

Members of Congress

Windsor

Virtually every feature of DOMA distinguishes it from routine “statutory definitions” and other line-drawing exercises. It was enacted without any genuine effort to discern a connection to a legitimate federal interest. It singles out married same-sex couples by one trait alone and denies them protection across the board. And a purpose for its enactment, clearly stated in the House Report and during floor debates, was moral disapproval of the minority group that it burdens.” (p. 12)

None of the arguments advanced in DOMA’s defense comes remotely close to justifying it. Thus, even if the Court does not apply heightened review, DOMA must be struck down. (p. 12)

Given the lack of grounding in any of the affected statutes or regulations, it is impossible to discern a rational connection between DOMA and any of the legitimate purposes that those laws are designed to achieve. (p. 18)

DOMA does not serve, but instead undermines, the federal laws and programs that it affects. (p. 18)

The goal of maximizing the financial well-being and independence of widows is not furthered by depriving Edie Windsor and others like her of the estate-tax exemption that other married Americans receive. (p. 19)

The arbitrary results of the many applications of DOMA illustrate that the statute lacks any rational relationship to the objectives of the laws and programs that it affects. (p. 20)

DOMA is also unlike most other Acts of Congress in another critical respect: A clearly stated purpose for its enactment was to express moral disapproval of a disfavored minority group. (p. 20)

[T]he evidence is clear ... that DOMA harms children raised in the households of married same-sex couples. (p.25)

DOMA undercuts Congress’s long-standing practice of deferring to the States on matters of family law. (p.27)

Before DOMA, Congress never found it necessary to override differences in state marriage rules. (p. 32)

Summary of Brief

Amici Curiae are 172 current members of the House of Representatives and 40 current Senators, including some who voted for DOMA in 1996 but now agree it is unconstitutional. They argue that laws that disadvantage gay people should not be assumed to be constitutional, in part because gay people lack meaningful political power, as evidenced by DOMA and subsequent efforts in Congress to ban marriage for same-sex couples altogether, and the failure to pass even basic nondiscrimination protections. They also argue that DOMA lacks any rational justification, and was intended to express disapproval of an unpopular minority group. As such, they argue, DOMA is unconstitutional.

Notable Quotes

“When Congress enacted DOMA, gay and lesbian couples could not marry anywhere in the world. Some States still criminalized same-sex relationships, inviting further discrimination against gay men and lesbians in employment, family relations, and housing. Gay men and lesbians were still often portrayed as mentally unstable, sexually promiscuous, and morally deficient. In short, it was a different world for gay men and lesbians, and many were understandably reluctant to speak openly about themselves or their families. A number of Members, like the constituents we serve, did not personally know many (if any) openly gay men or lesbians, and majority attitudes toward this minority group were often viscerally fearful and negative. ... While fear and distrust of families different from our own may explain why DOMA passed by comfortable majorities in 1996, it does not excuse the need for a constitutionally permissible justification for the law. (p. 2)

“As a result, when the question of same-sex marriage arose in 1996, reflexive beliefs and discomfort about same-sex relationships dominated congressional debate. From our perspective—including those of us who voted for DOMA—debate and passage of the law did not necessarily arise “from malice or hostile animus,” but instead from “insensitivity caused by simple want of careful, rational reflection or from some instinctive mechanism to guard against people who appear to be different in some respects from ourselves.” *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 374 (2001) (Kennedy, J., concurring). While fear and distrust of families different from our own may explain why DOMA passed by comfortable majorities in 1996, it does not excuse the need for a constitutionally permissible justification for the law.” (p. 3)

During the passage of DOMA, “some members questioned and objected to the unsupported and illogical assertions regarding same-sex couples and their families. But Congress failed to consult any family- or child-welfare experts on whether denying federal recognition to married gay and lesbian couples would serve child welfare or promote stability of American families. Of course, DOMA does neither of those things.” (p.15)

“As legislators who for years have supported legislation to repeal laws that disfavor gay men and lesbians and bills that would provide them critical protections against discrimination, we know first-hand the obstacles that gay men and lesbians face in the legislative process.” (p. 9)

“Since 1996, Congress has held at least nine hearings dedicated to exploring ways to prevent States from marrying gay and lesbian couples. Joint Resolutions to amend the Constitution to prohibit any State from marrying same-sex couples have been introduced in *every* Congress over the past two decades.” (p.7-8)

“We urge the Court to hold that sexual orientation is not a presumptively valid ground on which to legislate. A pervasive history of discrimination based on a trait that bears no relation to a person’s ability to contribute to society warrants heightened review.” (p. 11-12)

“Virtually every feature of DOMA distinguishes it from routine ‘statutory definitions and other line-drawing exercises.’ It was enacted without any genuine effort to discern a connection to a legitimate federal interest. It singles out married same-sex couples by one trait alone and denies them protection across the board. And a purpose for DOMA’s enactment, clearly stated in the House Report and during floor debates, was moral disapproval of the minority group that it burdens.” (p. 12)

“DOMA affects *thousands* of Federal statutes and regulatory materials covering virtually every subject within the federal sphere, including Social Security, housing, nutrition, veterans’ and military benefits, employment, immigration, and many other areas. Yet Congress did not study a single affected law or program or refer the bill to committees with jurisdiction over these and many other relevant subjects.” (p. 13)

“In fact, Congress did not even know which, or how many, federal laws were affected when it voted on the bill. It was not until nearly two months after DOMA passed the House, and just five days before it passed the Senate, that House Judiciary Chairman Henry Hyde even asked the GAO to analyze DOMA’s effects on federal laws and programs.” (p. 13)

“In fact, and as revealed by the only hearing ever held to explore the statute’s effect on American families—held fifteen years after the law’s enactment—DOMA does not serve, but instead undermines, the federal laws and programs that it affects.” (P. 18)

“For example, the purposes of the Social Security program are not served when denial of survivor benefits to a lesbian’s or a gay man’s surviving spouse leaves the spouse destitute even though both spouses paid into the Social Security system on the same terms as other citizens. The goal of maximizing the financial well-being and independence of widows is not furthered by depriving Edie Windsor and others like her of the estate-tax exemption that other married Americans receive. The policy of encouraging employers to provide family health benefits is not served either by denying to employers the tax deduction for providing such benefits to married gay and lesbian couples or by refusing to cover spouses of gay and lesbian federal employees. Our national security is undermined by denying spousal benefits to gay and lesbian servicemembers, especially during periods of armed conflict. Our veterans are dishonored when we deny them the right to have their spouses buried alongside them in our national cemeteries.” (p. 18-19)

Amici Curiae

Amici are 172 Members of the U.S. House of Representatives and 40 U.S. Senators. Some voted against the Defense of Marriage Act in 1992; others voted for it; still others were not yet in Congress when it was enacted. Now all *amici curiae* agree that Section 3 of is unconstitutional.