laws and programs in which marital status is a factor.

Historically, the federal government has always deferred to state law in determining marital status. But not so for states that license marriages for same-sex couples. Instead of acknowledging its inability to regulate marriage, the federal government has created a marriage policy that overrides the state’s determination of who is married – but only for same-sex couples. Section 3 effectively creates a system of first- and second-class marriages, where the former receive all federal legal protections, and same sex couples are denied all federal legal protections.

### ***Which federal rights and protections does Section 3 of DOMA deny to same-sex married couples?***

Federal law excludes legally married same-sex couples and their children from the biggest programs our government offers to support and protect families and denies them important federal rights and protections, including:

- The right to take time off from work to care for a seriously ill spouse through the Family Medical Leave Act; Access to all the benefits of a spouse’s health plan, without a tax penalty;

- Medicaid preventions against elder homelessness when one spouse goes into a nursing home;
- Social Security spousal and survivor benefits related to disability, care of a minor child, retirement, and death, which protect a family's economic security in old age, and upon disability or death
- The right to leave assets to your spouse – including the home you share together – without incurring a tax penalty;
- Joint tax filing and pooled deductions that can save families money;
- Retirement and death benefits for spouses of federal employees;
- Disability, dependency or death benefits for the spouses of veterans and public safety officers;
- The ability to sponsor a non-resident spouse for purposes of immigration.

All families deserve the support, security and protections the federal government provides. Yet, with Section 3 of DOMA, the federal government reaches into the state and divides legal marriages into two different classes – those worthy of federal rights and protections and those deemed unworthy.

### **What can I do to help defeat DOMA?**

You can support organizations like GLAD that are fighting to end this federal discrimination. You can lobby your congressional representatives for the repeal of DOMA. If you live in a state that does not allow same-sex couples to marry, you can support your local marriage equality organization. As the number of states that offer same-sex couples the protection of marriage and the number of married same-sex couples increase, so will the pressure to end the federal discrimination against same-sex married couples.

However, GLAD, along with other leading LGBT organizations, including HRC, Lambda Legal, and the ACLU, strongly discourages the filing of individual lawsuits challenging DOMA. Although GLAD believes that there are sound legal strategies to challenge this federal discrimination, poorly planned and timed lawsuits are likely to set the fight for marriage back. There are other ways to fight that are more likely to win.

In the meantime, if your marriage is not respected, we encourage you to call GLAD's Legal InfoLine at 800-455-GLAD (4523) to discuss your options. We also encourage all married same-sex couples to fill out one of our surveys at <http://www.glad.org/help/share-survey/>.

***If you would like information about LGBT or HIV legal issues, or need advice from an attorney who is knowledgeable and sensitive to these issues, please contact GLAD's Legal InfoLine at 800-455-GLAD (4523).***