

Defense of Marriage Act

President Bill Clinton signed the Defense of Marriage Act (DOMA)—which rejects federal recognition of gay and lesbian marriages—into law on September 21, 1996. While the act does not prohibit states from issuing same-sex marriage licenses, it set out to accomplish two key issues in regards to marriage. First it gave individual states the right not to recognize same-sex marriages performed in another state. The second key objective, which was determined to be unconstitutional by the Supreme Court in 2013, defined marriage under federal law as the legal union between one man and one woman. Lawmakers who supported the bill called it a confirmation of marriage as naturally understood under federal law, while critics argued that the bill violates a number of constitutional rights.

The act came in response to concerns over *Baehr v. Lewin*, a same-sex marriage case that reached the Hawaii Supreme Court in 1993. In its ruling, the Hawaii Supreme Court stated that a Hawaii law prohibiting same-sex marriage was unconstitutional and sent the case to a trial court in order to find out if the law could be upheld through compelling state interest. When the trial started in 1996, opponents of same-sex marriage feared that Hawaii might legalize the practice, thus forcing other states to legally acknowledge same-sex marriages carried out in Hawaii. This led to the passage of DOMA, which gay rights groups criticize as a violation of equal protection of the laws under the Fourteenth Amendment. Other opponents of DOMA say that it violates the Constitution's full faith and credit clause, which requires states to recognize the legal actions of other states.

Until 2013, several state and federal courts had upheld and struck down the law's constitutionality. By 2010, the majority of states had passed defense of marriage laws banning same-sex marriages, about a half dozen states were allowing same-sex marriage for residents of the state, and a few states were acknowledging same-sex marriages performed in other states. However, in 2011, DOMA began a path to the Supreme Court.

In 2011, the Barack Obama administration announced that it considered DOMA unconstitutional and would not defend it in court. On May 29, 2012, the First Circuit Court of Appeals in Boston agreed, ruling in *Gill v. Office of Personnel Management* that DOMA cannot be enforced. The case specifically challenged Section 3 of DOMA, which states that marriage is "only a legal union between one man and one woman." In its ruling, the First Circuit ruled that DOMA made a minority group unequal without justification for doing so. Specifically, the court pointed to the inability of legally married same-sex couples to file joint federal tax returns, collect Social Security survivor benefits, or receive health insurance and other benefits provided to spouses of federal employees.

The ruling applied only to states within the First Circuit until June 26, 2013, when the Supreme Court ruled in *United States v. Windsor* that Section 3 of DOMA was a violation of the Fifth Amendment and Fourteenth Amendment. In the majority opinion for the Court, Justice Anthony Kennedy wrote that "the liberty protected by the Fifth Amendment's Due Process Clause contains within it the prohibition against denying to any person the equal protection of the laws. . . . The class to which DOMA directs its restrictions and restraints are those persons who are joined in same-sex marriages made lawful by the State." In other words, the Court considered Section 3 a form of discrimination against a specific group. The Court ruled that Section 3 violated the Fifth and Fourteenth Amendments by denying state-recognized same-sex marriages the same federal benefits enjoyed by heterosexual couples. The Court also ruled that DOMA violated certain states' rights, since states have been tasked with creating and regulating marriage laws.

Part of the DOMA framework, however, remains in place. The Court did not rule on Section 2 of the law, which says that states do not have to recognize same-sex marriages performed in other states, so this portion of the law will remain intact.

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Further Reading

Chabot, Steve, ed. *Defense of Marriage Act: Hearing Before the Committee on the Judiciary, U.s. House of Representatives*. Darby, PA: Diane Publishing Company, 2004. ; Pinello, Daniel R. *America's Struggle for Same-Sex Marriage*. Cambridge, MA: Cambridge University Press, 2006; Smith, Alison M. "Same-sex marriages: legal issues (Defense of Marriage Act)" *Congressional Research Service Reports and Issue Briefs* June 1, 2006.

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