

*United States v. Windsor*  
United States Supreme Court  
Challenge to the so-called “Defense of Marriage Act”

Under Section 3 of the so-called “Defense of Marriage Act,” or DOMA, even if a same-sex couple is married under state law, the federal government must treat them as unmarried for all federal programs, such as family medical leave, social security survivor benefits, access to health care for a spouse and federal taxes. In [\*United States v. Windsor\*](#), the Supreme Court will decide whether Section 3 of DOMA is constitutional.

### Eddie Windsor’s Story

Eddie Windsor and Thea Spyer were together for 44 years. They became a couple in 1965, got engaged in 1967 and finally got married in 2007, after a very long engagement. A decade into their relationship, Thea was diagnosed with multiple sclerosis, which gradually paralyzed her. Eddie helped Thea manage as she went from using a cane, to crutches, to a manual wheelchair, to a motorized wheelchair that she could operate with her one working finger. When Thea died in 2009, she left all of her possessions to her spouse Eddie. But because of DOMA, Eddie was forced to pay more than \$363,000 in federal estate taxes. If Eddie and Thea had been a married straight couple, the estate’s tax bill would have been \$0.

### The Legal Challenge

Ms. Windsor sued the United States to get her money back. The Department of Justice decided that it could not defend the constitutionality of DOMA and has argued to the courts that DOMA violates the Constitution. Nevertheless, the United States continues to enforce DOMA against Eddie and hundreds of thousands of other married gay couples, which means Ms. Windsor hasn’t gotten her refund. A leadership group of the House of Representatives (called BLAG) has been defending DOMA in court. Two lower courts have ruled that DOMA violates the equal protection provisions of the United States Constitution.

### Eddie Windsor’s Legal Brief to the Supreme Court

Ms. Windsor’s brief, filed today, argues that DOMA violates the Constitution because it treats married gay couples differently than married straight couples but there is no logical reason for doing so. The brief makes two primary arguments.

- **Heightened scrutiny should apply to laws, like DOMA, that discriminate against gay people.** The *Windsor* ruling from the federal appeals court ruled that laws like DOMA that discriminate against gay people should be reviewed with “heightened scrutiny” by the courts. Under this standard, courts will presume that anti-gay discrimination by the government is unconstitutional and will require the government to have a very strong explanation for why it needs to treat gay people in a less favorable manner. Courts have usually applied a less rigorous standard that often allows the government to discriminate against lesbians and gay men. While DOMA should fail under any standard, if the Supreme Court adopts the heightened scrutiny standard, it would help eliminate anti-gay discrimination in many different contexts.
  - Sexual orientation meets all of the elements the Court has looked to when deciding whether other kinds of government discrimination should get heightened scrutiny:

- There is a long history of discrimination against gay people.
    - Sexual orientation isn't relevant to a person's ability to contribute to society.
    - Sexual orientation is a central part of people's identity that cannot be changed voluntarily and that people should not have to change in order to avoid discrimination.
    - Gay people are a minority and lack the ability to protect themselves from harm through the normal political process .
  - None of the reasons put forward by BLAG can pass heightened scrutiny
- **DOMA violates the Constitution on any level of review.** Even under lower level review, DOMA is unconstitutional because it does not rationally advance any legitimate government interest.
  - DOMA does not further any interest in "responsible procreation." BLAG says that DOMA makes sense because it will help ensure that straight couples get married before having children (noting that straight couples can have children "by accident," whereas gay couples cannot). But no straight couple is going to get married, or have children, simply because DOMA treats married *gay* couples as though they were unmarried. That makes no sense.
  - DOMA does not foster uniform treatment of federal benefits. Before DOMA, the federal government already had a uniform rule: it treated all married people the same. DOMA means that all married people are treated the same unless they're gay, in which case they're treated differently. That's not uniform treatment, that's anti-gay treatment.
  - BLAG's other justifications for DOMA (like "cost savings," "proceeding with caution," "dual sovereignty") identify general goals that may be desirable, but they don't explain why DOMA chose to achieve those goals by treating married gay couples differently than married straight couples.
  - To the extent that anyone is arguing that DOMA advances the "traditional definition of marriage" or promotes heterosexuality, those are not legitimate government interests and cannot justify DOMA under the Constitution.
  - The legislative history of DOMA makes plain that Congress passed DOMA based on fear of and stereotypes about gay people, rather than any legitimate government purpose. But the Constitution doesn't permit the government to pass a law just to disadvantage a politically unpopular group of people.

Ms. Windsor's Supreme Court brief on the merits issues can be found at [www.aclu.org/lgbt-rights/united-states-v-windsor-windsors-brief-merits](http://www.aclu.org/lgbt-rights/united-states-v-windsor-windsors-brief-merits). Ms. Windsor's Supreme Court brief on the jurisdictional questions raised by the Court can be found at [www.aclu.org/lgbt-rights/windsor-v-united-states-windsor-brief-jurisdiction](http://www.aclu.org/lgbt-rights/windsor-v-united-states-windsor-brief-jurisdiction).

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