



July 20, 2011

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
U.S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
U.S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

LAURA W. MURPHY
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

RE: ACLU Statement for Judiciary Committee Hearing on “S. 598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families”

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 thank the Committee for holding this critically important hearing. The Defense of Marriage Act (DOMA) harms married gay and lesbian couples and their families in many ways and Congress needs to pass the Respect for Marriage Act (H.R. 1116 and S. 598). Since the first lawsuit for same-sex couples in 1971, the ACLU has been at the forefront of legal, legislative, and public education efforts to secure the freedom for same-sex couples to marry and to win legal recognition for lesbian, gay, bisexual and transgender (LGBT) relationships. Repealing DOMA through the passage of the Respect for Marriage Act would ensure that all legal marriages receive the respect they deserve 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 union law. Today, gay and lesbian couples can legally marry in five states – Connecticut, Iowa, Massachusetts, New Hampshire and Vermont – as well as in the District of Columbia. In a matter of days, gay and lesbian couples will be able to marry in New York, bringing the total number of states with the freedom to marry to six. With the momentous legislative victory in New York, the number of Americans who will enjoy the freedom to marry will jump 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 study from the Williams Institute at UCLA's School of Law estimated there are 50,000 to 80,000 legally-married same-sex couples in the U.S. 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.

While LGBT Americans have made many remarkable strides over the last 15 years, the discriminatory Defense of Marriage Act 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

These couples include people like 82-year-old ACLU client Edie Windsor. Edie 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.

Teresa Heck and Rebecca Andrews

Teresa Heck and Rebecca Andrews are a married couple in Iowa who have been together for 13 years. In April of this year, Rebecca was diagnosed with a serious form of ovarian cancer. Teresa, who works for the Iowa Department of Corrections, applied to take leave under the Family and Medical Leave Act (FMLA) to help care for Rebecca and ensure she made it to all of her doctors' appointments and surgeries.

The Department of Corrections denied Teresa's FMLA request to help care for her partner – something that other married couples would never have to worry about – claiming that DOMA prevents any legal recognition for the marriages of gay and lesbian couples, including the protections of FMLA. Because the Department of Corrections denied Teresa's FMLA request, she was forced to use her own personal vacation time to care for Rebecca. On two occasions, if Teresa had not used her vacation time to help see to Rebecca's medical needs, Rebecca likely would have died due to complications from cancer surgery. This devastating treatment of a legally-married couple facing an extremely difficult health crisis is a direct result of the senseless discrimination of DOMA.

Defend Marriage by Respecting *ALL* Legal Marriages

Congress should repeal DOMA once and for all by passing the Respect for Marriage Act (H.R. 1116 and S. 598). Such a step would provide critically important federal protections for married same-sex couples like Teresa and Rebecca by providing federal recognition of marriages that are already recognized by states. This legislation would repeal 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. The Respect for Marriage Act would return the federal government to its historic role in deferring to states in determining who is married.

The Respect for Marriage Act is federal legislation that affects the federal government only. Nothing in the proposed Respect for Marriage Act forces 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. This legislation would, however, end the unconscionable denial of equal treatment under federal law to lawfully married same-sex couples and their families.

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."¹ Former Representative Barr remarked that the Respect for

¹The Respect for Marriage Act Garner's 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 (September 2009 Press Release)

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.”²

The Respect for Marriage Act currently has the support of 118 members of the House and 27 Senators. 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 all 50,000 - 80,000 legally-married same-sex couples and their families across the country. Someone like Edie Windsor who spent a committed lifetime with her spouse and partner should not be punished by the federal government simply because of who she loved and spent her life with. We urge you to support *all* married couples by passing the Respect for Marriage Act (H.R. 1116 and S. 598).

For questions or comments, please contact Ian Thompson at (202) 715-0837 or ithompson@dcacclu.org.

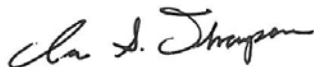
Sincerely,



Laura W. Murphy
Director, Washington Legislative Office



Christopher E. Anders
Senior Legislative Counsel



Ian S. Thompson
Legislative Representative

² *Id.*