



November 2, 2011

The Honorable Patrick Leahy  
Chairman, Senate Judiciary Committee  
U.S. Senate  
Washington, D.C. 20510

The Honorable Charles Grassley  
Ranking Member, Senate Judiciary Committee  
U.S. Senate  
Washington, D.C. 20510

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**RE: ACLU Urges “YES” Vote for the Respect for Marriage Act (S. 598)  
and Rejection of ANY Weakening Amendments**

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters, and fifty-three affiliates nationwide, we are writing to thank the Senate Judiciary Committee for scheduling consideration of the Respect for Marriage Act (S. 598), and urge you, and all of the members of the Committee, to vote “YES” on this legislation and oppose any weakening amendments that may be offered.

The Respect for Marriage Act, which was introduced earlier this year by Senator Dianne Feinstein (D-CA) and currently has 30 cosponsors, would repeal the discriminatory, so-called Defense of Marriage Act (DOMA) in its entirety, as well as provide all married couples certainty that regardless of where they travel or move in the country, they will not be treated as strangers under federal law.

When DOMA (Public Law 104-199) was passed by Congress and signed into law in 1996, gay and lesbian couples could not legally marry in any state, and it was not until 2000 that Vermont made national headlines with its civil unions law. Today, gay and lesbian couples can legally marry in six states – Connecticut, Iowa, Massachusetts, New Hampshire, New York and Vermont – as well as in the District of Columbia. With the recent momentous legislative victory in New York extending the freedom to marry to lesbians and gay men, the number of Americans who enjoy this freedom jumped from nearly 16 million to 35 million. In addition, there are an estimated 18,000 legally married same-sex couples in California who married in 2008 prior to the passage of Proposition 8 and whose marriages are still recognized by the state. Maryland, New Mexico and Rhode Island legally recognize out-of-state-marriages of same-sex couples. Eleven additional states have relationship recognition laws

such as civil unions and domestic partnerships that, while falling short of marriage, afford gay and lesbian couples a measure of recognition and protections for their families.

It may be self-evident, but America is a much different country for same-sex couples than it was in 1996. A recent analysis of Census 2010 data from the Williams Institute at UCLA's School of Law estimated that nearly 132,000 same-sex couples in the U.S. identified as spouses. With greater numbers and greater visibility comes greater acceptance. A May 2011 Gallup poll found that a majority of Americans (53 percent) favored legalizing marriage for gay and lesbian couples. This poll is consistent with other recent national polls, including a March poll by the *Washington Post* and ABC News, which found majority support for gay and lesbian couples gaining the freedom to marry. The trend lines on this issue are striking and unmistakable.

As an indication of just how much has changed since 1996, both former Representative Bob Barr (R-GA), the congressional author of DOMA, and former President Bill Clinton have called for DOMA's repeal and passage of the Respect for Marriage Act. Former President Clinton said, "When the Defense of Marriage Act was passed, gay couples could not marry anywhere in the United States or the world for that matter. Thirteen years later, the fabric of our country has changed, and so should this policy."<sup>1</sup> Former Representative Barr remarked that the Respect for Marriage Act would "remove the federal government from involving itself in matters of defining 'marriage,' which historically and according to principles of federalism, are properly state matters and not federal."<sup>2</sup>

On July 20, the Senate Judiciary Committee held a landmark hearing on the impact of DOMA on gay and lesbian couples and their families. On the eve of the hearing, the Obama administration announced its support for passage of the Respect for Marriage Act. The hearing was particularly notable because it was the first to examine DOMA's impact on tens of thousands of Americans with a critical eye since the law was first enacted. Among those testifying was 77-year-old Ron Wallen of Indio, California. Earlier this year, Ron's husband and partner of 58 years, Tom Carrollo, died of leukemia. Despite the fact that Ron and Tom spent nearly their entire adult lives together and were legally married in California, Ron, as a result of DOMA, was denied something that often provides a critical lifeline for surviving widows and widowers – Social Security survivor benefits. As Ron stated in his written testimony to the Judiciary Committee –

The Survivor's Benefit would have done for me what it does for every other surviving spouse in America – ease the pain of the loss, help during a very difficult transition and allow time to make decisions and plan for my future alone. It is devastating to know that any married couple in the U.S., regardless of how long they were married, can depend on the Survivor's Benefit. Yet, I could not – after 58 years with my spouse – simply because we were two married men. This is unfair and unjust.<sup>3</sup>

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<sup>1</sup>The Respect for Marriage Act Garners Support of President Clinton and Former Rep. Bob Barr, DOMA's Original Author, [http://nadler.house.gov/index.php?option=com\\_content&task=view&id=1307&Itemid=115](http://nadler.house.gov/index.php?option=com_content&task=view&id=1307&Itemid=115) (September 2009 Press Release)

<sup>2</sup> *Id.*

<sup>3</sup> S. 598, *The Respect for Marriage Act: Assessing the Impact of DOMA on American Families Before the S. Comm. on the Judiciary*, 112th Cong. (2011) (statement of Ron Wallen).

The resulting monthly income loss that followed Tom's death, combined with the denial of Social Security survivor benefits, has forced Ron to "panic sell" the home he had shared with Tom. However, due to the current state of the real estate market around Palm Springs, he has had few interested prospects and no serious buyers to date, despite substantially lowering the price twice. The senseless discrimination of DOMA has taken an already difficult situation for a man who had just lost his partner of nearly six decades and made it far worse.

Sadly, Ron's example is hardly unique. While LGBT Americans have made many remarkable strides over the last 15 years, DOMA denies all legally married same-sex couples and their families each of the more than 1,100 federal benefits and protections afforded to opposite sex married couples, according to the non-partisan Government Accountability Office. Basic protections such as Social Security survivor benefits and Family and Medical Leave Act coverage are afforded to all married couples, except for the tens of thousands of legally married same-sex couples. This is discrimination based on sexual orientation plain and simple. DOMA causes these married couples and their families real and sometimes devastating harm each and every day.

Edith "Edie" Windsor and Thea Spyer shared their lives together as a couple in New York City for 44 years. They got engaged in 1967, a couple of years after becoming a couple, and were finally married in Canada in May 2007. Two years later, after living for decades with multiple sclerosis, which led to progressive paralysis, Thea passed away. When Thea died, the federal government, because of DOMA, refused to recognize their marriage and taxed Edie's inheritance from Thea as though they were strangers. Under federal tax law, a spouse who dies can leave her assets, including the family home, to the other spouse without incurring estate taxes. For the simple fact that Edie was married to woman instead of a man, she had to pay a \$363,000 federal estate tax that would have otherwise been \$0.

Ordinarily, whether a couple is married for federal purposes depends on whether they are considered married in their state. New York recognized Edie and Thea's marriage, but because of DOMA, the federal government refuses to treat married same-sex couples, like Edie and Thea, the same way as all other married couples. After decades together, including many years during which Edie helped Thea through her long battle with multiple sclerosis, it was devastating to Edie that the federal government refused to recognize their marriage.

Congress should repeal DOMA once and for all by passing the Respect for Marriage Act. Such a step would provide critically important federal protections for people like Ron Wallen and Edie Windsor who have lost their spouses after a lifetime together by providing federal recognition of their marriages that were already recognized by the states in which they were licensed.

The Respect for Marriage Act is federal legislation that would affect the federal government only. Nothing in the proposed Respect for Marriage Act would force a state to recognize a valid marriage performed by another jurisdiction, and nothing in it obligates any person, religious organization, locality or state to celebrate or license a marriage between two persons of the same sex. The Respect for Marriage Act would return the federal government to its historic role in deferring to states in determining who is married. Most importantly, this legislation would end the unconscionable denial of equal treatment under federal law to lawfully married same-sex

couples and their families.

A Congress that is genuinely concerned with the defense of marriage could do no better than to extend the 1,100 federal marriage benefits and protections to the tens of thousands of legally married same-sex couples and their families across the country. People like Ron Wallen and Edie Windsor who spent a committed lifetime with their spouses should not be punished by the federal government simply because of who they loved and shared their lives with. The ACLU urges you to support *all* married couples by voting “YES” on the Respect for Marriage Act (S. 598). For questions or comments, please contact Ian Thompson at (202) 715-0837 or [ithompson@dcaclu.org](mailto:ithompson@dcaclu.org).

Sincerely,



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