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S. HRG. 112–120

S. 598, THE RESPECT FOR MARRIAGE ACT: ASSESSING THE IMPACT OF DOMA ON AMERICAN FAMILIES

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JULY 20, 2011

Serial No. J–112–35

Printed for the use of the Committee on the Judiciary

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S. 598, THE RESPECT FOR MARRIAGE ACT: ASSESSING THE IMPACT OF DOMA ON AMERICAN FAMILIES

WEDNESDAY, JULY 20, 2011

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
WASHINGTON, DC.

The Committee met, pursuant to notice, at 9:50 a.m., in room SH–216, Hart Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Schumer, Durbin, Whitehouse, Klobuchar, Franken, Coons, Blumenthal, Grassley, and Hatch.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Thank you all for coming. I should note that Senator Grassley and I talked; he is going to be a few minutes late. Originally, this was scheduled to begin at 10 o'clock, and his schedule was set accordingly. But we moved it up 15 minutes to accommodate the statements from our colleagues who are here.

I want to welcome everyone to the first ever Congressional hearing examining a bill to repeal the Defense of Marriage Act, DOMA. I called this hearing to assess the impact of DOMA on American families. I have heard from many Vermont families concerned about this important civil rights issue. Earlier this year, I was proud to join Senator Feinstein and others to introduce S. 598, The Respect for Marriage Act, a bill that would repeal DOMA, and restore the rights of all lawfully married couples. These American families deserve the same clarity, fairness, and security that other families in this great Nation enjoy.

As Chairman of this Committee, I have made civil rights a focal point of our agenda. But outside of the hearing room, I have often spoken with those who think the issue of civil rights is merely one for the history books. This is not so. There is still work to be done. The march toward equality must continue until all individuals and all families are both protected and respected equally under our laws.

In the 15 years since DOMA was enacted, five States, including my home State of Vermont, plus the District of Columbia, have provided the protections of marriage to committed same-sex couples. In just a few days, the State of New York will become the sixth State to recognize and protect same-sex marriage. But, unfortunately, the protections that these States provide to their married

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couples are overridden by the operation of DOMA. I am concerned that DOMA has served to create a tier of second-class families in States like Vermont. This runs counter to the values upon which America was founded and to the proud tradition we have in this country of moving toward a more inclusive society.

Next month, Marcelle and I will celebrate our 49th wedding anniversary. Our marriage is so fundamental to our lives that it is difficult for me to imagine how it would feel to have the Government refuse to acknowledge it. But, sadly, the effect of DOMA goes well beyond the harm to a family's dignity. The commitment of marriage leads all of us to want to protect and provide for our families. As we will hear today, DOMA has caused significant economic harm to some American families. This law has made it more difficult for some families to stay together. It has made it more difficult for some family members to take care of one another during bad health. And DOMA has even made it more difficult for some Americans to protect their families after they die.

I believe it is important that we encourage and sanction committed relationships. I also believe that we need to keep our Nation moving toward equality in our continuing efforts to form a more perfect union. I am proud to say that Vermont has led the Nation in this regard.

In 2000, Vermont took a crucial step when it became the first State in the Nation to allow civil unions for same-sex couples. Nine years later, Vermont went further to help sustain the relationships that fulfill our lives by becoming the first State to adopt same-sex marriage through the legislative process. I have been inspired by the inclusive example set by Vermont.

But I have also been moved by the words of Representative John Lewis, my dear friend from the other body. Like others, my position has evolved as States have acted to recognize same-sex marriage, and I applaud the President's decision to endorse the Respect for Marriage Act that Senator Feinstein and others and the rest of us have introduced. The President understands that this civil rights issue affects thousands of American families.

I want to support the repeal of DOMA because I do not want Vermont spouses, like Raquel Ardin and Lynda DeForge, to experience the continuing hardship that results from DOMA's operation. They live in North Hartland, Vermont. They have been together in a committed relationship for over three decades. They both served the country they love in the Navy, and both worked for the Postal Service. They moved to Lynda's parents' home in Montpelier, where I was born, to care for her mother who was living with Alzheimer's disease. Sadly, Raquel's degenerative arthritis forced her into retirement, and now she needs regular and painful treatment. Lynda was denied family medical leave to care for Raquel, her spouse, because DOMA does not recognize her Vermont marriage, which is a lawful Vermont marriage. This is just one example of an American family's unfair treatment because of DOMA.

Many other Vermont families have reached out to share their experiences. They include small business owners paying more in Federal taxes because they are not allowed to file as other married couples do. They are young couples that are taxed when their employer provides health insurance to their spouse. They are working

parents with teenage children navigating student loan forms. They are retirees planning for end-of-life care. These are powerful stories, and their stories, all of them, will be part of the hearing record.

The Respect for Marriage Act would allow all couples who are married under State law to be eligible for the same Federal protections afforded to every other lawfully married couple. Nothing in this bill would obligate any person, religious organization, State, or locality to perform a marriage between two persons of the same sex. Those prerogatives would remain. What would change, and must change, is the Federal Government's treatment of State-sanctioned marriage. The time has come for the Federal Government to recognize that these married couples deserve the same legal protections afforded to opposite-sex couples.

I thank the witnesses who are going to be here today. I know that those who were able to travel to the hearing room represent a small fraction of Americans impacted by DOMA, but I am glad that the Committee is going to webcast this so they can hear it. I want to point out this powerful book put together by a Vermont photographer, Linda Holingdale, called "Creating Civil Union: Opening Hearts and Minds" this book shows some of the families impacted by DOMA. I will not include the book in the record, becuase it is already published, but I encourage all Senators who are interested to take a look.

Senator Hatch, did you wish to say anything?

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Mr. Chairman, I want to welcome all of our good colleagues here. I appreciate all three of them. I will put my statement in the record.

Thank you.

[The prepared statement of Senator Hatch appears as a submissions for the record.]

Chairman LEAHY. Thank you.

Senator Feinstein, you are the sponsor, chief sponsor of this bill. Would you like to say something?

STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much. Very briefly, Mr. Chairman, let me thank you for your leadership because you have made this a historic day in holding the first hearing ever on this subject, so it is very special and very historic.

DOMA was wrong in 1996, and it is wrong today. Twenty-seven of my colleagues and myself have introduced the Respect for Marriage Act. Our bill is simple. It strikes DOMA from Federal law. I would like to make just a few quick points.

Family law has traditionally been the preserve of State law. It, therefore, varies from State to State. Marriage is the preserve of State law. Divorce is the preserve of State law. Adoption is the preserve of State law. And inheritance rights are the preserve of State law. The single exception is DOMA.

Chief Justice Rehnquist once wrote that family law "has been left to the States from time immemorial, and not without good reason." And he was right.

My second point is that same-sex couples live their lives like all married couples. They share financial expenses. They raise children together. They care for each other in good times and in bad, in sickness and in health, until death they do part. But DOMA denies these couples the rights and benefits to file joint Federal income taxes, to claim certain deductions, to receive spousal benefits under Social Security, to take unpaid leave under the Family and Medical Leave Act, to obtain the protections of the estate tax when a spouse passes and wants to leave his or her possessions to another.

I would like to thank Ron Wallen from Indio, California, as well as the other witnesses today for coming before the Committee, and I also want to thank the 16 Californians who submitted statements for the record, which, Mr. Chairman, I would ask to enter into the record.

Chairman LEAHY. Without objection.

[The statements appears as a submissions for the record.]

Senator FEINSTEIN. There are between 50,000 and 80,000 married same-sex couples in this country and 18,000 in my State of California. Many Californians impacted by DOMA could not come here today to testify. Let me give you one example.

Jill Johnson Young from Riverside could not fulfill one of her wife Linda's last wishes: that they be buried together at a veterans cemetery. This is not right.

Dr. Kevin Mack was tragically killed this past Thursday on his way to San Francisco General Hospital. He leaves behind his husband and two children, who now, because of DOMA, essentially lose rights that would have gone to a heterosexual couple.

For some reason, the Congress of the United States, when it passed DOMA in 1996, sought essentially to deny rights and benefits provided by the Federal Government to legally married same-sex couples. This must change. That is what this is all about. However long it takes, we will achieve it.

Thank you very much, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Our first witness is Congressman John Lewis, as we all know, a civil rights legend. I should also point out he is a close personal friend. He is often referred to as "the conscience of the Congress." Today Congressman Lewis continues to be, as he has been throughout his life, a powerful advocate of matters of equality.

Congressman Lewis, please go ahead, sir.

STATEMENT OF HON. JOHN LEWIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. LEWIS. Thank you very much, Mr. Chairman.

Chairman Leahy and other members of the Senate, I thank you for inviting me to testify before this Committee today. It is an honor to be here.

I am very happy to see the Judiciary Committee holding hearings to address the issue of marriage equality. But at the same time, Mr. Chairman, I must admit I find it unbelievable that in the

year 2011 there is still a need to hold hearings and debate whether or not a human being should be able to marry the one they love.

Now, I grew up in southern Alabama, outside of a little town called Troy. Throughout my entire childhood, I saw those signs that said "white restroom," "colored restroom," "white water fountain," "colored water fountain," "colored waiting," "white waiting," "white men," "colored men," "white women," "colored women." As a child, I tasted the bitter fruits of racism and discrimination, and I did not like it. And in 1996 when Congress passed the Defense of Marriage Act, the taste of that old bitter fruit filled my mouth once again.

The Defense of Marriage Act is a stain on our democracy. We must do away with this unjust, discriminatory law once and for all. It reminds me of another dark time in our Nation's history, the many years when States passed laws banning blacks and whites from marrying. We look back on that time now with disbelief, and one day we will look back on this period with that same sense of disbelief.

When people used to ask Dr. Martin Luther King, Jr. about interracial marriage, he would say, "Races do not fall in love and get married. Individuals fall in love and get married."

Marriage is a basic human right. No Government, Federal or State, should tell people they cannot be married. We should encourage people to love and not hate.

Human rights, civil rights, these are issues of dignity. Every human being walking this Earth, man or woman, gay or straight, is entitled to the same rights. It is in keeping with the American promise of life, liberty, and the pursuit of happiness. These words mean as much now as they did at the signing of the Declaration of Independence.

That is why Congress must not only repeal the Defense of Marriage Act, but work to ensure full marriage equality for all citizens, together with the privileges and benefits marriage provides. All across this Nation, same-sex couples are denied the very rights you and I enjoy. They are denied hospital visitation rights and they are denied equal rights and benefits in health insurance and pensions simply because the person they love happens to be of the same sex.

Even in States where they have achieved marriage equality, these unjust barriers remain, all because of the Defense of Marriage Act.

Unfortunately, too many of us are comfortable sitting on the sidelines while the Federal Government and State governments trample on the rights of our gay brothers and sisters. As elected officials, we are called to lead. We are called to be a headlight, and not a taillight. So I applaud the work of Congressman Nadler and Senator Feinstein, and I applaud the Senate Judiciary Committee for holding this hearing.

I urge this Committee, the Senate as a body, and the U.S. House of Representatives as a whole to pass the Respect for Marriage Act as soon as possible. Justice delayed is justice denied, and passing this bill is simply the right thing to do.

More than just our constituents, these are our brothers and sisters. We cannot turn our backs on them. We must join hands and work together to create a more perfect union. In the final analysis,

we are one people, one family, the American family, and we all live together in this one house, the American House.

Mr. Chairman, I thank you again for inviting me to testify.

Chairman LEAHY. Well, thank you very much, Congressman Lewis.

We have been joined by Senator Grassley, and we have a Congressman from his own State of Iowa, Congressman Steve King, who represents Iowa's 5th Congressional District. He is a member of the House Agriculture Committee, Small Business Committee, and the Judiciary Committee of the House, the other Judiciary Committee.

Congressman King, thank you for being here. Please go ahead, sir.

STATEMENT OF HON. STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. KING. Thank you, Mr. Chairman, and I want to thank Senator Grassley also for inviting me to testify here. It is an honor and privilege to testify before the Senate Judiciary Committee, and I testify, of course, in opposition to S. 598 and other efforts to repeal the Defense of Marriage Act.

The Defense of Marriage Act passed in 1996 by overwhelming bipartisan majorities and was signed into law by President Clinton. This law defined marriage as, and I quote, "a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." This law also clarified that States did not have to recognize same-sex marriages performed in other States.

Traditional marriage is a sacred institution and serves as the cornerstone of our society. We cannot afford to de-value it with legislation like S. 598, and we must oppose any effort that would diminish the definition of marriage. All of human experience points to one committed relationship between a man and a woman as the core building block to society. It takes a man and a woman to have children, and children are necessary for the next generation, and we need to provide to them, pass through to them the values of our civilization in the family.

The U.S. Supreme Court affirmed this in 1888 when it stated, and I quote, "Marriage is the foundation of the family and of society, without which there would be neither civilization nor progress." And in 1942, the Supreme Court said, "Marriage and procreation are fundamental to the very existence and survival of the race."

DOMA was passed in 1996 because Congress and President Clinton understood that civil society has an interest in maintaining and protecting the institution of heterosexual marriage because it has a deep and abiding interest in encouraging responsible procreation and child rearing. Now with today's proposed legislation, you are suggesting that the Government does not have the same interest to protect a marriage today as it did in 1996.

The other side argues that you cannot choose who you love and that a union between two men or two women is equal to that of one man and one woman. But these are the same arguments that

could be used to promote marriage between fathers and daughters, mothers and sons, or even polygamous relationships.

In 1998, I helped draft Iowa's Defense of Marriage Act that States, "Only a marriage between a male and a female is valid." In 2009, the Iowa Supreme Court issued a lawless decision in *Varnum* v. *Brien*. Seven Iowa Supreme Court Justices decided to legislate from the bench. They struck down Iowa's DOMA law, and to read their opinion brings one to the conclusion that these justices believe they have the authority to find the Constitution itself unconstitutional. They even went so far as to say that rights to same-sex marriage "were at one time unimagined." When Iowans went to polls on November 2, 2010, they sent a message to the Supreme Court of Iowa. They rejected the *Varnum* decision and historically ousted all three justices who were up for retention. That included Chief Justice Marsha Ternus. Never in the history of Iowa had the voters ousted a single Supreme Court justice let alone the three that were up for retention votes last November.

In fact, every single time the American people have had the opportunity to vote on the definition of marriage, 31 out of 31 times they have affirmed that marriage is and should remain the union of a husband and a wife, and 30 States currently have constitutional amendments to define marriage between one man and one woman, and Maine passed an initiative to overturn a same-sex marriage bill.

Despite the clear will of the people, we have legislation like S. 598 before us today. We also have the President saying that DOMA is unconstitutional, despite no court ever reaching that conclusion. President Obama has also directed the Justice Department to stop defending the constitutionality of this law. It is not the role of the executive branch to determine what is or is not constitutional. It is the role of the executive branch to execute and uphold the laws that Congress passed.

Now, I understand that yesterday President Obama announced that he would support the repeal of DOMA. It is his domain to take such a position. But contrary to that position, I think it is clear that the will of the American people to maintain, protect, and uphold the definition of marriage between one man and one woman is there. This is good for families, good for society, and good for Government.

I would quickly add, Mr. Chairman, a couple of points about civil rights. Title VII of the Civil Rights Act says "protection for race, color, religion, sex, national origin." Those, except for the constitutional protection of religion, are immutable characteristics. Those characteristics that are immutable should be injected into the discussion, and a marriage license is offered because that is a permit to do that which is otherwise illegal. It is not a right to get married. That is why States regulate it by licensing. They want to encourage marriage.

Thank you. I appreciate your attention and I yield back.

Chairman LEAHY. Thank you very much, Congressman King.

Congressman Nadler is the author of the Respect for Marriage Act and lead sponsor of the companion bill in the House. He is also the lead House sponsor of the Uniting American Families Act, which we have also talked about in this Committee.

Congressman Nadler, thank you for coming across the divide and joining us here. Please go ahead, sir.

STATEMENT OF HON. JERROLD NADLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. NADLER. Well, thank you, Mr. Chairman, for holding this hearing and for your leadership on this issue. I also want to thank our colleague, the senior Senator from California, Senator Feinstein, for her leadership in introducing the Respect for Marriage Act in the Senate earlier this year along with the Chairman and with our outstanding junior Senator from New York, Senator Gillibrand.

I am thrilled to be here today as the author and lead sponsor of the Respect for Marriage Act, which now enjoys the support of 119 cosponsors in the House. Just yesterday, President Obama announced his support for the bill, and I applaud his leadership on the issue as well.

When Congress passed DOMA in 1996, it was not yet possible for a gay or lesbian couple to marry anywhere in the world. Fifteen years later, much has changed. Six States and the District of Columbia now include gay and lesbian couples in their State marriage laws, and there are an estimated 80,000 gay and lesbian couples married legally in this country.

As a result, and as former stereotypes about lesbians, gay men, and their relationships have fallen away, public understanding and opinion on this issue has shifted dramatically. While 75 percent of the public opposed allowing gay and lesbian couples to marry when Congress enacted DOMA, a majority of Americans now support marriage equality. Once viewed as a fiercely partisan issue, most individuals under age 45 who identify as Republican now support equal responsibilities and rights for gay and lesbian couples. Recently, in my home State, Republican and Democratic lawmakers joined forces and voted to include gay and lesbian New Yorkers in our State marriage laws, and they will start getting married legally in New York on Sunday.

This shift in understanding and opinion now makes clear what should have been apparent in 1996: the refusal to recognize the legal marriages of a category of our citizens based on their sexual orientation is unjustifiable. Time and experience have eroded the legal and factual foundations used to support DOMA's passage, and meaningful Congressional examination of this law is long overdue.

Some of Congress' reasons for DOMA have now been disavowed, most notably the claim that Congress can or should use the force of law to express moral disapproval of gay and lesbian Americans. It is no longer credible to claim that most Americans hold this view; and, of course, while once believed a legitimate reason for the law, it is now, since *Lawrence* v. *Texas*, reason enough to declare it invalid.

DOMA's supporters still claim that the law should survive and argue primarily that DOMA serves a legitimate interest in protecting the welfare of children by promoting a so-called optimal family structure—one that consists of a married opposite-sex couple raising their biological children. But there is no credible support for the notion that children are better off with opposite-sex parents or

that married gay and lesbian parents do not provide an equally loving, supportive, and wholesome environment. Any legitimate interest in children demands that the children of married lesbian and gay couples also receive the advantages that flow from equal Federal recognition of their parents' State marriages. No legitimate Federal interest in the welfare of children is ever advanced by withholding protection from some children based on a desire to express moral disapproval of their parents. And it defies common sense to claim that it is necessary to harm or exclude the children of married same-sex couples in order somehow to protect the children of opposite-sex couples.

Nor is it accurate to claim that Congress' only interest in marriage is in its children. Congress routinely allocates Federal obligations and benefits based on marital status and often does so to promote the welfare and security of these adults. These interests are not possibly served by DOMA.

While no legitimate Federal interest is served by this law, DOMA unquestionably causes harm, as we will hear from the married gay and lesbian couples who have joined us today. These couples pay taxes, serve their communities, struggle to balance work and family, raise children, and care for aging parents. They have undertaken the serious public and legal pledge to care for and support each other and their families that civil marriage entails. They deserve equal treatment from the Federal Government; in fact, the Constitution demands it and the Respect for Marriage Act would provide it.

The Respect for Marriage Act honors the greatest traditions of this Nation. The bill does not define marriage but, instead, restores our practice of respecting all State-sanctioned marriages for purposes of Federal law while allowing each State to determine its own marriage laws.

Unlike DOMA, the Respect for Marriage Act protects States' rights. Though each State now sets its own marriage law, DOMA currently prevents the Federal Government from treating all States' marriages equally. The Respect for Marriage Act would restore equal respect for the marriages of every State.

The Respect for Marriage Act also honors America's highest traditions of religious freedom. Religious views on marriage unquestionably differ, with some religions opposing and others solemnizing marriages for lesbian and gay couples. The Respect for Marriage Act allows this diversity to flourish, leaving every religion free to marry the couples it chooses without Government interference.

In authoring this bill, I worked closely with family law experts to ensure that the Federal Government once again works cooperatively with the States to support and stabilize American families. I am confident the bill strikes the right balance, and I look forward to working with all of you to ensure its passage.

I again thank you for holding this hearing.

Chairman LEAHY. Well, thank you, Congressman Nadler. I know that the House has both debates and votes scheduled, so my intention would be, if there are no questions, to allow our three House members to go back to the other body, and then I would yield to Senator Grassley, who did not have a chance to make his opening

statement because we changed the schedule. I would yield to him for that. But I thank all three of you for being here. I know, especially this week, how hectic a schedule it is on both sides. I appreciate you taking the time to come here. Thank you.

Senator Grassley.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Mr. Chairman, thank you for respecting my lateness of arrival and this courtesy.

The bill before us today is entitled "The Respect for Marriage Act." George Orwell would have marveled at the name. A bill to restore marriage—would restore marriage as it has been known as between one man and one woman. That is the view of marriage that I support. This bill would undermine not restore marriage by repealing the Defense of Marriage Act.

The Defense of Marriage Act was enacted in 1996, and just think of the vote by which it passed the U.S. Senate: 85–14. We do not often get votes of 85–14 in the U.S. Senate on controversial pieces of legislation.

Unlike a bill in which one member of a party supports a partisan bill of the other party, which sometimes passed for bipartisanship around here, this was truly a bipartisan bill, as evidenced by the 85–14 vote. President Clinton signed it into law. Even President Obama ran for election on a platform of support for traditional marriage. Until yesterday, he was a supporter of DOMA as well.

One of the witnesses before us today says that DOMA was passed for only one reason: "to express disapproval of gay and lesbian people." I know this to be false. Senators at the time, such as Biden, Harkin, Kohl, or even you, Mr. Chairman, and Representatives at the time like Representatives Schumer and Durbin, as they were members of the House at that time, did not support DOMA to express disapproval of gay and lesbian people, and neither did I.

Marriage is an institution that serves the same public purpose all over the world: to foster unions that can result in procreation. It creates incentives for husbands and wives to support each other and their children. It exists more to benefit children than adults, although many marriages do not involve children. Societies all over the world recognize the numerous reasons to extend special recognition to traditional marriage.

I never thought that I would have to ever defend traditional marriage. It has been the foundation of societies for 6,000 years, not only here but around the world, and it is what civilizations have been built on.

Support for traditional marriage cannot be viewed in a vacuum. Over the last 50 years, marriage has changed very dramatically. Perhaps the divorce laws, inheritance laws, and criminal laws of that time needed reform. Like many Members of Congress, I believe in federalism. I do not support the rights of the State—I do support the rights of States to make changes in marriage if they choose. But I also believe that a State that changes its definition of marriage should not be able to impose that change on sister States or the Federal Government.

Section 2 of DOMA adds a statutory enhancement to State authority under the Full Faith and Credit Clause of Article IV, Section 1 of the Constitution to maintain their own definitions of marriage. In addition, same-sex couples are not the only couples who face the issues that we are going to hear about today from our witnesses. Unmarried heterosexual couples, siblings, and friends who live together all can face the same problem, some of which can be addressed through other means than this particular legislation, and legitimately so.

I would like to note that one of our witnesses describes the serious threats that were made against ordinary citizens who exercised their First Amendment rights to petition the Government for redress of grievances when California judges forced that State to adopt same-sex marriage. The minority very much hoped to call a witness today at this hearing to testify in support of DOMA. I am sure she would have done an excellent job. She declined, however, citing as one reason the threats and intimidation that have been leveled against not only her but her family as a result of her public support of DOMA. She will continue to write on this subject but will no longer speak publicly. This chilling of the First Amendment rights is unacceptable.

There are good people of good faith on both sides of this question. They should seek to persuade each other through logic and factual evidence. They should not resort to threats of violence or seek to silence their opponents. And I say the same thing for people that want to take bad action against people that are gay and lesbian.

DOMA is a constitutional law, but it is subject to constitutional attack. As one of today's witnesses shows, the Department of Justice has not performed its constitutional duties to take care that laws be faithfully executed during the course of litigation involving DOMA. The Department recently argued in another case that the courts should rely on unpassed bills in deciding the legality of Government action. This is a ridiculous argument, one which courts have never accepted.

The rule of law requires rulings based on actual laws, not on policy preferences. The Obama administration lost that argument in that other case called the Leal case, although, regrettably, four activist judges agreed that somehow they ought to make a decision on the fact that Congress might pass a law as opposed to what the law actually is. Neither the administration nor any judge should rely on an aunpassed bill, S. 598, arguing or deciding the constitutionality of DOMA. Nor should the administration or any judge accept the argument the Justice Department made in the Leal case that there is any legal significance to the mere introduction of a bill, even if it is strongly supported by the administration. Nor should the administration nor any judge be of the erroneous opinion that this Congress will pass S. 598.

Thank you very much, Chairman.

Chairman LEAHY. Thank you. Of course, I would note in the other case you are referring to, we do have treaty obligations, that any time we enter a treaty it does become the law of the land.

Senator GRASSLEY. Well, that is the Supremacy of the Law Clause that I take an oath to uphold, so I agree with you on that.

Chairman LEAHY. And as each one of us has had to at one time or another, when we have had a citizen from our State is being held by authorities in another country, we have argued they should have the right to have somebody from our embassy speak to them and advise them of their rights. Of course, in that case the argument was we want—if we ask other countries to do that for our citizens, they ought to have the same rights in ours.

But, in any event, I would ask the staff if they would change the names on here, and we will call up the next panel. We will call up Ron Wallen, Thomas Minnery, Andrew Sorbo, and Susan Murray, and before we start, I will—we will hear the testimony from each of them, and then we will open it up to questions.

I should also note in the audience we are pleased to have Senator Gillibrand. As a couple of the witnesses have already noted, she is a strong supporter of this legislation and has worked with us and worked very hard for its passage, so I am glad to have you here, Senator.

The first witness we will hear from is Ron Wallen. He is a resident of Indio, California. He married Tom Carrollo, his partner of 55 years, in June of 2008.

Mr. Wallen, please go ahead, sir. And, incidentally, I should note for all witnesses, your whole statement will be placed in the record, and once you have the transcript—you will get a copy of the transcript, and if you find that you should have added this line or that line, you will have a chance to do that. We want as complete a record as we can have.

Please go ahead, Mr. Wallen.

STATEMENT OF RON WALLEN, INDIO, CALIFORNIA

Mr. WALLEN. Thank you, Chairman Leahy and members of the Senate Judiciary Committee, for inviting me to testify at this important hearing today. I want to especially thank my Senator, Senator Feinstein, for introducing the Respect for Marriage Act. And I am honored and appreciate the opportunity to tell my story.

My name is Ron Wallen. I am 77 years old, and I live in Indio, California.

Four months ago, Tom Carrollo, my husband and partner of 58 years, died of leukemia. Tom and I first met back in 1953 when Tom was 23 and I was 19. And from the first day, we enjoyed a sense of togetherness which never weakened in both good times and bad. Tom suffered a massive heart attack in 1978. On doctor's orders, we changed our lives, which also resulted in diminished income for us both. And for the next 33 years, our very ordinary life was happily spent together surrounded by friends and family until Tom's last illness.

On June 24, 2008, we were among the lucky couples in California to stand before family and friends and legally marry the one person we loved above all others. It was a wonderful day, a day of pure joy. And as ingrained as our love for each other was, we were still surprised by the amount of emotion that came to us when the words "I now pronounce married for life" were spoken. Imagine, after 55 years together, the two of us were blubbering on our wedding day.

But even on the day we vowed in sickness and in health, we were already facing the worst because Tom had been diagnosed with lymphoma, which later morphed into leukemia. Tom's illness was 4 years of pure hell, with more hospitalizations than I can count using both hands and feet. Not a month went by that I was not rushing him to the emergency room. But we were in it together. Tom did not have leukemia. We had leukemia. And as rotten as those 4 years were, they were made more bearable because we had each other for comfort and love and because we were married.

Since Tom died on March 8, I miss him terribly. And beyond the emptiness caused by the loss of the man I have spent my entire adult life with, my life has been thrown into financial turmoil because of DOMA.

Like a lot of retirees, we took a big financial hit in the stock market these past couple of years. But between Tom's Social Security benefit of $1,850, his small private pension of $300, and my Social Security check, which was $902, we had a combined steady monthly income of $3,050, which kept a roof over our heads. The rest of our living expenses were covered by the income from our diminished investments—not sumptuous, but enough.

As you know, for married couples in this country, Social Security allows a widow or widower to either claim their own benefit or the benefit amount of their deceased spouse, whichever is higher. That Survivor's Benefit is often what allows the widow or widower to stay in their home at a very difficult time. But DOMA says that gay and lesbian married couples cannot get that same treatment. Therefore, my reliable income went from $3,050 down to $900 a month. The monthly mortgage on my home is $2,078 plus associated HOA and other costs. You do not have to be an accountant to see that from the day Tom passed, I have had to worry about how to pay that mortgage.

That additional benefit would have done for me what it does for every other surviving spouse in America: ease the pain of loss, help during a very difficult transition, and allow time to make decisions and plan for my future alone. Yet I could not depend on this after 58 years with my spouse simply because of DOMA. This is unfair. This is unjust.

Many widows and widowers downsize and make adjustments after the loss of their spouse. Downsizing is one thing, but panic sale of a home which is underwater is quite another. After a lifetime of being a productive citizen, I am facing financial chaos. Tom and I played by the rules as we pursued our own version of the American DREAM. We served our country; we paid our taxes; we volunteered; we maintained our home; we got married as soon as we were legally able to do so. And yet as I face a future without my spouse of 58 years, it is hard to accept that it is the Federal Government that is throwing me out of my own home.

You can fix this problem by repealing DOMA. It is a discriminatory law against gay and lesbian couples who have assumed the responsibilities of marriage. All we ask is to be treated fairly, just like other loving and committed married couples. I beg you to repeal this law and allow all married couples the same protections.

"I'd like to add one more thought: Although I am happy to tell my personal sad story (of which there must be many thousands more,) it should not have been necessary. Basic application of the civil rights, privileges, and responsibilities which should be granted to all Americans, should, of and by themselves illustrate how wrong the Defense of Marriage Act is; how important it is to repeal it; and how it should never have been allowed to be passed in the first place. This should be obvious to all fair minded persons.

Again, thank you for inviting me to testify today, and I will be happy to answer any questions you may have.

[The prepared statement of Mr. Wallen appears as a submissions for the record.]

Chairman LEAHY. Thank you very much, Mr. Wallen.

Our next witness is Thomas Minnery, senior vice president of Focus on the Family and executive director of its lobbying affiliate, Citizen Link. And Mr. Minnery reminded me that years and years and years and years ago, when we were both younger, he actually covered me for one of the newspapers in Vermont.

Go ahead, Mr. Minnery. Is your microphone on? The little red light will go on.

STATEMENT OF THOMAS MINNERY, SENIOR VICE PRESIDENT FOR PUBLIC POLICY, FOCUS ON THE FAMILY, COLORADO SPRINGS, COLORADO

Mr. MINNERY. It is now. Thank you. And, Mr. Wallen, my heart goes out to you. My organization is very large. We do a lot of counseling for families to help them thrive in a difficult and complex society. We have resources for couples to build healthy marriages that reflect God's design and for parents to raise their children according to morals and values grounded in biblical principles. We have 13 international offices. Our radio programs are broadcast in 26 languages to more than 230 million people around the world each day, and, Mr. Wallen, we have resources that I believe can help you even in your situation, and if you would permit us, we would love to try and be helpful to you.

Mr. Chairman, and members of the Committee, I believe I represent two groups of people who have not been invited here today to testify. The first group of people are those many voters who have unapologetically endorsed the traditional definition of marriage in State ballot initiatives or referenda. Typically, these votes pass with overwhelming majorities, an average of 67 percent majority in each of the 31 States where voters have had a chance to register their opinions about it. Additionally, 15 more States have passed some sort of statute, bringing the total to 44 States that have decided in one form or another, usually by large, overwhelming majorities, that marriage is between one man and one woman.

One of the bill's most serious impacts, the bill we are discussing today, has been largely ignored. It is the repeal of Section 2 of DOMA. That is the section that protects States from being forced to recognize out-of-State same-sex marriages.

The bill's revocation of Section 2 is an attempt to undermine the public policies, laws, and Constitutions of the vast majority of States for whom traditional marriage is a settled issue. The only possible reason for doing so is to place the issue of marriage once

again into the hands of judges and to take the issue of marriage out of the hands of people who have already spoken so clearly in so many States. Should DOMA be repealed, parents in those States which have registered their approval of traditional marriages will be faced with the problems of coping with marriages of which they overwhelmingly disapprove. We need look no further than Massachusetts, the first State to legalize same-sex marriage, to understand what I am talking about. It is this forced political correctness that brooks no diversity of opinion that is the problem here.

National Public Radio featured an interview with a Massachusetts eighth-grade teacher, Deb Allen, who was exuberant about her new-found freedom to explicitly discuss homosexual behavior with kids after the law passed in Massachusetts. "In my mind, I know that, OK, this is legal now," she said. "If somebody wants to challenge me, I will say, 'Give me a break. It is legal now." That is what she said to NPR. The NPR reporter went on to explain that the teacher now discusses "gay sex" with students "thoroughly and explicitly with a chart"—in the eighth grade.

I feel like I am also representing parents who have not been invited here to speak who have a sincerely held religious view that marriage is between one man and one woman, and they want to protect their young children against other views.

Robb and Robin Wirthlin in 2006 had their 7-year-old son, Joey, come home and tell them about a book his teacher had read to the first grade class expounding on same-sex relationships. At first, they thought that he was mistaken. They requested that the school inform them about such presentations, and they were turned down.

Another couple, David and Tonia Parker, had an even worse result. When they questioned the teaching of explicit same-sex issues to their young son, Mr. Parker found himself in jail. "I am just trying to be a good dad," Parker said after his arraignment. The family acknowledged they were Christians attempting to follow their faith. "We are not intolerant," said his wife. "We love all people. That is part of our faith."

But, see, the judge who ruled on their case, the case of the Parkers and the Wirthlins, has this to say: "The sooner children are exposed to those topics of same-sex relationships, the better it is. It is difficult to change attitudes and stereotypes after they have developed." Excuse me? Attitudes and stereotypes? These are the sincerely held religious views of their parents, and the judge takes it upon himself to believe that these views, sincerely held, should be erased from the minds of the children.

Mr. Chairman, that is my opening statement. I would be pleased to take questions.

[The prepared statement of Mr. Minnery appears as a submissions for the record.]

Chairman LEAHY. Well, thank you very much, Mr. Minnery, and it is good to see you again.

Our next witness is Andrew Sorbo, a resident of Berlin—how do you pronounce it in Connecticut?

Mr. SORBO. Berlin.

Chairman LEAHY. The same way we do in Vermont.

[Laughter.]

Chairman LEAHY. We have a Berlin, Vermont, for those who are wondering. Andrew and his late spouse, Colin Atterbury, shared a life for nearly 30 years. They were joined in a civil union in Vermont in 2004. That is back when Vermont had civil unions before they had same-sex marriage. They were legally married in Connecticut in 2009.

Please go ahead, sir.

STATEMENT OF ANDREW SORBO, BERLIN, CONNECTICUT

Mr. SORBO. Thank you, Senator Leahy, Senator Feinstein, and Senator Blumenthal, for inviting me to testify before this Committee.

My name is Andrew Sorbo. I am 64 years old and a resident of Berlin, Connecticut. I spent 35 years as a teacher and principal in the Catholic and public schools of Rhode Island and Connecticut before retiring in 2005. I am here today to talk about how I have been hurt by the Defense of Marriage Act after I lost my partner of nearly 30 years, the love of my life and my legal spouse, Dr. Colin Atterbury, a professor of medicine at Yale University and the chief of staff of the West Haven, Connecticut, Veterans Administration Medical Center.

As a young man of 23, I had mistakenly married, separated, and divorced, and expected to spend the rest of my life alone and my nights in quiet desperation. But then to my everlasting surprise, on July 29, 1979, on a visit to New York City, I met Colin. From our first conversation, we knew that we had found our soul mates and our partners for life. Although we never expected it to happen in our lifetime, we had the opportunity to legalize our relationship with a civil and holy union in Vermont on the occasion of our 25th anniversary.

A year later, I retired and shortly afterward Colin was diagnosed with pancreatic cancer. For over 3 years, he battled the cancer with stoicism and courage, and I nursed him with a strength I was not aware that I possessed. In January 2009, we were married by two minister friends in a subdued ceremony in the living room of our home in Cheshire, Connecticut. Colin died 4 months later, just shy of our 30th anniversary.

Even though we had done everything we could to legalize our relationship and protect ourselves financially, DOMA hung over us like a dark and ominous cloud. The financial impact due to DOMA came swiftly after Colin's death. His Federal pension checks stopped, so our household income declined by 80 percent. DOMA did not allow Colin the same legal right which my other brother-in-law possessed when he retired—that is, the opportunity to accept a smaller monthly pension to allow his spouse, my sister, to inherit his pension and maintain her financial security in the event of his death. This year, I had to sell our house in Cheshire and downsize to a condominium. Leaving our home of 18 years is a moment I will never forget.

Colin was also denied the right to include me in his medical insurance plan. When I retired as a teacher in 2005, I had no alternative except to pay for my insurance coverage in full at a much higher rate than as a spouse. Last year, my insurance payments consumed almost one-third of my $24,000 teacher pension. In addi-

tion, DOMA forced my financial planner to create a retirement plan much less advantageous for me than if I had been Colin's female spouse.

Another consequence of DOMA is that, unlike my mother when my stepfather died, I was unable to inherit my spouse's Social Security benefits.

DOMA also interfered with our ability to file joint State income tax returns even though we were legally married in Connecticut. That process is prohibitively complex for same-sex spouses. Even after our civil union in 2004, Colin and I were not allowed to file joint Federal income tax returns, a situation that my sister and her husband never faced. After Colin died, I was forced to file a separate Federal return for him, and separating our finances at that point was exceedingly difficult.

The damage that DOMA inflicts every day on the lives of decent Americans is not only financial but also psychological as well. The toll on our belief in the justice and fairness of our society is incalculable. Were Colin sitting by my side today, Colin would implore you to remove this insult to our dignity, to respect us as much as you do our heterosexual countrymen, and to rescind DOMA. Colin would ask that you restore the economic justice that DOMA denies us. He would remind you that we are your brothers and your sisters, your aunts and your uncles, your cousins and your friends, your work mates and your neighbors, your sons and your daughters, and, yes, even sometimes your moms and your dads. And then Colin, the doctor who was a philosopher, would stop to ruminate because he was a thoughtful man. He would lower his voice solemnly. He would look every one of you in the eye before saying, "Everybody deserves equal treatment."

Thank you, Senators, for allowing me to testify today.

[The prepared statement of Mr. Sorbo appears as a submissions for the record.]

Chairman LEAHY. Thank you very much, Mr. Sorbo.

Our last witness on this panel is Susan Murray. Ms. Murray lives with her wife, Karen, in Ferrisburgh, Vermont. She is a partner in the law firm of Langrock, Sperry & Wool in Burlington, Vermont. That is one of the leading law firms of our State. She specializes in family law, appeals, estate planning, and civil rights. She was co-counsel in *Baker* v. *State of Vermont*, which established civil unions in Vermont.

Ms. Murray, please go ahead.

STATEMENT OF SUSAN M. MURRAY, FERRISBURGH, VERMONT

Ms. MURRAY. Thank you, Chairman Leahy, my fellow Vermonter, and thank you, Senator Grassley, and the other members of the Committee, for allowing me to testify here today.

I am the oldest of seven children. I came from a good Catholic family, and I had a great childhood. My mom and dad were completely devoted to us kids. But they were also devoted to each other. They were happily married for 51 years before my dad died 6 years ago. Sorry. So that was my model of a successful marriage. That is what I wanted for myself.

When I realized as a young adult that I was gay, I did not think that I would ever have the opportunity to have that same kind of

a life that my parents had. And then I met Karen Hibbard, and I consider myself blessed to have found the person that I wanted to be with for the rest of my life.

We have been together for more than 25 years now, and as soon as the State of Vermont—as soon as the Vermont Legislature said we could, we got married. We promised to continue to love one another and to be with each other through thick and thin for the rest of our lives.

By now, our lives are completely intertwined, both financially and otherwise. But we still cannot file join Federal tax returns, and that means we have to pay more in taxes.

There was a time a few years ago when I was very sick and I was in the hospital for 4 days. Karen stayed with me every day and every night until I got better. Luckily, I had health insurance through Karen's work, so that helped pay the medical bills. But unlike other married coworkers that she works with, Karen has to pay tax on the value of that health insurance coverage for me. That value is about $6,200 a year.

Now, Senators, when we met, Karen had blond hair and I had black hair, and now we both have gray hair. And as we get older, we are starting to worry about the financial difficulties that we may face because the Social Security laws do not provide us the full benefits that other couples have.

All of these things, large and small, add up over time, and it is like waves hitting the sand on a beach, over and over. They have the effect of eroding our financial security. It is trying to erode things that we have worked so hard to build up over time.

As Senator Leahy pointed out, I am a lawyer by profession. I do a lot of family law work and a lot of estate planning work, and in that role I have seen firsthand the ways in which the lack of Federal protections hurt same-sex families and the children they are raising. So I would like to give you just two examples here today.

I once represented a woman named Carey. She was a blue-collar worker. She worked in a big-box store. She and her partner, Erin, really struggled to support themselves and Erin's two children that Erin had from a prior marriage. At one point Carey went to her employer and tried to get health insurance for Erin and for Erin's two children, and the company said no. They specifically told her that the Federal Government did not require them to insure their employees' same-sex partners or spouses or those spouses' children. So they were not going to offer it. So for this family, the lack of health insurance really was very scary. They were essentially one illness away from financial ruin.

And the last case I will tell you about is a tragedy. My client, Cheryl, and her partner, Jane, were new parents of an 8-month-old boy. They were totally in love with that little baby. They had so many hopes and dreams together for raising that child. They had agreed that Cheryl was going to stay home and be a full-time stay-at-home-mom to take care of the baby and that Jane would go to work to earn money for the family. Now, she had a very modest job and made a modest income, but they had a little house, and they were making ends meet.

And then one morning on her way to work, Jane was killed in a car accident, and instantly all of that family's income was gone.

Cheryl did not even get the basic parent Social Security benefits that Jane had paid for through her Social Security taxes. That basic Federal safety net was not there for Cheryl and their little baby.

For me as a lawyer, it was heart-breaking to deal with that, to see that little baby and to try to help Cheryl deal with her grief and with this financial devastation. She ended up losing the house. We could not save it for her.

These are just two examples of the harms that same-sex couples have faced, and will face, if DOMA is allowed to remain the law of the land. I really hope you will get rid of this unfair law.

Thank you.

[The prepared statement of Ms. Murray appears as a submissions for the record.]

Chairman LEAHY. Thank you very much. We will go to our questions.

As a member of the Vermont Bar and a member of the legal community, I have been very familiar with your advocacy, Ms. Murray, in the fight for equality. But this is the first time I have heard your personal story and what you said about your parents and how their marriage was an example to you. And I can certainly relate to that and my own parents.

But you also were in Vermont when we had first civil unions the legislature passed. That was a major debate in our State. Then subsequently, a few years later, when the Vermont Legislature, the elected members debated and passed the same-sex marriage, which actually was far less of a—it did not bring about an awful lot of controversy from the right to the left in our State. But why was it important to you to get married rather than just have a civil union?

Ms. MURRAY. That is a great question, Senator. You know, civil unions was created out of whole cloth by the State of Vermont. Now other States have borrowed that phrase, but it was brand-new back then, and is different. And people did not know what it was. When we had a civil union ceremony, we had a big party, and some of the people we invited did not know what we were inviting them to. They did not understand it.

But marriage is universal. Everybody understands it—everybody in this country and everybody in the world. Everybody knows what the marriage vows are, that you take someone for better, for worse, for richer, for poorer, in sickness and in health, until death do you part. Everybody knows that. And the childhood that I had and the model that I had from my parents caused me to believe in marriage. I believe in its power to bind people and its importance to society. And I wanted to declare that publicly. We both wanted to declare that publicly for our friends, and our family, so that they would be there to support us and so that they understood that we were part of that world.

Chairman LEAHY. Let me ask you, we will have a number of witnesses, we already have had and will have more, who oppose the Respect for Marriage Act. Some say they want to fight poverty by keeping American families intact. They talk about the problems of single-parent households. Now, States have long determined issues of marriage. It is rare the Federal courts and the Supreme Court

stepped in. They did, of course, 40 years in *Loving* v. *Virginia*, when it unanimously struck down the miscegenation laws. But I think we can say that our Federal Government has had an interest in protecting children. We can agree that marriage provides more stable and financially secure homes and families for children.

When practicing family law, do you see any way that DOMA is operating to keep families more intact and protected or the other way around?

Ms. MURRAY. It is just the opposite of protection, Senator. Let me give you an example.

Karen and I have friends who live in New York, outside of Albany, a gay male couple. They have adopted three special-needs kids, including one who got AIDS because his mother was an intravenous drug user. They have had so many difficulties raising these children, really trying times, but they have done a fabulous job raising these kids. DOMA undermines their ability to take care of these children and to provide these children with the care and support that they need. To the extent they cannot file joint tax returns and that increases their tax burden, that is money that these parents cannot use to buy books for those kids, they cannot spend it on tutors, they cannot spend it on summer camps. They cannot even put money away for the kids' college educations.

I think we can all agree in this room that children are this country's most precious resource. They are our future. And the kids of same-sex couples deserve exactly the same protections and benefits and that sense of security that every other child in this country deserves, and they are not getting it with DOMA.

Chairman LEAHY. Thank you.

Mr. Minnery, earlier this year at the Conservative Political Action Conference in D.C., you made this statement. I believe I am quoting you correctly. "We believe we fight poverty every day in the most effective way that poverty can be fought in this country, and that is, by keeping families intact." And your report, "The Value of Marriage for Fighting Poverty," attributes child poverty in large part to the prevalence of single-parent households in our Nation. You suggest marriage would lift a significant number of those adults and children out of poverty.

I think we all agree that marriage provides more stable and financially secure homes and families for children, but does that come through if we are denying some parents rights and benefits that would make their families healthy and more secure?

Mr. MINNERY. Well, thank you for the question, Mr. Chairman. We all, we the people, care about marriage, care about what it is because it is the nurturing environment for children. And a mountain of social science data has concluded overwhelmingly that the best environment for raising those children, if possible, is an intact home headed by a married father and mother. In fact, I put in my prepared statement a footnote——

Chairman LEAHY. But my specific question, though, if you do have parents legally married, if they are same sex, and there are children, are those children benefited by saying that in that family they will not have the same financial benefits that another family, married parents of opposite sex would have? Are those children not put at a disadvantage by denying those same benefits to them?

And I am talking about now a legal marriage under the State laws of the State they live in.

Mr. MINNERY. Without question, those children are certainly better off than had they no parents. But same-sex marriage——

Chairman LEAHY. Wait a minute. I do not understand that. They would be better off if they had no parents?

Mr. MINNERY. No. They are certainly better than if they had no home headed by parents. But same-sex marriage says a whole lot more than that, Senator.

Chairman LEAHY. I know, but I am trying to go specifically to the financial. Are they not disadvantaged by not having the same financial benefits that an opposite-sex family would have?

Mr. MINNERY. Well, as I say, I do not know the details of which families you are speaking of. Certainly those families are better off—the children are better off with parents in the home. But I am saying——

Chairman LEAHY. But I am talking about just on—yes or no. And this is not a trick question. I am just asking. Please. If you have parents legally married under the laws of the State, one of set of parents are entitled to certain financial benefits for their children, the other set of parents are denied those same financial benefits for their children, are not those children—at least in that aspect of finances, are not those children of the second family, are they not at a deficiency? Yes or No.

Mr. MINNERY. It would be yes, as you asked the question narrowly, Senator.

Chairman LEAHY. Thank you. And I was asking narrowly. I used to have a career where I had to ask questions all the time.

[Laughter.]

Chairman LEAHY. Senator Grassley.

Senator GRASSLEY. Mr. Minnery, the testimony we have heard appears to me to turn on the operation of Section 3 of DOMA, which defines marriage for the purpose of Federal law. DOMA also contains Section 2, which, as you mentioned, preserves federalism by allowing each State to define marriage for itself without imposing its definition on other States. The bill before us would repeal Section 2 of DOMA as well as Section 3.

Does Section 2 of DOMA have anything to do with the loss of benefits that the witnesses have discussed?

Mr. MINNERY. DOMA was in place well before the couples at the table were married, so their situation, Senator, has not changed with DOMA. It is the same. And that is why I question the advice that Mr. Wallen spoke about when he talked about legal advice given to him about how to him. It seems as though the legal advice he was talking about assumed that DOMA would be repealed, but it seems to me that the legal advice of a competent adviser ought to understand the situation that exists. Nothing has changed since DOMA passed for these couples.

Senator GRASSLEY. OK. Since Section 2 of DOMA has nothing to do with anybody's benefit, what would be the effect of repealing Section 2? And what justification do proponents of repealing DOMA offer for repealing Section 2?

Mr. MINNERY. Well, Section 2 is that section of DOMA which excuses States from being required to recognize same-sex marriages

performed in other States. These are the States that have overwhelmingly determined what marriage is for the citizens of that State. Overwhelmingly they have voted for that. And if DOMA were to be repealed, presumably same-sex marriages performed elsewhere would have to be recognized in those States, those many States that have determined that marriage is what it has always been in their States. And with that comes a very forced political correctness which can get downright nasty.

In my prepared comments, I speak about a case in Washington State in which voters had gone to the polls to try and repeal a civil unions measure. They had put that on the ballot by the initiative process. Many of the names of those petition signers were released, and the threats and the intimidation against them were horrendous, and those threats and intimidation found their way into a brief filed in Federal court on behalf of those parents. Most of those comments against the petition signers I cannot report here. They are too vile.

Senator GRASSLEY. Can I go on to another question, please?

Mr. MINNERY. Please.

Senator GRASSLEY. Mr. Minnery, we hear testimony today that the social science research shows that the well-being of children raised in same-sex marriages is the same as children who are raised in traditional marriage. Is that your understanding of the research? Is there anything questionable about the studies that show that children are just as healthy and well adjusted when raised by same-sex parents?

Mr. MINNERY. Yes, and my written statement goes into that in some detail, Senator. I appreciate the question. As I started to say before, an overwhelming mountain of evidence shows that children do best when they have a mom and a dad, and the studies that have analyzed same-sex households are very recent. The conclusions tend to be ambiguous, these sample sizes tend to be small, and they tend to be what social scientists call snowball samples—that is to say, they are not random samples for inclusion in the study. They are people who have been recruited to be in the studies by, for example, answering ads in the same-sex publications, bookstores, places where same-sex couples frequent. That is the way most of them have been included in studies, and that is not as legitimate as a scientifically random sample. And those samples are much better in those studies which are longitudinal and which show that a mother and father provide the best environment for those children.

Senator GRASSLEY. Thank you, Mr. Minnery.

Chairman LEAHY. Thank you.

I yield to Senator Feinstein. I have to step out for about 4 or 5 minutes. I am going to give her the gavel during that time. Then Senator Whitehouse will be recognized after that unless another member on the Republican side comes.

Senator GRASSLEY. I am going to step out for a minute two, but I will be right back.

Chairman LEAHY. Thank you. Senator Feinstein.

Senator FEINSTEIN. [presiding.] Thank you very much, Mr. Chairman. I just want to establish some things for the record.

In 1997, in a case called *Boggs* v. *Boggs*, the Supreme Court said, and I quote, "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States."

Nothing in this bill would obligate any State, religious, organization, or locality to perform a marriage between two people of the same sex, nor would anything in this bill require a State to recognize a same-sex marriage from another State.

DOMA has never been necessary to preserve States' rights because a State does not have to recognize a marriage that violates its public policy. So I think that is pretty clear.

I think one of the big discrepancies here in is in the area of health coverage. Many Americans get health coverage through their employers, and they use those plans to cover families, including spouses. These plans are usually free from tax, so if a business pays $2,000 in health premiums for an employee and a spouse, the employee does not have to pay income tax on that benefit. DOMA removes this tax protection for same-sex couples. Under DOMA the employee will have to pay taxes on premiums paid to his or her spouse's health coverage. Plus the employee has to pay any employee contribution after taxes rather than before taxes, like any other married couple. This is how DOMA discriminates. So that means that same-sex couples are subject to thousands of dollars in additional taxes because of DOMA.

Susan, you are an attorney. Would you like to comment on that?

Ms. MURRAY. Senator, you are absolutely right. I experienced that in my own life, and I have seen it with many of my friends and with some of my clients, to the extent people can actually get health insurance benefits. Some of them cannot because the companies think that the Federal Government allows them to discriminate and, therefore, they are able to do that. So if they can get access to health insurance, they still have to pay more money for it.

Senator FEINSTEIN. In the area of gift tax, estate tax, divorce—and let me talk about the gift tax for a moment. You know, many Americans are generous with their spouses. They give them a piece of jewelry, an expensive electronic item, they buy a vacation for a spouse. Under Federal law these gifts are not taxed for married couples except for same-sex couples because of DOMA.

I have a constituent from Piedmont, California, by the name of Max Kalend. He recently suffered from this aspect. When his husband, Phillip, passed away from an aggressive form of cancer, Phillip's estate was taxed to the tune of $2 million because of DOMA.

Could you comment on this issue of the gift and inheritance tax?

Ms. MURRAY. I would be happy to, Senator. I see this all the time in my practice. I can tell you the story of a young couple named Jessica and Eileen who came to see me recently. Jessica was lucky enough to have inherited some money, a significant amount of money, from her parents, but her wife, Eileen, had no money at all, and they had two goals:

One was to provide some financial protections for Eileen, to give her some assets, to protect her in the event Jessica passed away, and to prepare for all the ups and downs of life as they moved forward and got older. And the other was to try to minimize their

Federal estate tax, just like any other married couple that comes into my office.

If they were a married couple that was recognized by the Federal Government, that would have been a very easy, straightforward estate plan for me to draft. But because of DOMA, I cannot just simply have Jessica transfer assets into Eileen's name because anything over, right now, $13,000 a year triggers gift tax.

Senator FEINSTEIN. Thank you. Obviously I am trying to build a record here. Let me speak about veterans' benefits. "Don't ask, don't tell" has been repealed, so gay servicemen will soon be able to put their lives on the line in service to our country in the military. And they receive a number of benefits on account of their service to our Nation.

For example, if a veteran dies in service, the surviving spouse will receive death benefits. If a veteran dies from a disability related to his service, the surviving spouse can receive benefits. A veteran's spouse can also be buried with their deceased spouse at a military cemetery.

Under DOMA the spouses of gay servicemembers would be excluded from these benefits even though those service members performed exactly the same service to our country and put their lives on the line for the United States.

My question is for any witness that would care to answer. Can you please comment, to the extent that you know, on the likely impact of DOMA on gay service members and their spouses?

Ms. MURRAY. Senator, I can tell you briefly from a non-gay case that I just had, I do divorce work, and I just represented a woman who is divorcing her husband who is active in the military, and she is entitled to 55 percent of his pension. He is about ready to retire after 20 years in the military. She is divorcing him, and she is getting 55 percent of his military pension. Any same-sex couple is not going to have access to that same pension benefit. It is just not available to them.

Senator FEINSTEIN. Thank you very much, and I thank all of you for being here today. It is very important and I am very grateful.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Madam Chair, and thank you for your leadership on this issue. I will gladly yield to——

Senator DURBIN. No. You go ahead.

Senator WHITEHOUSE. OK. This discussion that we are having is so often a clash between ideology and just human stories that what I would like to do is to take my time and echo the testimony of Ron and Andrew and Susan with some stories from Rhode Island.

David and Rock wrote to me from Providence. "We now both have active and busy careers, a teenager thinking about college, and the financial challenges of college tuition and shrinking retirement assets. We are involved in the community and in our church. We have the concerns of most families. In fact, if we were a heterosexual couple, ours would be the story of a conservative American family: the importance of education, the importance of faith, delaying marriage until financially stable, marriage followed by a shared household, followed by child rearing."

"And then there is DOMA. We carry our marriage documents, adoption documents, and medical care proxy documents when we

travel. I am ineligible for inclusion in military family benefits. We are not eligible to file joint income tax. We are ineligible for spousal Social Security benefits in the event of the death of one of us. It is time to end this discriminatory policy."

Carol and Anne write: "We have been together since 1987 and have had 20 foster children. For 30 years, I have worked at the same company and paid taxes and been a model citizen. For 23 years, Anne has taken care of children in need. At one high school we were known as 'the ladies,' and educators heaved a sigh of relief when they knew a tough child had us as their foster parents. With kindness and patience and compassion, our efforts have made great changes in 20 young lives. We are doing our best to make this a better world. Please pass the Respect for Marriage Act and reverse DOMA. We want to be able to tell our foster children, 'We are married 100 percent.'"

Bill and Ernie write: "We live in Cumberland, Rhode Island, and we have been a couple for over 20 years. We live quietly and go about our business without bothering anyone. I was born 59 years ago and Ernie was born 55 years ago. We have been citizens of the United States all our lives, but since the passage of DOMA, our Government has seen fit to take rights away from us. Why is this? We have not hurt anyone. Ernie's and my union will not cause harm to anyone. It makes no sense to set us outside the protections of Federal law to make us less than full citizens of the United States. Please ask your colleagues in the Senate to support the return of our civil rights. It is the only civil thing to do."

And, finally, from a story in the Providence Journal about Pat Baker and Deborah Tevyaw, Pat has been in public service for a long time. She is a 51-year-old correctional officer. It says here, "She was never a gay rights activist, but after doctors diagnosed her with incurable lung cancer in December, she got an added jolt. The Federal Defense of Marriage Act precludes Tevyaw from collecting the Social Security benefits Baker earned for a surviving spouse."

The story continues: "The discovery stunned Baker, leading her to embark on what may well be her first and last act of bravery in the name of marriage equality."

The story concludes: "They are not entitled to the full scope of protections with regard to end-of-life issues, disposition of remains, who is considered next of kin, who gets to make decisions on medical care, organ donations, and more. Noting that the couple has spent thousands of extra dollars trying to put in place such protections, Loewy said, 'I hope it is a reminder to the legislators that this is not abstract. This is a really tragic illustration of how these vulnerable situations are made so much more difficult because these same-sex couples are not treated like everybody else.'"

I could not improve on those comments from Rhode Island couples, and I thank everyone for their attention and look forward to working particularly with Senator Feinstein on passage of her bill. Again, I want to recognize her leadership, and I want to recognize the leadership of our chairman. There have been many occasions when this hearing room has been made the fulcrum of progress for this country as a result of his leadership. This is another such occasion, and I want to recognize him for that.

Chairman LEAHY. [presiding.] Thank you very much, Senator Whitehouse, and I think we have all been fortunate with the leadership you have shown, and Senator Feinstein and others have shown here.

Senator Franken, you are next. Please go ahead, sir.

Senator FEINSTEIN. It is early bird.

Senator FRANKEN. Because I would grudgingly yield to Senator Durbin.

[Laughter.]

Senator FRANKEN. Thank you, Mr. Chairman. I want to especially thank the witnesses who have shared their personal stories with us. What you are doing here is very important not just for the millions of Americans directly affected by the so-called Defense of Marriage Act but for our entire nation.

DOMA is an injustice. It is an immoral and discriminatory law. Our nation was founded on the premise that all people are created equal and that all persons should receive equal treatment under the law.

Our society may be different than it was then, but these principles remain the same. That is why I am an original cosponsor of the Respect for Marriage Act, and that is why I think the day we repeal DOMA will be a great day in this nation, akin to the ratification of the 19th Amendment and the passage of the Civil Rights Act. And I think that Congressman Lewis's presence here spoke to that in a very powerful way.

Mr. Chairman, I would like to enter the rest of my opening statement into the record.

Chairman LEAHY. Without objection, so ordered.

[The prepared statement of Senator Franken appears as a submissions for the record.]

Senator FRANKEN. Mr. Minnery, on page 8 of your written testimony, you write: "children living with their own married biological or adoptive mothers and fathers were generally healthier and happier, had better access to health care, less likely to suffer mild or severe emotional problems, did better in school, were protected from physical, emotional, and sexual abuse and almost never live in poverty, compared with children in any other family form."

You cite a Department of Health and Human Services study that I have right here from December 2010 to support this conclusion.

I checked the study out.

[Laughter.]

Senator FRANKEN. And I would like to enter it into the record, if I may.

Chairman LEAHY. Without objection, so ordered.

[The study appears as a submissions for the record.]

Senator FRANKEN. And actually does not say what you said it says. It says that nuclear families, not opposite-sex married families, are associated with those positive outcomes.

Isn't it true, Mr. Minnery, that a married same-sex couple that has had or adopted kids would fall under the definition of a nuclear family in the study that you cite?

Mr. MINNERY. I would think that the study, when it cites nuclear families, would mean a family headed by a husband and wife.

Senator FRANKEN. It does not.

[Laughter.]

Senator FRANKEN. The study defines a nuclear family as "one or more children living with two parents who are married to one another and are each biological or adoptive parents to all the children in the family." And I frankly do not really know how we can trust the rest of your testimony if you are reading studies these ways.

Ms. Murray, I recently read about a Minnesota same-sex couple with two daughters. The working partner and their daughters could get health insurance through that partner's employer, but they could not afford to cover the non-working partner, who is named Shannon, because every contribution they or their employer made to Shannon's coverage would be fully taxable under Federal law.

Now, Shannon and her partner cannot get married in Minnesota, but even if they could, DOMA would mean that their situation would remain the same. According to one estimate, because of DOMA, same-sex couples pay $1,069 more annually for health coverage than opposite-sex employees. As Senator Feinstein mentioned, you have had to go through this.

Can you tell us how same-sex couples end up paying or coping with these disparities?

Ms. MURRAY. Senator, a lot of them simply do not get health insurance, and they end up in the emergency room. My partner is a physician assistant and works in an emergency room in Burlington, Vermont, and she sees these couples coming in when they cannot afford insurance. So our system is paying, at least on an emergent basis, for these folks' health care, and anything that their kids are not getting, if their kids are not covered, they are not getting regular checkups nor are the partners. That is a huge problem that we have on a long-term basis in terms of health care.

Senator FRANKEN. Thank you very much, and thank you to all the witnesses, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Using our usual early bird rule, Senator——

Senator FRANKEN. Well, almost all of them.

Chairman LEAHY. Senator Coons is next. Senator Coons.

Senator COONS. Thank you, Chairman Leahy. Thank you to you and to Senator Feinstein for your long and determined work on repealing DOMA. And thank you to the members of our panel today who have shared with us searing personal stories of their experiences as veterans, teachers, and attorneys. They represent, I know, thousands of our constituents, our colleagues, our classmates, our friends who have gone through similar suffering, loss, and mistreatment through DOMA.

The purpose of today's hearing is to look at Senate bill 598 and to consider the impact DOMA has had on legally married couples who have been denied access to all sorts of different Federal programs, benefits, rights, and privileges. And as Ms. Murray mentioned, they are like waves on a beach that just drive away the possibility of equality, even to those legally recognized couples.

To me, this hearing is fundamentally about equality and whether or not we as a Nation think it is OK to deny some American citizens the same rights and privileges afforded to other citizens. Do we really think it is OK for our Federal Government to say we sim-

ply do not like who you love? And my question here is how we can have an answer that is anything other than emphatically no. Equality for all is supposed to me, in my view, equality for all, and I do not see what business it is of our Federal Government to reach into Americans' hearts and judge them for whom they love, particularly when their States have empowered them to marry.

I am tired of it being the law of this land that it is OK for the Government to discriminate against Americans solely based on their gender, identity, or sexual orientation. I am tired of seeing kids grow up in a country where their Government tells them discrimination is OK, and I think it is no wonder that we continue to see kids being bullied in school and see so many LGBT children take their own lives because they have given up hope, because in my view this law simply encourages discrimination.

I think we have bigger problems in this country than going out of our way to continue to discriminate against and deny rights to Americans. And we have heard today some of these witnesses have, I think, movingly testified about how same-sex marriage is at real harm from DOMA. In my view, others have testified here and elsewhere about how somehow same-sex marriage threatens or hurts heterosexual marriage, and I do not know about my colleagues, but my wedding ring and my marriage did not magically dissolve or disappear just because New York passed a same-sex marriage bill last month. In my view, S. 598 is about restoring rights. It is not about taking them away. It is about righting these wrongs and moving on.

I am a person of faith. My family and I worship regularly, and I am raising children in what might be considered a traditional marriage. But I do not think that my faith, which informs my politics, empowers me to have a monopoly on the interpretation of the will of God. And in my view, it is expressly not appropriate for the Federal Government to discriminate against couples based on who they love.

So, in my view, the Defense of Marriage Act is just wrong. It is wrong and needs to be repealed. And I am grateful to the Chairman and to the witnesses before us for having laid out in clear, compelling ways how DOMA has harmed them directly.

I would be grateful if I could take a moment to ask some of the witnesses about the symbolic harm that DOMA has also imposed on you because you have spoken in compelling ways about financial loss, loss of a home, loss of survivor's benefits, loss of health benefits, loss of respect. But I would be interested in hearing, if I could, further about the symbolic power of DOMA in your lives to any of the three witnesses—Ron, Andrew, or Susan—who testified to your financial loss.

"Senator Coons, although I cannot say there there have been any instances of crowds chasing me down the streets with brickbats, nor psychologically taunting me personally, I can definitely say the DOMA affects all gay and lesbian couples (indeed all gays and lesbians) in the following way: We are constantly hearing about children being harassed because they are or are presumed gay—sometimes to the tragic point of suicide; we know that gays and lesbians are treated with scorn in many ways and in many situations; we know that children of gay parents have difficulty explaining to

their friends about the "differentness" of their family; we know that gay and lesbian parents often have difficulty enrolling their children in schools, or that once enrolled, have difficulty as parents at meetings in those schools—the list is endless. How in the world can we expect to spread the message of love, of civil acceptance of differences, of showing how discrimination is wrong, of creating a society in which harmony is paramount in our relationships with each other, when our very own government singles out gay and lesbian couples as something "different" and not worthy of the same rights as their heterosexual brothers and sisters? I submit that DOMA's evils go way beyond the problems of we individuals who have personally sustained difficulties."

Mr. SORBO. Senator, I am glad to be able to respond to that. I was a teacher and principal, as I told you, for 35 years. Every day of my career, I led my students in the Pledge of Allegiance, and that Pledge of Allegiance ends "with liberty and justice for all." For 35 years, every day, when it came to those words, I stood in front of my students with a blank face, but inside I knew it was not true. I knew as a history teacher that it had not been true for blacks, it had not been true for women, it had not been true for mixed-race couples. And I knew that it was not true then for same-gender couples. And I had to stand before them and say that.

I also had every day of my career, until the very end when I finally got the courage to admit who I was, to always use the pronoun "I" to my students when they would ask me questions that probed into my personal life. "I was going on vacation." "I did this." I could not say "we" because the next question was: "Well, who is the other person?" And I knew that would lead to lots of problems.

So it is a good question, Senator, because the financial aspect of this is only one aspect of the harm that DOMA does and the discrimination against gay people. It is an insult to our dignity and, as I said in my testimony, our sense of equality. I grew up in a normal household. My father died when I was a year old, but "normal" in that my mother, my sister, and I had a loving home. And my mother brought me up to be as ethical as possible. I knew from her example the difference between right and wrong, that it was wrong to discriminate against the black people who lived in the housing project that I lived in in Providence, Rhode Island. And I believed as a person who studied history and loved history from the time I was a child that this country that is supposed to be the shining beacon on the hill, according to the people who settled the Massachusetts Bay Colony, this country was formed on ideals of equality and justice. And we have had to struggle to fight every generation to extend that idea of freedom and justice to more and more groups. And my group, my community, is the latest to have to fight for that.

I am appalled and I am baffled at how representatives of our country in the Senate and the House cannot see the historical perspective on this, that some of our own representatives and Senators who are there to protect the minority are allowing us to become the victims of the majority, which to me is unconstitutional. And I am sorry to say that I cannot understand how they do not see that they are the philosophical descendants of those who defended slavery, who defended laws against mixed-race couples, and who de-

fended the laws that allowed the separate but equal status that Representative Lewis so eloquently spoke of in his testimony.

Thank you.

Senator COONS. Thank you, Mr. Sorbo, and sometimes it takes a history teacher to help us see our way clearly to the future. I, too, found Congressman Lewis' testimony very moving, and yours equally so.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Our next witness is Senator Blumenthal—our next witness? Our next one to question——

Senator BLUMENTHAL. I hope not a witness, Mr. Chairman.

[Laughter.]

Chairman LEAHY. No, no.

Senator BLUMENTHAL. I would yield to Senator Durbin, if—I would be delighted to yield, not grudgingly.

[Laughter.]

Chairman LEAHY. Senator Durbin, did you wish to—then Senator Blumenthal, of course, a valued member of this Committee, former Attorney General of the State of Connecticut. Senator Blumenthal, please go ahead.

Senator BLUMENTHAL. Thank you. Mr. Chairman, thank you for your leadership and Senator Feinstein's and other members of the Committee who have joined in this cause, and thank you to all of the witnesses who are here today particularly to Mr. Sorbo from the town of Berlin, Connecticut. It is a small town, but there are those of us who love it.

I want to say at the very outset my thanks to all of you for giving a face and a voice to some abstract and seemingly complicated principles of constitutional law and basic liberty and rights. You have given a face and a voice in terms of the practical consequences of the Respect for Marriage Act, and I regard this hearing as a really historic day for our Nation. Nations, like people, are judged by their capacity for growth, and I think today marks another step in the growth of our Nation and the progression toward recognizing some principles that go to the very core of what makes our Nation the greatest in the history of the world. So I thank all of you for being here today.

You know, for me, some of these questions are much narrower than the constitutional issues that are being debated in the courts because what really matters here is the respect for Connecticut's law. And, Mr. Sorbo, you were married under Connecticut law. Respect for Connecticut law means that the Federal Government should recognize that law and give it the kind of sanctity that the Founders of this Nation meant for the laws of our States to have.

States do have the prerogative to establish the rules that surround marriage, just as they do inheritance and divorce. And so for the Federal Government to discriminate against some marriages in the way that it does is also disrespect for Connecticut's law as well as Connecticut's people and Connecticut's marriages.

So in order to illustrate some of the practical consequences here, I think you mentioned the effect on your ability to Colin's IRA. I wonder if you could expand a little bit about how you were unable—and most people do not think of IRAs as being a function of

Federal law—how you were unable to access it as fully as you would have been otherwise if DOMA had not existed.

Mr. SORBO. Senator, after Colin died, I went to our bank to speak to a financial adviser about how to transfer all of the assets, which we had done everything we could to protect in terms of putting it in both of our names. Yale University required Colin to have that IRA in his name so that when he passed away—and we tried to transfer that over because I had the right of survivorship. We spent hours and hours and hours on the phone, and it would have been almost a comic program if it had been recorded because my financial adviser and I sat there talking to one person after another, and each one of them at Yale had a different opinion about what needed to be done, and disagreeing and so on. And it took us many, many hours, many days to finally get it transferred over.

The ultimate result was that I guess they went to one of their lawyers—I am not sure—but whoever they went to finally decided that they could not recognize our marriage because of Federal law, because of DOMA. And so, therefore, we had to transfer that IRA into an inherited IRA.

Now, the difference—I am not an expert on this, but my understanding was that because my marriage was not recognized, it had to go over as an inherited IRA, which then I had to begin withdrawing on the December after the year following Colin's death. Now, if I had been a woman, that would not have been the case. I could have deferred withdrawing that until, I think it is, 70½. By law you have to begin withdrawing a minimum amount. That may not seem like a lot, but that 7 extra years would have allowed me to buildup that asset before I began to withdraw from it. And that is what my financial adviser would have liked to have done, because at my age—I am still fairly healthy. I go to the gym. I try to take care of myself as much as I can. And so I am not facing large health bills which I might be facing in the future. And, of course, inflation is eating up my income. Every retired person knows that inflation is the big gorilla in the closet for us.

So that denied me the ability to do what I could have done and what my sister could do, to buildup that asset until she was 70½.

Senator BLUMENTHAL. And I think that as you have testified, just to complete your story, the practical consequences extended also to the Family and Medical Leave Act, retirement and survivor benefits under Social Security, and a variety of very practical, sizable consequences to you because of DOMA, which would not have otherwise existed, even though under Connecticut law you were lawfully married.

Mr. SORBO. That is correct.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

Senator FEINSTEIN [presiding.] Senator Durbin.

Senator DURBIN. Is there anyone I can yield to? I guess not.

[Laughter.]

Senator DURBIN. Thank you very much, Madam Chair, and thanks to the witnesses who are here today.

There are events in the life of a Senator that are memorable, and one of those that comes to my mind was attending the bill-signing ceremony where President Obama signed the law which repealed "Don't ask, don't tell." It was a day of great celebration and relief.

The rabbi who gave the invocation that day—I remember his words—said, "When you look into the eyes of another person, if you do not see the face of God, at least see the face of another human being." And I thought to myself that that really is what this conversation is all about: recognizing our own frailties and weaknesses and strengths, but seeing in the face of every person another human being.

The woman who gave the invocation that day was someone I had never met and still have not met but have admired and told her story many times—retired U.S. Air Force Colonel Margarethe Cammermeyer. This was a woman who served as a combat nurse during Vietnam, risking her life for our men and women in uniform, and progressing through the ranks to the status of colonel, and then answering honestly one day on a questionnaire that she was lesbian, and for that she was discharged from the service. There was never any suggestion that she had ever done anything wrong or ever failed in her duty to her country, but she was the victim of outright discrimination.

Senator Grassley was kind enough to mention my name in his opening statement—I thank him—and mentioned the fact that I voted for the Defense of Marriage Act. That is true. And others did as well. I will not use that as an explanation or excuse. But I recall when a former Congressman from Illinois named Abraham Lincoln was challenged because he changed his position on an issue, and his explanation was very simple. He said, "I would rather be right some of the time than wrong all of the time."

That is why I am an original cosponsor of the Respect for Marriage Act that Senator Feinstein has introduced. I believe that this is eminently fair and gives to those who are in a loving relationship an opportunity to receive benefits which they deserve.

Mr. Minnery, I have read your testimony. I was not here when you presented it. But if we are truly interested in the welfare of children—and we are—it seems to me that denying basic financial resources to a loving couple who have adopted a child is not the way to help that child. In fact, I think we can find that in many instances families that struggle financially have a tougher time raising children—not all the time, but many times. It just makes a lot more sense for us to change the law when it comes to Federal benefits, so that a same-sex relationship that is recognized in a State is also recognized by our Federal Government across the United States of America.

I would just close by saying that I know that this is an issue which has evolved in America. The feelings of most Americans, the majority today, about same-sex marriage have changed, and I think they have changed for the better. This bill would not mandate any religion to change its beliefs. This bill would not mandate any State to change its laws. What it does is say that as a Nation our Federal Government is going to recognize the rights of same-sex couples to the basic benefits which they are entitled to. This could have been a hearing under my Subcommittee for the Constitution, Civil Rights and Human Rights, but Chairman Leahy asked if he could make it a full Committee hearing. I am glad he has so that more of my colleagues could come here and speak and be on the record in support of the Respect for Marriage Act.

Thank you, Senator.

Senator FEINSTEIN. Thank you very much, Senator Durbin.

Let me thank the witnesses. We have a vote at 12 o'clock. There is another panel coming up, so I am going to move on. I hope that is agreeable. But let me thank everyone. I have been in a lot of these. This was very good testimony, and I think all of us will remember it. So thank you all very much, and we will move on to the next panel.

Senator COONS. [presiding.] I would like to thank the Chairman for asking me to lead the deliberations of this Committee for the second panel. First I would like to begin by asking the members of the second panel to please rise, raise your right hand after me, if you would, as I administer the oath. Do you solemnly swear that the testimony you are about to give to the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SOLMONESE. I do.

Mr. NIMOCKS. I do.

Mr. WHELAN. I do.

Mr. WOLFSON. I do.

Senator COONS. Thank you. Please be seated, and let the record reflect the witnesses have taken the oath of this Committee.

First we will welcome Joe Solmonese, president of the Human Rights Campaign. With more than a million members and supporters, the Human Rights Campaign is our Nation's largest advocacy organization for lesbian, gay, bisexual, and transgendered civil rights. Prior to joining HRC, Joe was chief executive officer of Emily's List. A native of Attleboro, Massachusetts, Joe lives in Washington, D.C., and is a graduate of Boston University.

Mr. Solmonese, please proceed, but let me first remind all witnesses, if I could, to please limit your opening remarks to 5 minutes. Your full statements will be placed in the record in their entirety. And as Senator Feinstein just recognized, there is a noon vote which may well require us to do a little juggling to manage, but thank you.

Mr. Solmonese, please proceed.

STATEMENT OF JOE SOLMONESE, PRESIDENT, HUMAN RIGHTS CAMPAIGN, WASHINGTON, D.C.

Mr. SOLMONESE. Thank you, Senator Coons and members of the Committee. On behalf of the Human Rights Campaign and our more than 1 million members and supporters nationwide, I want to thank you for the opportunity to offer testimony in today's historic hearing. And I also want to thank Senator Feinstein for her leadership on this legislation and on behalf of lesbian, gay, bisexual, and transgender people in California and all across the country.

Every week I have the opportunity to travel this country and to speak with members of my community, with their families, with their friends, with their religious leaders, and with their employers about the distinct difficulties that they face in the form of discrimination. Now, today I have the privilege of bringing their stories and their concerns before this Committee.

Gay and lesbian couples work hard. They work hard to provide for their families, they work hard to provide quality health care,

they work hard to plan for retirement and to save for college—just like their family and friends, just like their neighbors and coworkers. But they do so in a country that still refuses to recognize them as equal. And for those who are lucky enough to live in States that do permit them to marry, they still face a Federal Government that treats their marriages as if they do not exist.

So on behalf of the tens of thousands of married same-sex couples in this country, including myself and my husband, I urge Congress to pass the Respect for Marriage Act and to end the Federal Government's disrespect for and discrimination against lawfully married same-sex couples.

DOMA harms thousands of families as they try to manage the day-to-day issues of their lives. Families like Rachel Black and Lea Matthews from the Bronx, who are here today with their beautiful daughter, Nora. Rachel and Lea met in college in Mississippi and have been together for 13 years. With marriage now a reality for gay and lesbian couples in New York, Rachel and Lea are thrilled and excited to at long last tie the knot. But for gay and lesbian couples like them, the joy of finally being able to marry is tempered by the fact that DOMA remains in the way of true equality. Rachel and Lea worry every day about the important protections that they will be denied, like unpaid leave from work for one to care for the other if she gets sick, or the ability to continue health coverage for their family if one of them gets laid off.

DOMA means that the many protections the Federal Government provides for the health and security of American families remain out of reach for same-sex couples and their children. It keeps, for instance, gay and lesbian Americans from sponsoring their spouses for immigration to the United States, forcing binational couples to choose between love and country. It deprives surviving same-sex spouses of crucial Social Security benefits earned by their loved ones through years of hard work. Senator Feinstein asked about the impact of DOMA on "Don't Ask, Don't Tell." It even bars the spouse of a gay or lesbian service member or veteran from being buried with him or her in a veterans' cemetery.

As you have heard today, particularly from those who have felt firsthand the hardship imposed by DOMA, the impact of this discriminatory law is real, and it is unconscionable. It is long past time for the Federal Government to end its discrimination against lawfully married same-sex couples. Congress must repeal this law enacted solely to treat gays and lesbians unequally, and so I urge you to pass the Respect for Marriage Act and to ensure that all American families have the full respect and protection of their Federal Government.

Thank you.

[The prepared statement of Mr. Solmonese appears as a submissions for the record.]

Senator COONS. Thank you, Mr. Solmonese.

We now turn to Mr. Nimocks. Mr. Austin Nimocks is senior legal counsel for the Alliance Defense Fund. Mr. Nimocks' practice focuses on the definition of marriage, parental rights, voters' rights, and religious liberty. ADF is closely involved in defending DOMA against legal challenges, and Mr. Nimocks earned both his bachelor's and J.D. from Baylor University in Waco, Texas.

Mr. Nimocks, please proceed.

STATEMENT OF AUSTIN R. NIMOCKS, SENIOR LEGAL COUNSEL, ALLIANCE DEFENSE FUND, WASHINGTON, D.C.

Mr. NIMOCKS. Thank you, Mr. Chairman, Ranking Member Grassley, and members of the Committee, for the privilege and invitation of testifying here today.

Mr. Chairman, as debates rage these days regarding budget deficits, debt ceilings, and jobs, I am pleased that this body is taking some time to discuss mothers and fathers—arguably, the two most important jobs in our society.

This legislation also gives us the opportunity to look at an important query that is oftentimes overlooked: Why is Government in the marriage business?

Mr. Chairman, as you are aware, Congress enacted Federal DOMA in 1996 by an 84-percent margin. Enacting it, it stated as appears as a submissions for the record. "[a]t bottom, civil society has an interest in maintaining and protecting the institution of heterosexual marriage because it has a deep and abiding interest in encouraging responsible procreation and child rearing. Simply put, Government has an interest in marriage because it has an interest in children." This truth remains today, and Americans agree.

As evidenced by likely the most extensive national research survey ever conducted on Americans' attitudes about marriage, completed in May of this year, we know that 62 percent of Americans agree that "marriage should be defined only as a union between one man and one woman."

Mr. Chairman, marriage is not just a mere law or creature of statute but a social institution that has universally crossed all political, religious, sociological, geographical, and historical lines. As put by the famous philosopher, Bertrand Russell, a self-described atheist, "But for children there would be no need of any institution concerned with sex. It is through children alone that sexual relations become of importance to society and worthy to be taken cognizance of by a legal institution."

Accordingly, marriage between one man and one woman is a longstanding, worldwide idea that is a building block of society. Marriage does not proscribe conduct or prevent individuals from living how they want to live. And individuals marry, Mr. Chairman, as they always have, for a wide variety of personal reasons. But today's discussion should not be about the private reasons why individuals marry, but about the policy of our country as a whole and the Government's unique interest in this public institution.

Because the Government's interest in marriage is different from the reasons why individuals choose to marry, entrance to marriage has never been conditioned upon a couple's actual ability and desire to find happiness together, their level of financial entanglement, or their actual personal dedication to each other. Rather, marriage laws stem from the fact that children are the product of the sexual relationships between men and women and that both fathers and mothers are viewed to be necessary for children.

Thus, throughout history, diverse cultures and faiths have recognized marriage between one man and one woman as the best way to promote healthy families and societies. The studies and science

you have heard about over a long period of time demonstrate that the ideal family structure for a child is a family headed by opposite-sex biological parents in a low-conflict marriage.

But some, Mr. Chairman, are asking you to ignore the unique and demonstrable differences between men and women in parenthood: no mothers, no fathers, just generic parents. But, Mr. Chairman, there are no generic people. We are composed of two complementary but different halves of humanity. As our Supreme Court has stated, "The truth is that is that the two sexes are not fungible. Inherent 'differences' between men and women, we have come to appreciate, remain cause for celebration."

This body should also disavow any notion that repealing Federal DOMA is a constitutional mandate. Mr. Chairman, in 1967, the Supreme Court decided the case *Loving* v. *Virginia*. In that case, the Supreme Court struck down a race-based marriage law that prohibited whites from marrying anyone of color. In so ruling, the Supreme Court talked about marriage as "fundamental to our very existence and survival," discussing the timeless and procreative aspects of marriage.

Just 5 years later, the Supreme Court, in 1972, substantively upheld a decision by the Minnesota Supreme Court that marriage laws like Federal DOMA are not unconstitutional and rejected a claim for same-sex marriage. Mr. Chairman, not one single Justice of the United States Supreme Court found the constitutional claims against marriage worthy of the court's review.

Marriage between a man and a woman naturally builds families and gives hope that the next generations will carry that family into the future. And while some may argue, Mr. Chairman, that times have changed, they cannot credibly argue that humanity as a gendered species has changed. Men and women still compose the two great halves of humanity. Men and women are still wonderfully and uniquely different, and men and women still play important and necessary roles in the family.

In conclusion, Mr. Chairman, because of the fundamental truth that children are the product of sexual relationships between men and women and that men and women each bring something important to the table of parenting, this Government maintains a compelling interest in protecting and preserving the institution of marriage as the union of one man and one woman.

Thank you for the time and privilege, Mr. Chairman.

[The prepared statement of Mr. Nimocks appears as a submissions for the record.]

Senator COONS. Next we will hear from Ed Whelan. Mr. Whelan is president of the Ethics and Public Policy Center. Mr. Whelan is a regular contributor to National Review Online. Mr. Whelan has served as Deputy Assistant Attorney General at the Office of Legal Counsel as well as General Counsel previously to this Committee. Mr. Whelan earned both his undergraduate and law degrees from Harvard University.

Mr. Whelan, please proceed.

STATEMENT OF EDWARD WHELAN, PRESIDENT, ETHICS AND PUBLIC POLICY CENTER, WASHINGTON, D.C.

Mr. WHELAN. Thank you, Senator Coons. My thanks also to Senator Leahy and Ranking Member Grassley for inviting me to testify before this Committee in opposition to S. 598, which is misleadingly titled the "Respect for Marriage Act."

Far from respecting marriage, this bill would empty the term of any core content. It would redefine marriage for purposes of Federal law to include anything that any State, now or in the future, recognizes as a marriage.

The effect and the evident purpose of the bill is to have the Federal Government validate so-called same-sex marriage by requiring that it treat as marriage for purposes of Federal law any such union recognized as a marriage under State law. The bill would require taxpayers in the States that maintain traditional marriage laws to subsidize the provision of Federal benefits to same-sex unions entered into in other States.

Further, the principles invoked by advocates of same-sex marriage in their ongoing attack on traditional marriage clearly threaten to pave the way for polygamous and other polyamorous unions, one of the current projects of the left. Under the bill, any polyamorous union recognized as a marriage under State law would have to be recognized by the Federal Government as a marriage for purposes of Federal law. Thus, the foreseeable effect of the bill would be to have the Federal Government validate any State's adoption of polyamory and to require taxpayers throughout the country to subsidize polygamous and other polyamorous unions.

S. 598 would also repeal the Defense of Marriage Act. That proposed repeal is wholly unwarranted. DOMA was approved by overwhelmingly majorities in both Houses of Congress and was signed into law by President Clinton in 1996. DOMA does two things. First, it reaffirms the longstanding understanding of what the term "marriage" means in provisions of Federal law—the legal union of a man and a woman as husband and wife. Second, in a genuine protection of values of federalism, it safeguards the prerogative of each State to choose not to treat as a marriage a same-sex union entered in another State. It thus operates to help ensure that one State does not effectively impose same-sex marriage on another State or on the entire Nation. At the same time, it leaves the citizens of every State free to decide whether or not their State should redefine its marriage laws.

It is a profound confusion to believe that values of federalism somehow require the Federal Government to defer to, or incorporate, the marriage laws of the various States in determining what "marriage" means in provisions of Federal law.

Now, it is worth noting that of the eight current members of this Committee who voted on DOMA in 1996, seven voted for DOMA. Those seven include Chairman Leahy and Senator Kohl, as well as Senators Schumer and Durbin, who voted for DOMA as House members. Among the many other prominent Democratic Senators who voted for DOMA in 1996 were Vice President Joseph Biden, Harry Reid, Patty Murray, Barbara Mikulski, and too many others to name in the short time I have.

Now, I am not claiming that Senators cannot change their mind, but this list of supporters of DOMA suffices to refute the empty revisionist claim that DOMA somehow embodies an irrational bigotry against same-sex couples.

DOMA's reservation of spousal benefits to the union of husband and wife reflects the longstanding judgment that that relationship with its inherent link to procreation and child rearing is especially deserving of support. People are obviously free to dispute that judgment, but no one who voted for DOMA can plausibly claim to be surprised by how it has operated. And while it is natural that everyone would hope for more Federal benefits for themselves, no one can plausibly claim that DOMA somehow disrupted his or her own financial planning. DOMA was enacted 8 years before the Massachusetts Supreme Court first imposed same-sex marriage in this country, so there was never a time when anyone in a same-sex union had any reasonable basis for believing that that union would entitle him or her to Federal spousal benefits.

Moreover, it is wrong to assert, as some do, that the definition of marriage has always been purely a matter left to the States. Our predecessors understood what too many Americans today have forgotten or never learned or find it convenient to obscure, namely, that the marriage practices that a society endorses have real-world consequences that extend far beyond the individuals seeking to marry and that shape or deform the broader culture. That understanding underlay the 19th-century effort to combat polygamy, which was recognized to be incompatible with democracy. That is why Congress, in its separate enabling acts for the admission to statehood of Arizona, New Mexico, Oklahoma, and Utah, conditioned their admission on their including anti-polygamy provisions in their State constitutions. That history makes it all the more jarring that supporters of this bill would require that Federal law treat as a marriage—and require Federal taxpayers to subsidize—any polygamous marriage recognized by any State.

I detail in my testimony how the Obama administration has wrongly declined to defend DOMA. I will simply close with the observation that this bill is ill-conceived legislation that should proceed no further. Legislators who genuinely want to respect marriage should defend traditional marriage, not undermine it.

[The prepared statement of Mr. Whelan appears as a submissions for the record.]

Senator COONS. Finally, we welcome Mr. Evan Wolfson. Mr. Wolfson is founder and executive director of Freedom to Marry, the national campaign to end marriage discrimination. Mr. Wolfson was co-counsel in the historic Hawaii marriage case that launched the ongoing global movement for freedom to marry and has participated in many other landmark HIV/AIDS cases and gay rights cases. Mr. Wolfson earned his B.A. from Yale University in 1978, after which he served as a Peace Corps volunteer in a village in Togo, West Africa. He graduated from Harvard Law School and has appeared before the United States Supreme Court in the case of *Boy Scouts of America* v. *Dale*, and in 2000 was named one of "the 100 most influential lawyers in America" by the National Law Journal. In 2004, Mr. Wolfson was named one of "the 100 most influential people in the world" by Time Magazine. He is the author

of "Why Marriage Matters: America, Equality, and Gay People's Right to Marry," which was published in 2004.

Mr. Wolfson, please proceed.

STATEMENT OF EVAN WOLFSON, FOUNDER AND PRESIDENT, FREEDOM TO MARRY, NEW YORK, NEW YORK

Mr. WOLFSON. Thank you, Senator Coons, Members of the Committee. As the Senator said, I am Evan Wolfson, founder and president of Freedom to Marry, the national campaign to end discrimination in marriage, and I am also author, as noted, of "Why Marriage Matters: America, Equality, and Gay People's Right to Marry." I am very pleased to be here with you today to testify in support of the Respect for Marriage Act, which would return the Federal Government to its traditional and appropriate role of respecting marriages performed in the States. I want to thank Chairman Leahy for holding this hearing, and chief sponsor Senator Feinstein, and my Senator, Senator Gillibrand, for their leadership in introducing this important legislation in the Senate.

Fifteen years ago this summer, I was in a courtroom in Hawaii along with my non-gay co-counsel, Dan Foley, representing three loving and committed couples who had been denied marriage licenses despite being together, some of the couples, for decades. In the clear, cool light of the courtroom, we presented evidence, called and cross-examined witnesses, and made logical and legal arguments, as did the State's attorneys. At the end of that trial—the first ever on marriage in the world—the court concluded, based on that record we compiled, that there is no good reason for the Government to deny the freedom to marry to committed couples simply because of their sex or sexual orientation.

By contrast, Congress compiled no such record and did not wait to consider evidence or serious analysis before rushing that same year to add a new layer of marriage discrimination against couples already barred from marrying.

DOMA imposes a gay exception to the way the Federal Government historically and currently treats all other married couples. DOMA stigmatizes by dividing married couples at the State level into first-class marriages and second-class marriages for those the Federal Government does not like. But in America, we do not have second-class citizens, and we should not have second-class marriages either.

Much has changed since DOMA's enactment in 1996. Then, same-sex couples could not marry anywhere in the world. Today, five States and our Nation's capital have now ended the denial of marriage licenses, joining 12 countries on four continents where gay people share in the freedom to marry.

Tens of thousands of same-sex couples are legally married in the United States, as you have heard, many raising children. And as of this coming Sunday, when New York State ends its restriction, the number of Americans living in a State where gay couples share in the freedom to marry will more than double to over 35 million.

In 1996, opponents could conjure up groundless but scary hypotheticals about the impact of the freedom to marry on children, on society, on marriage itself. Those claims were hollow, but today there is a mountain of evidence, and it all points in the direc-

tion of fairness. For that reason, literally every leading public health and child welfare association in the country, including most recently the American Medical Association, have all concluded, based on science, evidence, and clinical as well as personal experience, that the children being raised by same-sex couples are healthy and fit, and that these kids and their families would benefit from inclusion in marriage without taking anything away from anyone else.

Today, thanks to the lived experience with the reality of the freedom to marry, even the Republican sponsor of DOMA, former Congressman Bob Barr, believes it should be repealed, stating that, "DOMA is neither meeting the principles of federalism it was supposed to, nor is its impact limited to Federal law."

The Democratic President who in 1996 signed DOMA into law, Bill Clinton, has also called for its repeal, as has President Obama, who has endorsed this restorative legislation.

Congressman Barr's and President Clinton's journey away from DOMA to the freedom to marry and respect for marriage mirrors the changed minds and open hearts of the American people. In a 1996 Gallup poll, only 27 percent of the American people favored the freedom to marry, but today, according to Gallup and five other recent surveys, support has doubled to 53 percent, a clear national majority for marriage, with younger Americans across the board overwhelmingly in support. Sixty-three percent of Catholics are for the freedom to marry, and opposition is falling amongst all parts of the public with accelerating momentum and bipartisan voices, as reflected in last month's historic vote in New York.

This Sunday many will watch on television as joyous couples declare their love and have their commitments celebrated by family and friends and confirmed by the State. Yet as they join in marriage, these couples will become the latest Americans to experience firsthand the sting of discrimination by the Federal Government.

They will endure the intangible yet very real pain of once again being branded a second-class citizen and will suffer the tangible harm of being excluded from the safety net of protections and responsibilities that other married couples cherish.

Mr. Chairman, it is time for Congress to end this discrimination. Congress can remove this sting, eliminate this pain, end this harm by enacting the Respect for Marriage Act. Fairness demands it, and the time has come.

Thank you.

[The prepared statement of Mr. Wolfson appears as a submissions for the record.]

Senator COONS. Thank you very much to all of our witnesses on this second panel, and I appreciate your following the testimony from the first panel, which spoke sort of personally and in moving ways about the very real harm suffered by LGBT couples through the so-called Defense of Marriage Act, and I look forward to hearing your response to questions. But I will first, if I might, defer to Senator Klobuchar, who was not able to ask questions of the first panel and now joins us for questions of the second panel. Senator.

Senator KLOBUCHAR. Thank you very much, Senator Coons. I was over at a Transportation hearing, so I want to thank all of you for being here.

I was really struck, after hearing the first panel, by just the legal entanglements, all of the issues that have arisen in the last few years, whether it is someone trying to be at a partner's bedside when they are dying or whether it is some of the other issues that the witnesses raised and stories that they told. And it made me think about what you were just speaking about, Mr. Wolfson, that it has been 15 years since DOMA was enacted, and the legal and social landscape has changed since then. And I guess I would ask everyone: In your opinion, how has the issue of same-sex marriage transformed over the years? What effect has the passage of time had on the debate? If you could just answer briefly, Mr. Solmonese.

Mr. SOLMONESE. Thank you, Senator. I think first and foremost, perhaps the most powerful contributors to changing American public opinions on the question of same-sex marriage or the circumstances of our relationships generally were perhaps best displayed in the previous panel: hard-working, committed, loving Americans having the opportunity to tell the stories of their lives, and more to the point, to really talk about the inequities and the injustice that we face in the absence of marriage equality. And I think that all across this country, the more opportunities that we have had to tell those stories, to help people understand the circumstances of our lives, and in particular, when I reflect on Ron's story in the previous panel, the genuine inequity and despair that we face in the absence of marriage equality, I think that most Americans—and most Americans to my way of thinking are fair-minded and optimistic—cannot help but be moved by these stories and cannot help but be moved in the direction of understanding the need for full marriage equality. Or in the case of the debate today, we should not lose sight of what this conversation is about today, the real need to ensure that in those States where same-sex couples enjoy the right to marriage equality, that they be afforded those Federal benefits, particularly things like Social Security survivor benefits.

Senator KLOBUCHAR. Thank you. Thank you, Mr. Solmonese.

Just quickly, Mr. Nimocks, any response on the question about the changes over the last 15 years?

Mr. NIMOCKS. Thank you very much, Mr. Chairman, Senator Klobuchar. I do not believe that there have been substantial changes in the opinions of Americans across this country about marriage as time has passed. We know that the first vote in this country occurred in Hawaii in 1998, the last one in Iowa in 2010. And what is clear in all those votes in all the 32 jurisdictions where Americans have voted upon the question of marriage is they have been unanimous that marriage should be the union of one man and one woman. And as I alluded to in the poll where 62 percent of Americans agree that marriage should be defined as the union of one man and one woman, that is the exact language that is going to be on the ballot in 2012 in your home State of Minnesota, and Minnesotans are going to vote on that. And I believe Minnesotans will become the 33rd jurisdiction to affirm that.

The question before the Committee, with respect, is the question of marriage, whether it should be the union of one man and one woman, whether mothers and fathers are necessary, and I think

Americans over a large period of time have been very consistent on that.

Thank you.

Senator KLOBUCHAR. Mr. Whelan, if you could just keep it down to 30 seconds, I have another question to ask Mr. Solmonese.

Mr. WHELAN. Well, I will try to be quick, but yours is a very interesting question, and I hope I can give a somewhat more extensive response than that.

My perception is, based on the polls, at least, that there has been a decline among young people in support for marriage. I think that decline reflects a broader collapse in our marriage culture, a collapse that I will emphasize is largely the responsibility of what heterosexuals have done to marriage in recent decades. And I think what we have is a situation where a lot of folks simply do not understand what marriage is. They do not understand the systemic importance of marriage in serving the interests of millions and millions of children who deserve to be raised in the best possible environment. And I think increasingly some folks do not understand that when you decouple marriage from the core interest in procreation and child rearing, you create a mission confusion that inevitably disserves the interests of millions and millions of children yet unborn.

Senator KLOBUCHAR. OK. And maybe, Mr. Wolfson, we can get your answer in writing, because I had a quick question here at the end, before my time runs out, of Mr. Solmonese, and that is, whether the Respect for Marriage Act has any impact on the ability of religious organizations or churches to freely express their views.

Mr. SOLMONESE. Thank you, Senator. As I mentioned before, what we are here to discuss today and what is at the heart of this legislation really is how the Federal Government treats lawfully married people in States where marriage equality is the law of the land. It does not require individuals or religious organizations to do anything, and as you know, the First Amendment protects the rights of churches and religious organizations to determine who they will or will not marry and which——

Senator KLOBUCHAR. I think that is an important point for some people——

Mr. SOLMONESE. Yes, it is.

Senator KLOBUCHAR.—that they—because freedom of religion is so important to many people in my State and across the country. I know Senator Feinstein had made that point, so I appreciate you making that, that this bill does not in any way require churches, synagogues, or mosques to recognize or perform same-sex marriages.

Thank you. I really appreciate it, and I thought the panel before this—not that your panel is not stupendous, but I thought that the way that they told their stories, their own individual stories, was quite moving and also gave us a sense of the legal problems that they are encountering because of this law. Thank you.

Senator COONS. Thank you, Senator Klobuchar.

If I might turn first to Mr. Whelan, in both your testimony and Mr. Nimocks' testimony, there is a suggestion that somehow there is an inevitable connection between procreation, parenthood, opposite-sex couples, and then a critical national Federal policy interest

in promoting marriage as being just between a man and a woman. What do you see as the rationale for why Federal law is silent on unlimited serial heterosexual marriage with all the pain and difficulty of divorce and its impact on children and child rearing, but prohibits one life-long loving, stable same-sex marriage? Help me understand that.

Mr. WHELAN. Well, I think the answer to that, Senator, is the same as the answer to why Congress in the mid–19th century took action to outlaw polygamy and to condition—or, more precisely, to condition the admission of several States on those States' permanently banning polygamy.

It is true that within broad bounds the general practice of the Federal Government has been to permit variations among State laws in terms of what constitutes marriage. At the same time, as the anti-polygamy effort illustrates, there is an understanding that there is some genuine core, some genuine essence to what marriage is, that marriage cannot simply be defined to mean anything. And I think what we see here and what 84 of your predecessors in the Senate understood in 1996 is that the union of one man and one woman is at the very core of what marriage needs to be in order to serve the interests of children over the generations.

Senator COONS. Thank you, Mr. Whelan.

If I might, Mr. Solmonese, your written testimony notes, I think quite correctly, that DOMA harms more than just gay and lesbian couples. One of my areas of focus on LGBT issues has been participation in and support for the It Gets Better project, which uses the Internet to share messages of hope to LGBT youth.

There has been testimony here by several witnesses about public opinion. I am not sure what the relevance is of whether 60 or 70 support today or yesterday. In my view, DOMA, to the extent it enshrines and advances discrimination, has negative secondary impacts not just immediately on the couples from whom we heard previously, but also more indirectly, symbolically, in terms of encouraging discrimination and harassment in our broader society. Could you speak, Mr. Solmonese, if you would, to HRC's experience and views on how DOMA might have secondary negative symbolic effects on LGBT youth and on our culture as a whole?

Mr. SOLMONESE. Thank you, Senator, certainly. I think there are a number of ways, and certainly we heard from the previous panels ways in which individuals in our community have faced genuine discrimination in the absence of the right to full marriage.

But one of the things that I think is important to point out—and I see this and I experience this as I travel the country and I travel to places where it is, for lack of a better term, perhaps more difficult to be a member of the LGBT community, parts of the country where I talk to people who just face much more sort of discrimination on a number of fronts. And one of the things that they tell me that I think is important to point out is that, for instance, when they walk into a hospital emergency room, even in a place where civil unions perhaps may be the law of the land, there is sort of a process that that admitting person goes through as they evaluate the circumstances and the individual family in front of them. "You are not married, and so while you are not married, you know, there is sort of a societal disparity there, and I need as an admitting per-

son in this hospital emergency room to understand what is different about you and what is different about the circumstances of your particular life that I need to be aware of."

You know, parents tell me that they send their children off to school nowadays from the household of a civil-unioned family and what sort of—beyond the tangible perhaps benefits disparity that we talked about here today, you know, what does that mean? What does that speak to to that child and the sort of experience that they might encounter as having been sent to school from a civil-unioned family or from a same-sex-couple family as opposed to from a married household? You know, there is a societal understanding of what it means to walk in the door of an emergency room as a married couple or to walk into a PTA meeting as a married couple and what that means generally.

And that is something that I think is important to point out because that is beyond sort of the tangible benefits discrimination that we heard about earlier today, something that I hear a great deal of as I travel across the country.

Senator COONS. Thank you, Mr. Solmonese, and I just want thank everyone who has testified today to the very real impact, the negative impact that DOMA has had on married couples, on legally married couples in States across this country. I am committed, as one of the original cosponsors, to the passage of the Respect for Marriage Act, and I am hopeful that the remainder of this hearing can be constructive.

Given there are just a few minutes left in the vote currently going on on the floor, I will yield the gavel and the microphone to my more senior colleague, Senator Schumer, who will close out today's hearing. Thank you very much

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. [presiding.] Well, thank you, and I want to thank you, Chairman Coons—sounds good right, "Chairman Coons"?—for running this hearing. When I recruit members, I say you would be amazed how quickly you move around here up the ladder.

I want to thank our witnesses on this panel and on the previous two panels for this testimony, and I am just going to give an opening statement or a statement, and then we will adjourn the hearing.

I think the powerful testimony of the witnesses we have heard today speaks volumes. So, Mr. Chairman, I just want to say a few brief words about the importance of repealing DOMA.

Not long after this hearing concludes, in less than 100 hours, gay couples from across my home State of New York will be lining up outside courthouses and clerks' offices to officially tie the knot. Many of those who plan to say "I do" have been together for decades. They have raised children together, battled illnesses together, built loving, lasting lives together. And on Sunday, our State of New York will recognize that—that love, that life, that commitment until death do they part—with a marriage license.

So personally I support marriage equality. I believe one of the defining qualities of America has always been our inexorable drive

to equality. As the French historian Alexis de Tocqueville observed when he visited the U.S. in the 1930's, it is the quality that distinguishes the United States from all other countries.

Now, we are not here today to discuss the relative merits of marriage equality but another issue of bringing equality. The purpose of this hearing—and I want to thank Chairman Leahy—is to examine the real-life impact of the Defense of Marriage Act on same-sex married couples.

It is a fact that when New York begins conferring marriage licenses to same-sex couples this weekend, the Federal Government will not be able to give those married couples the same Federal benefits that straight couples receive who similarly pledge in the eyes of the law to spend their lives together. Instead, in the eyes of the Federal Government, these couples will remain strangers, with none of the responsibilities or privileges of matrimony. The same is true, of course, of couples in five other States and the District of Columbia.

There are well over a thousands different Federal benefits that married gay couples are denied because of DOMA. Unfortunately, the effects of this discrimination are most acutely felt in the times of vulnerability. Gay couples are denied family medical leave, Social Security survivor benefits, estate tax exemption, and many other vital rights that their heterosexual neighbors and friends enjoy. This is not right, this is not fair, and something needs to be done about it.

I want to draw my attention to one particular way in which DOMA adversely impacts gay couples: the Federal tax exemption for health benefits. If a straight married man wants to add his wife to his health insurance plan, he can do so without hassle or expense. It is a tax-free fringe benefit. It has been for decades. Now, let us say you are gay, legally married in your State, and your employer is kind enough to offer same-sex-partner health benefits. That is becoming increasingly common: 83 of the Fortune 100 companies offer them. But because of DOMA, gay employees must include the cost of insurance—and we all know that health care is not cheap—in their taxable income. That means that even though they are married in the eyes of their State and their company is being fair and generous, the Federal Government hits them with a heaping tax burden every April 15th. Worse still, the employer is required to pay FICA taxes on the benefit. That is right. Because of DOMA, major employers are forced to pay—I am looking at that side of the room—extra taxes.

I have a bipartisan bill with Senator Collins to change that. It is called the Tax Parity for Health Plan Beneficiaries Act. Needless to say, were we successful in repealing DOMA, there would be no need for the legislation. Our tax parity bill addresses one of a thousands Federal benefits that married gay couples cannot receive under law.

So I hope we will repeal DOMA. CBO came to the following conclusion in 2004: "If DOMA were repealed, revenues would be higher by less than $400 million a year from 2005 through 2010 and by $500 million to $700 million from 2011 to 2014."

I want to say this: There are three fundamental principles at stake here: repealing DOMA makes good fiscal sense, it respects

States' rights, and it treats all married people the same. It is fair, it makes sense, and it is time.

And I would say to many in the audience who have waited a long time for many things that one of my favorite expressions was what Martin Luther King said and what I was proud to repeat over and over again at the Gay Pride parade in New York a few weeks ago, and that is, "The arc of history is long, but it bends in the direction of justice."

The hearing is adjourned.

[Whereupon, at 12:23 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

United States Senate

COMMITTEE ON THE JUDICIARY

Response of David Austin R. Nimocks to

Written Questions from Senator Chuck Grassley,

Ranking Member of the Senate Judiciary Committee,

Regarding the July 20, 2011 Committee Hearing Entitled "S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

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Dear Chairman Leahy, Ranking Member Grassley, and Committee Members,

On July 27, 2011, as a follow up to the July 20, 2011 hearing on repealing the Defense of Marriage Act ("DOMA"), Ranking Member Grassley asked me to answer the following question:

> **One of the witnesses believes that DOMA degrades same-sex couples, their loved ones, and their marriages, rendering them second class citizens.**
>
> **Do you believe that this is the effect of DOMA, and are there legitimate, non-discriminatory reasons why the government can prefer to give official recognition only to traditional marriages?**

Arguments about "second class citizens" are grounded in legal principles of equal protection and relate, in part, to our country's civil rights history. *See, e.g.*, *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961). However, equal protection "does not require things which are different in fact or opinion to be treated in law as though they were the same." *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (quoting *Tigner v. Texas*, 310 U.S. 141, 147 (1940)).

DOMA acknowledges the fundamental truth that opposite-sex couples are inimitably different from same-sex couples, which flows from the fact that men and women are uniquely different. Such an affirmation is neither offensive nor unconstitutional. Rather, it recognizes the real and crucial differences between same-sex unions and marriage between a man and a woman. And it is these legitimate, undeniable differences which show that not only *can* the federal

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government give official recognition to marriage, it *should*. Particularly, numerous courts have relied on the unique procreative capacity of opposite-sex relationships in concluding that "the many laws defining marriage as the union of one man and one woman ... are [constitutional because they are] rationally related to the government interest in 'steering procreation into marriage.'" *Citizens for Equal Protection v. Bruning*, 455 F.3d 859, 867 (8th Cir. 2006).[1] This is true not only of *every* appellate court—federal and state—to consider this issue under the U.S. Constitution, but the majority of state courts interpreting their own constitutions as well,[2] including the Minnesota Supreme Court in its famous 1971 decision, *Baker v. Nelson*.[3] And when the U.S. Supreme Court was asked by the losing plaintiffs to overrule *Baker*, it unanimously rejected the appeal as failing to present a substantial question of federal law— dismissing exactly the type of arguments referenced by the witness.[4]

It is, however, "degrad[ing]" to humanity to suggest that men and women are the same. Indeed, the lynchpin of most common anti-marriage arguments is

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[1] *See also Wilson v. Ake*, 354 F. Supp. 2d 1298, 1308-09 (M.D. Fla. 2005); *In re Kandu*, 315 B.R. 123, 145-47 (Bankr. W.D. Wash. 2004); *Adams v. Howerton*, 486 F. Supp. 1119, 1124-25 (C.D. Cal. 1980); *In re Marriage of J.B. and H.B.*, 326 S.W.3d 654, 680 (Tex. App. 2010); *Standhardt v. Superior Court of Arizona*, 77 P.3d 451, 461-64 (Ariz. Ct. App. 2003); *Singer v. Hara*, 522 P.2d 1187, 1197 (Wash. Ct. App. 1974).

[2] *See Conaway v. Deane*, 401 Md. 219, 317-23, 932 A.2d 571, 630-34 (Md. 2007); *Hernandez v. Robles*, 855 N.E.2d 1, 7-8 (N.Y. 2006); *Andersen v. King County*, 138 P.3d 963, 982-85 (Wash. 2006) (plurality); *Morrison v. Sadler*, 821 N.E.2d 15, 23-31 (Ind. Ct. App. 2005); *Standhardt*, 77 P.3d at 461-64; *Jones v. Hallahan*, 501 S.W.2d 588, 590 (Ky. 1973).

[3] *Baker v. Nelson*, 191 N.W.2d 185, 187 (Minn. 1971) ("The equal protection clause of the Fourteenth Amendment, like the due process clause, is not offended by the state's classification of persons authorized to marry.").

[4] *See Baker v. Nelson*, 409 U.S. 810 (1972).

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that there are no important or demonstrable differences between men and women and that any two people, irrespective of sex, can fulfill the important public purposes of the institution of marriage. But as stated by the Supreme Court, "[t]he truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle interplay of influence one on the other is among the imponderables."[5] "'Inherent differences' between men and women, we have come to appreciate, remain cause for celebration . . . ."[6]

These celebrated "inherent differences" are the foundation for society's interest in marriage: "encouraging responsible procreation and child-rearing."[7] Only a man and a woman can create a sexual union that can, in turn, generate a child. And, as supported by millennia of accumulated common sense[8] and shown by the unusually strong consensus of social science,[9] children are best raised in a low-conflict home led by their biological father and mother. Both parents matter

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[5] *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 133-34 (1994) (quoting *Ballard v. U.S.*, 329 U.S. 187, 193-194 (1946)).

[6] *United States v. Virginia*, 518 U.S. 515, 533 (1996).

[7] H.R. Rep. No. 104-664, at 13 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2905, at 2917.

[8] *See Hernandez,* 7 N.Y.3d at 359 ("Intuition and experience suggest that a child benefits from having before his or her eyes, every day, living models of what both a man and a woman are like."); *Lofton v. Secretary of the Dep't of Children & Family Servs.*, 358 F.3d 804, 820 (11th Cir. 2004) ("Although social theorists ... have proposed alternative child-rearing arrangements, none has proven as enduring as the marital family structure, nor has the accumulated wisdom of several millennia of human experience discovered a superior model."); *accord In re Op. of the Justices*, 129 N.H. 290 (1987) *and In the Matter of the Marriage of J.B. and H.B.*, 326 S.W.3d 654 (Tex. Ct. App. 2010).

[9] *See, e.g.*, footnotes 10 and 11 to *Statement of Austin R. Nimocks*, submitted for the July 20, 2011 hearing on S.598 (identifying the relevant studies).

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because they "play crucial and qualitatively different roles in the socialization of the child."[10] And this parental diversity is crucial for children because "[t]he two sexes are different to the core, and each is necessary—culturally and biologically—for the optimal development of a human being."[11] Thus, pretending that our society is not composed of two wonderfully different and complementary halves of humanity both denies reality and ignores the government and society's primary and public reason for being in the marriage business: children.

Americans fully understand this fundamental truth about marriage. The people do not need the assistance of their elected representatives to define the institution of marriage. Unlike the debt ceiling, complicated administrative questions, or matters where the expertise of the legislature is preferred, the people are the experts on marriage since it is not the product or creation of Congress. DOMA did not invent marriage or create anything new. Rather, it merely recognized and guarded what the people know and believe.

And lest there be any question about what Americans believe about marriage, one need only to look at the record. What is likely the largest and most definitive poll of Americans' opinions on this issue, completed in May 2011, found that 62% of Americans believe marriage should be defined as "only a union

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[10] Michael Lamb, *Fathers: Forgotten Contributors to Child Development*, 18 Hum. Dev. 245, 246 (1975).

[11] David Popenoe, *Life Without Father: Compelling New Evidence that Fatherhood & Marriage are Indispensable for the Good of Children & Society* 197 (1996).

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between one man and one woman."[12] Unsurprisingly, that percentage reflects the success rate for the votes in 31 states that, like DOMA, recognized and protected marriage as being only between a man and a woman.[13] By contrast, every U.S. jurisdiction that has redefined marriage has done so without the popular consent of the people.

Finally, as outlined in my original testimony and my supplemental written testimony, there are many firm bases for the government to recognize what has always been true from the beginning of time. Because only opposite-sex couples can fulfill the public purposes of marriage, DOMA is a sound, compelling, and constitutional policy.

Respectfully submitted this 10th day of August 2011.

David Austin R. Nimocks

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[12] *See* http://www.adfmedia.org/News/PRDetail/?CID=27539 (last visited August 3, 2011).

[13] *See* http://oldsite.alliancedefensefund.org/userdocs/MarriageAmendmentVotePercentages.pdf (last visited August 3, 2011) (showing that, for instance, an average of 62.5% of voters have voted to approve their state marriage amendments). However, many consider the number of U.S. jurisdictions that have voted on marriage to be 32. As referenced by Hon. Steve King at the July 20, 2011 hearing on S.598, Iowans removed from their supreme court on November 2, 2010 all three justices who were up for retention votes. In the words of Rep. King, Iowans "sent a message to the Supreme Court of Iowa," and made clear both their displeasure with the court's decision in *Varnum v. Brien*, and their unwavering belief in marriage as the union of one man and one woman.

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Questions for the Record
From Senator Amy Klobuchar
To
Evan Wolfson
Founder and Executive Director
Freedom to Marry

Following the Senate Judiciary Committee Hearing:
"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"
Held on July 20, 2011

During the hearing, I asked all of the witnesses on your panel the questions listed below, but you did not have time to respond. Please do so now.

It has been 15 years since DOMA was enacted, and the legal and social landscapes have changed since then. In your opinion, how has the issue of same-sex marriage transformed over the years? What effect has the passage of time had on the debate?

First, the most important change since the passage of so-called DOMA in 1996 is that same-sex couples actually won the freedom to marry – in six states plus our Nation's capital, and 12 countries on four continents. Americans have had the chance to see the reality that when marriage discrimination ends and gay couples share in the freedom to marry, families are helped and no one is hurt. There is now real evidence and experience, not just hypotheticals and gloom-and-doom scare tactics from those who oppose inclusion and equality. As the American people have heard the stories of love and commitment such as the testimony presented by witnesses such as Ron Wallen, hearts have opened and minds have changed. Now a majority of Americans have come to support the freedom to marry.

Second, the other key change since 1996 is that the lived experience of the freedom to marry has refuted the claims that ending marriage discrimination would somehow harm children, families, marriage, or society. The truth is precisely the opposite: where loving and committed same-sex couples have been able to share in marriage, no one has been harmed, the lives of children have been improved, and even divorce rates and other measures of family and marriage health have remained stable or improved. In fact, there is no evidence that justifies perpetuating the exclusion from marriage. As I note in my written and oral testimony, this is why every mainstream professional association on child welfare and public health has concluded, based on evidence and experience, that ending the denial of marriage will help families and harm no one.

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SUBMISSIONS FOR THE RECORD

WASHINGTON
LEGISLATIVE OFFICE

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
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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

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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.

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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

[1]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 (September 2009 Press Release)

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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@dcaclu.org.

Sincerely,

Laura W. Murphy
Director, Washington Legislative Office

Christopher E. Anders
Senior Legislative Counsel

Ian S. Thompson
Legislative Representative

[2] *Id.*

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AMNESTY
INTERNATIONAL

The Honorable Patrick Leahy
Chair
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

July 19, 2011

Dear Chair Leahy,

On behalf of Amnesty International USA's nearly 300,000 members, thank you for holding a hearing on the Respect for Marriage Act ("RMA"), S. 598, which would repeal the discriminatory "Defense of Marriage Act" ("DOMA") and help end discrimination against same-sex couples. We applaud your leadership to protect the human rights of all people, including the lesbian, gay, bisexual and transgender ("LGBT") community.

Amnesty International USA strongly supports the RMA. The "Defense of Marriage Act" is a hurtful law that singles out lawfully married same-sex couples for unequal treatment under federal law, violating their right to be free from discrimination. This law discriminates in two substantial ways. Section 2 of DOMA purports to allow states to refuse to recognize valid civil marriages of same-sex couples performed in other states; and Section 3 of the law carves all same-sex couples, regardless of their marital status, out of all federal statutes, regulations, and rulings applicable to all other married people. As a result, DOMA denies these lawfully married couples access to over 1,100 federal benefits and protections. The RMA, introduced by Sen. Dianne Feinstein, would remedy this injustice by repealing DOMA and ensuring that all lawfully married couples – including same sex couples—are able to receive the benefits of marriage under federal law.

Amnesty International USA believes that all people, regardless of their sexual orientation or gender identity, should be equal under the law and should be able to enjoy the full range of human rights, without exception. Marriage between individuals of the same-sex is an issue of fundamental human rights, the basis of which is enshrined in Article 16 of the Universal Declaration of Human Rights.[1] Amnesty International USA believes that the denial of equal recognition of same-sex relationships prevents many people from accessing a range of other rights, such as rights to housing and social security, and stigmatizes those relationships in ways

[1] Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Article 16, *Universal Declaration of Human Rights.*

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that can fuel discrimination and other human rights abuses against people based on their sexual orientation or gender identity.

Passage of the RMA would help protect these rights and allow same-sex couples and their families eligibility for important federal benefits and protections such as family and medical leave and Social Security spousal benefits.

Thank you again for addressing this urgent human rights issue in the United States. We look forward to continuing to work with you and appreciate your leadership on this issue.

Sincerely,

Larry Cox
Executive Director
Amnesty International USA

Cc: Senator Diane Feinstein

AMNESTY INTERNATIONAL'S LGBT PRIDE TOOLKIT

Lesbian, Gay, Bisexual & Transgender Rights are Human Rights

ACTION: Support Respect for Marriage Act

ISSUE BRIEF

The **Defense of Marriage Act (DOMA)** singles out lawfully married same-sex couples for unequal treatment under federal law. This law discriminates in two important ways. First, Section 2 or DOMA purports to allow states to refuse to recognize valid civil marriages or same-sex couples. Second, Section 3 of the law carves all same-sex couples, regardless of their marital status, out of all federal statutes, regulations, and ruling applicable to all other married people—thereby denying them over 1,100 federal benefits and protections.

For example, legally married same-sex couples cannot file their taxes jointly, take unpaid leave to care for a sick or injured spouse, receive spousal, mother's and father's, or surviving spouse benefits under Social Security, or receive equal family health and pension benefits as federal civilian employees.

The **Respect for Marriage Act (RMA)** repeals DOMA and restores the rights of all lawfully married couples—including same-sex couples—to receive the benefits of marriage under federal law. The bill also provides same-sex couples with certainty that federal benefits and protections would flow from a valid marriage celebrated in a state where such marriages are legal, even if a couple moves or travels to another state.

Under the RMA, same-sex couples and their families would be eligible for important federal benefits and protections such as family and medical leave or Social Security spousal and survivors' benefits, but the federal government could not grant state-level rights. The bill *does not* require states that have not yet enacted legal protections for same-sex couples to recognize a marriage, nor does it obligate any person, state or religious organization to celebrate or license a marriage between two persons of the same sex.

The Respect for Marriage Act was introduced in the Senate by Sen. Dianne Feinstein (D-CA) and re-introduced in the House by Rep. Jerry Nadler (D-NY) on March 16, 2011. (The Respect for Marriage Act is S. 598 and H.R. 1116).

ACTION DETAILS

Use the **petition** on the following page to collect signatures calling for the passage of the Respect for Marriage Act (RMA), which would in turn, repeal the Defense of Marriage Act (DOMA).

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Pass the Respect for Marriage Act!

50 YEARS AMNESTY INTERNATIONAL

The Defense of Marriage Act (DOMA) denies lesbian and gay couples over 1,000 federal protections that ar guaranteed to all other married couples—despite being committed to each other and paying taxes lik everyone else.

The **Respect for Marriage Act (RMA)** would remedy this injustice by repealing DOMA and restoring the rights c all lawfully married couples—including same sex couples—to receive the benefits of marriage under federa law. Furthermore, the RMA would also provide same-sex couples with certainty that federal benefits an protections would flow from a valid marriage celebrated in a state where such marriages are legal, even if couple moves or travels to another state.

Along with Amnesty International, the Human Rights Campaign and other human rights organizations, we strongly support the passage of the Respect for Marriage Act.
(S. 598; H.R. 1116)

NAME (PLEASE PRINT)	SIGNATURE	EMAIL	KEEP ME INFORME
Jose Nieves Barrios	[illegible]		☐
E.R. Garcia	E.R. Garcia		☐
M. Adamovich	[illegible]	GAS ME~THERAPY@G-Mail.com	☑
Carolyn Jacoby	[illegible]	[illegible]@gmail.com	☑
Tyler McKechnie	[illegible]	dramaspikes@aol.com	☐
Ali Rueber	Ali Rueber	aerueber@gmail.com	☑
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David Puzzo	[illegible]	[illegible]@gmail.com	☐
[illegible]	[illegible]		☐
			☐

Pass the Respect for Marriage Act!

50 YEARS AMNESTY INTERNATIONAL

The Defense of Marriage Act (DOMA) denies lesbian and gay couples over 1,000 federal protections that ar guaranteed to all other married couples—despite being committed to each other and paying taxes lik everyone else.

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Along with Amnesty International, the Human Rights Campaign and other human rights organizations, we strongly support the passage of the Respect for Marriage Act.
(S. 598; H.R. 1116)

NAME (PLEASE PRINT)	SIGNATURE	EMAIL	KEEP ME INFORME
Mia G. Waylor	Mia G	D.Saffledeacess@Gmail	✓
BANSARI SOMANI	B Somani	bansaris@yahoo.co.uk	✓
Stephan Likosky	Stephan Likosky		
Cristina Terrano	Cristina Terrano	Contact@Terranophotography.com	✓
Christopher D Lott	Christopher D Lott	christopherdlott@gmail.com	✓
Pattie Lewis	Pattie Lewis	Pattieloetzer@yahoo.com	
Vana Lewis		VanaLewis@Aol.Com	
Hesselfje S. van Goor	Hesselfje S van Goor	HESSELFJE.S@GMAIL.COM	
Leslie Lisecz	Leslie Lisecz	Leslie.lisecz@gmail.com	✓
Kathryn Howard	Kathryn Howard	Stantchini@gmail.com	✓
Stephanie Hawley	Stephanie Hawley		
Jill Fiking	JILL FIKING	171 E. 2nd St, NY 40009	

July 23, 2011

Dear Members of the Senate Committeee on the Judiciary:

Imagine your spouse, someone with whom you have shared your life for over 27 years, comes home from the doctor one day with the news that she has an advanced-stage cancer and needs sugery immediately. You would be devastated with feelings of grief, anxiety, and fear. You also have hope. You and she have spent twenty-seven years together facing many ups and downs. You will face this newest crisis together, as a team, as you always have. You promise to take care of her, to be with her every step of the way.

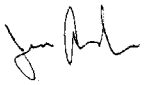
Now, imagine the next day when you request time off of work so that you can take care of your wife and you are flatly denied. You cannot legally take leave to take care of your wife. What was an already anxious event, is now cataclysmic. Your loved one, your legally-married spouse, will face long-term care without you. You have to go to work or face losing your job.

It is difficult to imagine, because for most married couples it simply wouldn't happen. Unfortunately, this scenario isn't one of the imagination. It's real. After being in a commited, loving, monogamous relationship of twenty-six years, this very same-gender couple asked me to perform their wedding. They were married earlier this year, but were forced to rely on outside help for daily care for the recovery from surgery.

After so many years of weathering storms together, it is unbelievable, illogical, and problematic that same-gender couples should not have a legal right to do so now, especially since they are legally married in their home state of Iowa. As an ordained pastor in the Evangelical Lutheran Church in America who is integrally involved with the LGBT community, I feel compelled to contribute this story in hope and expectation that DOMA be repealed. It is only right and ethical that the same-gender couples over whose marriages I preside are able to file joint taxes, receive spousal Social Security benefits, and take unpaid leave to care for an ill spouse.

I have been a pastor for twenty years in the states of North Dakota, Minnesota, and now Iowa. I've ministered to farmers, stay-at-home moms, executives, and even politicians. I've sat by many hospital beds and on many living room couches of those who are ill, dying, or recovering from surgery. The unifying factor in all these stories is the incredible love and care that spouses are able give to their loved ones in those trying times. As one who sees the miracles that happen when love is allowed, I ask that you support the Respect for Marriage Act (S. 598) and fully repeal DOMA. Thank you for your attention.

Sincerely,



Jen Andreas, M.Div.
Pastor, Lord of Life Lutheran Church
Ames, Iowa

Statement of Marvin Burrows

Before the Committee on the Judiciary

United States Senate

Submitted for the Record of a Hearing Entitled

"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

July 20, 2011

I respectfully address the United States Senate Judiciary Committee:

My name is Marvin Burrows, and I am 75 years old. I live in Hayward, California. I was born and spent my childhood in Michigan. I served in the United States Air Force.

My parents knew I was homosexual by the time I was 15 years old. They decided to put me in a "mental home" to be "cured" of this dreaded "disease". I tried to hang myself so my family wouldn't have to be embarrassed that I was a queer. After the suicide attempt, instead of being committed, I was given the choice to do outpatient therapy. The physiatrist told my mom and me that my treatment would be different than we expected. He helped me learn how to live in society and how to protect myself. Considering the times, the early 1950's, that doctor was a true exception! I believe that without his help I would not be alive today.

I met the love of my life, William Duane Swenor, in 1953. He was 15 and I was 17. My father found out and told me to leave home if I continued to see Bill. After my dad kicked me out I had no place to go, and I was still in high school. I stayed with my grandmother until Bill could ask his mother if I could move in with them. She gave her permission, I moved in, and from that time on we lived as a committed couple.

I had limited contact with my family, with the exception of my mother and grandmother. Finally, after a very long time, the rest of my family accepted Bill as my life partner.

Bill and I moved from Michigan to California in the mid 60's because we thought we would be more accepted in San Francisco.

We bought things jointly, we opened joint bank accounts. We shared all of our income and expenses. We rented apartments together, but often had to lie about our relationship, even to the point of telling potential landlords that we were related.

We did the best we could at the time to protect our relationship, drawing up legal papers in case of illness, injury or death. We had wills, powers of attorney, and advance directives. We spent a good deal of money and time trying to protect what we had built together.

When the California State Domestic Partners Registry became available in 2000, Bill and I registered. We were told that our registration would take the place of the Powers of Attorney, and to our knowledge our relationship was then legally protected.

On February 15, 2004 Bill and I married when Mayor Gavin Newsom of San Francisco gave us the opportunity. At that time we had been together for 50 years. We were very surprised at how emotional we became while saying our vows. To be able to speak those words, out loud, in front of others, brought tears to our eyes. It was the best time in our lives and we had high hopes for our future as a married couple. I have attached a photograph of our wedding to this statement. I am on the left in the photo, and Bill is on the right.

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Without a doubt, that ceremony changed and revitalized our relationship. It gave us an important measure of pride and acceptance. It felt great to be able to do something so personal, and yet so historic, all at the same time.

However, our marriage and over 4,000 others were declared null and void by the California Supreme Court 6 months later, in August of 2004.

When the California Supreme Court declared, in May of 2008, that we California same-sex couples could get legally married at long last, it was too late for Bill and me.

Had we had the chance to marry legally under California law, we would have done so. But Bill died of a heart attack on March 7, 2005. I was completely devastated.

While Bill was alive he had signed me up for his union insurance through the International Longshore and Warehouse Union (ILWU). Bill had to pay income taxes on that insurance, even though straight married couples do not have pay such taxes.

Bill had also signed me up for his pension benefits through the ILWU. When he died, however, I was told that due to DOMA I was denied Bill's pension. I was told this twice to my face and several other times in letters sent to people who were trying to help me. Three years later, after years of fighting with the help of the National Center for Lesbian Rights, the union finally changed its position and gave me Bill's pension, saying it was "the

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right thing to do for a fellow member."

I also could not collect Social Security benefits based on Bill's earnings, even though, had Bill married 5 different women in the 51 years we were together, each one of them could have claimed his Social Security. We both paid into the Social Security system. We shared everything and loved only each other for our entire adult lives. It is unfair, and it is un-American that I should be left this way by our country.

I had to move from our home of 35 years because I could no longer afford the payments without his social security benefits. I could not live on my own as I was almost financially destitute, so a friend invited me to move into his home. I lost my cat and had to give away our pet parrots. I didn't even have room to keep our bedroom set, so I gave that to my nephew. I lost my lifelong partner, my home, our animals, income, my health insurance, and even my bed and furniture all in one fell swoop.

All of this would have happened to me, even if Bill had lived long enough for us to marry.

The reason is the Defense of Marriage Act. Bill still would have been taxed on health benefits for me, I still would not have received Bill's Social Security, I would have had to fight for years for Bill's pension, and I would have lost my house.

This is what DOMA does to people. It shatters their lives at a time when they need stability and comfort the most. It makes people, including

me, feel like less of a person – like an outcast not worthy of full equality.

I still believe that this country can change for the better, and I do my best to contribute to my community on a volunteer basis. For example, I have volunteered to deliver Meals on Wheels for 22 years, and I am a founder of Lavender Seniors of the East Bay. I do believe that we will be allowed to marry some day in every state, and I believe these marriages will be recognized by our federal government.

It may not happen in my lifetime, but it gives me great hope to believe that someday no one will have to go through what I did when I lost the love of my life. I hope my story will open the minds of the Committee members and other members of Congress to repealing DOMA and treating gay couples equally.

Submitted with respect and sincerity,

Marvin Burrows

National Gay and Lesbian Task Force Action Fund

Build Power Take Action Create Change

Written Testimony Submitted to the
Committee on the Judiciary
U.S. Senate

On S. 598 (Respect for Marriage Act)

July 20, 2011

By
Rea Carey
Executive Director
National Gay and Lesbian Task Force Action Fund

1325 Massachusetts Ave., NW, Suite 600, Washington, DC 20005
Tel 202.393.5177 • Fax 202.393.2241 • www.theTaskForceActionFund.org

Rea Carey, National Gay & Lesbian Task Force July 20, 2011

We thank Chairman Leahy and the Committee for this opportunity to provide testimony on the Respect for Marriage Act, S.598. On behalf of the National Gay and Lesbian Task Force Action Fund — the oldest national organization advocating for the rights of lesbian, gay, bisexual, and transgender (LGBT) people — we urge you to repeal section 3 of the Defense of Marriage Act (DOMA) by passing the Respect for Marriage Act.

DOMA is one of the most discriminatory and farthest-reaching laws ever to emerge against our community. The law is grossly unjust and places significant harm on far too many families in our country. It is shocking that in 2011, legally married couples in the United States are being singled out and selectively denied fundamental rights by their own federal government. Too many have been hurt for too long because of DOMA, and its repeal is long overdue.

DOMA Causes Financial Hardships and Dignitary Harms

Same-sex couples whose relationships are legally recognized by their states are denied the 1,138 federal benefits, rights, and privileges available to married opposite-sex couples. The denial of these benefits, rights, and privileges harms our families' economic security and dignity.

For example, the Family Medical Leave Act (FMLA) requires employers to allow married couples to take unpaid leave to care for their sick spouses. Because of DOMA, same-sex married couples are not eligible to take FMLA leave to care for each other when they are sick.

Because of DOMA, the IRS must interpret the tax code in a way that denies federal tax benefits to same-sex couples that other married couples receive. Same-sex couples cannot file joint tax returns, which would accurately and honestly reflect their relationships and families. Further, when one member of an opposite-sex married couple provides benefits to the other — such as adding him or her to an employer's health insurance plan — those benefits are excluded from the taxpayer's gross income (or deducted from taxable income). Because of DOMA, however, same-sex spouses do not qualify for that exclusion. Ineligibility for federal tax benefits takes on a further dimension of harm at the end of life. Because of DOMA, when one member of a same-sex couple dies, any assets left to his or her spouse are subject to a federal estate tax. Other married couples' bequests are not taxed under the federal estate laws.

Because of DOMA, same-sex couples are excluded from the vast array of Social Security benefits that flow from marriage. These benefits include the upward adjustment in benefits a surviving spouse receives when a spouse with more generous benefits dies, as well as mothers' and fathers' Social Security benefits. Children of a same-sex couple may also be affected: if they live in a state that does not allow second-parent adoption and a nonbiological parent dies, they cannot receive surviving child benefits. These benefits are crucial to individuals', couples', and families' economic security. Like all working Americans, LGBT people have paid for these benefits throughout their working lives. But because of DOMA, same-sex couples — and, often, their children — cannot receive these benefits.

Federal employees experience further significant harms as a result of DOMA. The following is a message from Ralph Cherry, a retired federal employee:

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> *I am a sixty-five-year-old federal retiree in a same-sex domestic partnership of thirty-two years. Because of DOMA, my partner is not eligible for any survivor benefits from me, and I cannot add him to my health insurance. In order to ensure that he is looked after if I should die first, I have been forced by this situation to take out a life insurance policy. As to health benefits: he has a chronic health issue which we must cover in the individual insurance market at exorbitant rates; in fact, as I write, he is in severe pain which we cannot treat because on the individual market he cannot get coverage for the condition for a year. Members of Congress: I am on the exact same Federal Employees Health Benefits Plan as you; imagine yourselves in this ridiculous position to know my frustration. The federal government is shooting itself in the foot with this outdated law, discouraging talented potential civil servants from applying for employment because they happen to be gay and can get humane treatment for their family members in the private sector. For heaven's sake, drag yourselves into the twenty-first century.*

The harmful effects of DOMA compound the other obstacles to economic security that LGBT couples and families face. LGBT people are generally poorer than the general population, and poverty rates are especially high for LGBT couples within communities of color. Moreover, children of gay and lesbian partners are twice as likely to be poor as are children of married same-sex couples, a pattern that is consistent across race and ethnicity.

DOMA Harms People Across the United States

Although national data are not yet available from the 2010 census, the 2000 census counted 594,000 same-sex unmarried-partner households in the United States. Analysis of the data by the Williams Institute reveals that more than 250,000 children in the United States are being raised by same-sex parents.

Six states and the District of Columbia have full marriage equality, and nine more states have broad relationship recognition laws. Because of DOMA, however, same-sex couples whose relationships are legally recognized in their states are nevertheless denied all the federal benefits, rights, and privileges available to married opposite-sex couples.

Most Americans Support the Provision of Benefits to Same-Sex Married Couples

A 2008 survey by Newsweek/Princeton Research reported that sizeable majorities of Americans were in favor of same-sex couples' having inheritance rights (74%), Social Security benefits (67%), health insurance and other employment benefits (73%), and hospital visitation rights (86%). A 2010 survey by the Human Rights Campaign revealed that a majority of Americans supported the repeal of DOMA. This year, polls by Gallup, CNN, and ABC News/Washington Post all have shown that majorities of Americans favor same-sex marriage.

Conclusion

The stories of hardship under this law are heartbreaking. With the passage of the Respect for Marriage Act, Congress would begin to close this ugly chapter in our nation's history. It would

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end an egregious injustice against thousands of loving, committed couples who simply want the protections, rights, and responsibilities already afforded other married couples.

We thank the many Senators who support the Respect for Marriage Act and full, swift repeal of DOMA.

We at the National Gay and Lesbian Task Force Action Fund, along with people all across the country — from every town and every background — recognize that our entire country benefits when everyone is allowed to contribute their talents and skills, free from discrimination. That's why we urge the passage of the Respect for Marriage Act.

Thank you.

S. 598 (Respect for Marriage Act)

TESTIMONY
COURAGECAMPAIGN.ORG/TESTIMONY

Senate Committee on the Judiciary
"S.598, *The Respect for Marriage Act: Assessing the Impact of DOMA on American Families*"

Wednesday, July 20, 2011 at 9:45 a.m.
Room 216 of the Hart Senate Office Building

COURAGE CAMPAIGN MEMBERS
DON CHABOT and JIM NIMMO
Together 34 Years

My partner, Don Chabot, and I, Jim Nimmo, live in Oklahoma where we've been caring for one another, emotionally and financially, for 34 years. In other words we've been together though thick and thin, sickness and health, richer and poorer. During these 34 years both of us have been gainfully employed, paid our taxes on time, and contributed to making our neighborhood and Oklahoma a better place to live for everyone. I was even a candidate for the Oklahoma City School Board years ago.

We have also been co-plaintiffs in a 2004 lawsuit that challenged the Oklahoma version of DOMA, called State Question 711. The passage of this ballot question made the benefits and privileges of state-recognized marriage off-limits to committed couples of the same gender. Even though Don and I have a long history together, the passage of this DOMA imitator gave us a second-class citizenship, even though we both pay first-class taxes. Both the state of Oklahoma and the Federal government have abandoned us even though we have broken no laws. DOMA and Oklahoma denigrate same-gender couples, cheating us of the full enjoyment of our lives and efforts as model citizens.

As the older half of our relationship, Don, 69, has been receiving Social Security for six years. Due to health issues, he signed into it early. Should he die first his lifelong payments to Social Security will be unavailable to me because DOMA will not recognize our right to marriage.

The rescinding of DOMA will not make our devotion to one another any stronger, but it will recognize that we deserve the same benefits and privileges that opposite-gender couples receive. This includes but is not limited to survivor benefits from Social Security and employer pensions, property inheritance, hospital visitation and health care directives.

Our system of American fair play needs to rescind DOMA for the better health of all Americans.

CONTACT:
James Nimmo, james.nimmo@gmail.com, (405) 843-3651
Ana Beatriz Cholo, Courage Campaign Communications Manager, anabeatriz@couragecampaign.org, 312-927-4845 (cell)

Courage Campaign is a multi-issue online organizing network that empowers more than 700,000 grassroots and netroots supporters to work for progressive change and full equality in California and across the country. Through a one-of-a-kind online tool called Testimony: Take A Stand, the Courage Campaign is chronicling the sights, sounds and stories of LGBT families and all who wage a daily struggle against discrimination across America. For more information about Testimony, please visit, http://www.couragecampaign.org/Testimony.

Courage Campaign • 7119 West Sunset Boulevard, No. 195 • Los Angeles, California • 90046
Phone: 323-969-0160 • Fax: 323-969-0157

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Statement of Tracey L. Cooper-Harris

Before the Committee on the Judiciary

United States Senate

Submitted for the Record of a Hearing Entitled

"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

July 20, 2011

My name is Tracey Cooper-Harris. I am a U.S. Army Veteran of Operation Enduring Freedom & Operation Iraqi Freedom. I served with honor for a total of 12 yrs as an Animal Care Specialist in all 3 components of the Army: Active, South Carolina National Guard, & Army Reserves. While in my Reserve unit in California, I deployed to the Middle East for 11 months in 2002. I was stop-lossed during my deployment, and I did not reenlist after I came home. Although I loved my job and the Army wanted me to stay because of my hard work and exemplary service, I was tired of having to live a lie under Don't Ask, Don't Tell as a gay soldier.

When I returned home in 2003, it took me a bit of time to readjust back to civilian life. I struggled with the invisible wounds of war, the 5-year relationship I had prior to deployment, the subsequent breakup of that relationship, steady employment, & housing. I couch-surfed for weeks while I was trying to get myself back on track with housing, work, & eventually school. The person who helped me through all that was my then teammate, Maggie. Maggie & I played rugby together. She was known for her compassion, warm & gregarious nature, and dominance in moving people on the rugby pitch.

As our friendship grew romantic & into a committed relationship, I knew that this is the woman I wanted to marry. After 3 years together, that opportunity came. We married on November 1, 2008, days before Prop 8 passed. Even though we were able to marry, it was bittersweet to have fellow citizens in our state vote to stop other same-sex couples from making the ultimate commitment to each other in marriage as we had done. We knew that there would continue to be uncertainty if something happened to either one of us outside of California, or within the scope of the federal government's jurisdiction because of the Defense of Marriage Act (DOMA).

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The one thing on our side was time, and since the tide started to change favorably in the acceptance of gays and same-sex marriage throughout the country, we figured that laws would change before we became old or sick.

Well, I've had a reality check that is part of me now. A disease that I saw devastate the life of one of the most important people in my life is now affecting me. I have Multiple Sclerosis (MS), which is a chronic, often disabling disease that attacks the central nervous system (CNS). Myelin, a fatty substance that protects/insulates the nerve fibers and conducts electric impulse to get signals between the brain and CNS to make them move faster, is damaged/destroyed. When this happens, nerve impulses traveling to and from the brain and spinal cord are distorted or interrupted, producing the variety of symptoms that can occur. Symptoms may be mild, such as numbness in the limbs, or severe, such as paralysis or loss of vision. The progress, severity, and specific symptoms of MS are unpredictable and vary from one person to another.

I saw this disease ravage my Mom for 20 years, and the news that I had it was pretty hard to bear. There's no cure for MS, only medication to slow down the progression of the disease. Although I am on weekly medication that I take through injection, the future continues to be uncertain.

I can't help but remember how fast my Mom's health declined with this disease, causing her to be bedridden within three years after I joined the Army in 1991. I remember how she was no longer able to perform simple activities of daily living like feeding herself, bathing, or using the bathroom on her own. She needed a nurse to help her with all these tasks. I remember how much pain she

was in, and I remember my Pop staying by her side through it all, because of his love & commitment to his wife.

Like my Mom, I am blessed to have a spouse by my side to help me through this difficult time.

All this emotion and coming to grips with having this disease has made me focus on making sure that my wife, Maggie, has every benefit that any spouse of an honorably discharged veteran should have. Unfortunately, because we are a same sex couple, she would not be afforded the benefits and protections the federal government automatically bestows on other legally married couples.

To break it down, although the State of California recognizes our marriage (as do the states of New York, Rhode Island, Maryland, Connecticut, Vermont, Massachusetts, New Hampshire, Iowa, and Washington, DC), the federal government:

- does not allow us to file our taxes jointly (we lost out on thousands the 1st year we were married alone);
- can have us testify against each other in federal court, even though straight spouses enjoy the protection of a "spousal privilege";
- will tax the surviving spouse on any joint property we owned together;
- will not allow the surviving spouse to access social security survivors' benefits;
- will not allow my spouse to be buried with me at any veterans cemetery which has received federal funding;

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- will not consider my wife as my dependent for any of my veterans benefits I earned through 12 years of honorable service in the U.S. Army; and
- taxes us on my portion of health insurance benefits provided by Maggie's employer that they don't charge to heterosexual married couples.

The only way that we can get the things I mentioned above (plus more than 1,100 other protections at the federal level) is through the repeal of the Defense of Marriage Act.

Right now, same-sex couples who are married and have followed the marriage laws of their states are left out in the cold by the federal government. No attorney, no legal documents can ensure that federal benefits go to the surviving spouse should the other spouse die or become incapacitated.

Many of these federal benefits come up for the surviving spouse when their spouse dies or becomes incapacitated. I've seen this first hand with my Pop after my Mom died in 2001, as he is able to use her social security benefits, was not subject to any inheritance tax on the home they bought together in 1989, and was not taxed on health insurance provided by her employer. This is in stark contrast to what my wife or I will experience should something happen to either one of us.

My family will be left out in the cold at one of the most difficult times in life in the very real event that I start to become more affected by MS or should I die.

Even my final wishes after I die are affected by DOMA, since I want my wife to be buried with me at a state/federal veterans' cemetery. As long as that

cemetery has taken federal monies, my final wishes can't be fulfilled. Yet a straight veteran, even one who is in a common-law marriage, is allowed to have their spouse buried with them in a cemetery that has received federal monies.

Marriage equality isn't a gay thing. It's a family thing. There are thousands of families out there that are affected by DOMA and are forced to experience the turmoil that comes with not being able to protect their loved ones.

I am married to an amazing woman. We married for the same reason as many others have and continue to do: to show our commitment and love to each other in the presence of our Creator, our families, our friends, and our community. We married to ensure that our future children would grow in a home that has stability, love, and helps them become productive, contributing members of society.

We married to ensure that if one of us becomes incapacitated, we could visit our better half and make medical decisions based on the wishes of our spouse. And, we married to make sure if one of us dies, the surviving spouse would have the benefits earned at the state and federal level by the deceased. That's it. We're in this for better or worse, in sickness & in health, until parted by death. We want our marriage to be treated like any other marriage-nothing less.

After all the trials and tribulations this country has been through with discrimination & unequal treatment of its citizens based on religion, race/skin color, nationality, gender, veteran status, disability, or social status, we should have learned from our past.

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Marriage equality should be a non issue but the fear of the unknown is creating challenges for families like mine. It is time to correct this inequity and grant all people who have taken the commitment to marriage the protections offered by the federal government. I can't stand the thought of burdening my wife with the frustrations of DOMA when I start to get sicker.

My wife should not have to worry about all of these DOMA-related issues when my MS starts to get worse. It's just not right.

I served this country honorably for 12 years. It is time for Congress to behave honorably and repeal DOMA.

Thank you.

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July 19, 2011

Chairman Patrick Leahy
Senate Judiciary Committee
United States Senate
Washington, DC 20515

RE: Hearing on S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families

Dear Chairman Leahy:

On behalf of the one million lesbian, gay, bisexual, and transgender (LGBT) parents raising two million children across the United States, Family Equality Council – the national organization working to ensure full social and legal equality for LGBT families[1] by providing direct support, educating the American public, and securing inclusion in legislation, policies, and practices impacting families – would like to thank you for holding this historic hearing on S.598, the Respect for Marriage Act.

The federal government does not license marriages and, prior to passage of the so-called "Defense of Marriage Act" (DOMA)[2] in 1996, has always deferred to a state's determination of a person's marital status to determine eligibility for federal marital protections and responsibilities. DOMA overrides a state's determination of a person's marital status and renders married same-sex couples "single" thereby disqualifying them from any federal spousal protections and responsibilities.

To-date, with six states[3] – Massachusetts, Connecticut, Iowa, Vermont, New Hampshire and New York – and the District of Columbia providing same-sex couples with equal marriage rights, more than 11% of the total U.S. population currently lives in states that provide same-sex

[1] For purposes of this testimony, "LGBT families" refers exclusively to lesbian, gay, bisexual, and transgender parents raising children.

[2] 1 U.S.C. § 7 (West 1996, current through P.L. 112-23 approved 6-29-11) and 28 U.S.C. § 1738C (West 1996, current through P.L. 112-23 approved 6-29-11).

[3] Domestic partnerships have been legal in California since 2005. Cal. Fam. Code § 297 (West 2005). The Supreme Court of California legalized marriage for same-sex couples in 2008, but in November of that same year, Proposition 8 passed, adding an amendment to the California Constitution defining marriage as between one man and one woman. *In re Marriage Cases*, 43 Cal. 4th 757, 183 P.3d 384 (2008), Cal. Const. art. I, § 7.5. There are approximately 18,000 married same-sex couples in California. *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 928 (N.D. Cal. 2010). The district court decision in *Perry v. Schwarzenegger* found the Prop 8 amendment unconstitutional, but the case is still in litigation and the trial court order is stayed. *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010).

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couples with the freedom to marry.[4] LGBT families live in 99.3% of counties in every state across the nation,[5] and since 2004, when Massachusetts became the first state to legalize such unions, more than 80,000 same-sex couples have legally married.[6] Approximately 25% of these couples are raising children.[7]

For these 80,000 married same-sex couples, their families continue to go unrecognized by the federal government, unable to access the 1,138 federal benefits afforded to their opposite-sex counterparts.[8] When our families are denied access to these critical federal benefits and protections, they face multiple harms – direct and indirect, tangible and symbolic. DOMA sets apart and stigmatizes LGBT families and sends the message that we are less valid, less respected, and less worthy than other similarly situated families.

The current Administration agrees that DOMA is not only harmful to American families, but has determined that the law is unconstitutional and has ceased defending this discriminatory law in federal court. In its recent filing in support of a claim brought by a federal employee seeking to access health insurance benefits for her same-sex spouse, the U.S. Department of Justice stated the following:

> Section 3 of the Defense of Marriage Act, 1 U.S.C §7 ("DOMA"), unconstitutionally discriminates. It treats same-sex couples who are legally married under their states' laws differently than similarly situated opposite-sex couples, denying them the status, recognition, and significant federal benefits otherwise available to married persons.[9]

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[4] Maryland and New Mexico recognize same-sex marriages performed out-of-state.

[5] David M. Smith & Gary J. Gates, *Gay and Lesbian Families in the United States: Same-Sex Unmarried Partner Households, A Preliminary Analysis of 2000 United States Census Data*, A Human Rights Campaign Report 2 (August 22, 2001).

[6] Gary Gates, Williams Distinguished Scholarship, the Williams Institute, University of California Los Angeles.

[7] 21% of same-sex couples in California are raising children. *California: Census Snapshot: 2010*, the Williams Institute (2011). 28% of Wyoming same-sex couples are raising children. *Wyoming: Census Snapshot: 2010*, the Williams Institute (2011). 27% of Alabama same-sex couples are raising children. *Alabama: Census Snapshot: 2010*, the Williams Institute (2011). 20% of Pennsylvania same-sex couples are raising children. *Pennsylvania: Census Snapshot: 2010*, the Williams Institute (2011).

[8] In 1997, the Office of General Counsel of the General Accounting Office issued a memorandum to then-Chairman of the House Judiciary Committee stating that the Office had identified 1049 "federal laws classified to the United States Code in which marital status is a factor." U.S. General Accounting Office, Defense of Marriage Act, GAO/OGC-97-16 (Washington, D.C.: January 31, 1997) *available at* http://www.gao.gov/archive/1997/og97016.pdf. This number was updated to 1,138 in 2004. U.S. General Accounting Office, Defense of Marriage Act, GAO-04-353 (Washington, D.C.: January 23, 2004) *available at* http://www.gao.gov/new.items/d04353r.pdf.

[9] Defendant's Brief in Opposition to Motion to Dismiss, Golinski v. United States Office of Personnel Management, et al, N.D. Cal (2011) (No. C 3:10-00257-JSW).

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DOMA Harms Families

The U.S. General Accounting Office lists 13 categories of laws impacted by DOMA,[10] which include the federal programs to which married same-sex couples are denied equal access. These programs represent some of the critical legal safety nets that all married couples rely on as they plan futures and raise their children together. Using the stories of LGBT families, we will illustrate how DOMA harms children and tears apart families, how DOMA discriminates against U.S. citizen taxpayers and increases costs to employers as well as employees, threatens the security of our families and disrespects members of the U.S. military who selflessly serve our country. The harms inflicted by DOMA on LGBT families are numerous and the following stories highlight just a few examples of the impact on the families who live under the discrimination of DOMA every day.

DOMA Creates Tax Disparities for Families

The financial harms DOMA inflicts on LGBT families are concrete and numerous. The 2004 GAO report identified a total of 198 statutes involving marital status and taxation.[11] DOMA forces the IRS to pretend that married same-sex couples are single individuals or heads of household for purposes of taxation.[12] DOMA makes the very exercise of preparing tax returns exponentially more complicated and more expensive for married same-sex couples than it is for similarly-situated opposite-sex couples. Like all married couples, married same-sex couples typically share finances and expenses, but DOMA requires these couples to separate what is shared and file taxes as individuals. In states that respect the marriages of same-sex couples, those couples must file their state tax returns as married. However, because some items on a "married" state return require the taxpayer to already have a married federal return, many married same-sex couples must also go through the exercise of creating a "dummy" married federal return in order to complete their state tax filings. Preparing an extra federal return is a significant added expense that is unique to married same-sex couples.

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[10] U.S. General Accounting Office, Defense of Marriage Act, GAO-04-353 (Washington, D.C.: January 23, 2004) *available at* http://www.gao.gov/new.items/d04353r.pdf. "Social Security and Related Programs, Housing, and Food Stamps; Veterans' Benefits; Taxation; Federal Civilian and Military Service Benefits; Employment Benefits and Related Laws; Immigration, Naturalization, and Aliens; Indians; Trade, Commerce, and Intellectual Property; Financial Disclosure and Conflict of Interest; Crimes and Family Violence; Loans, Guarantees, and Payments in Agriculture; Federal Natural Resources and Related Laws; and Miscellaneous Laws."

[11] *Id.*

[12] *See* IRS Publication 201 (2001) *available at* http://www.irs.gov/publications/p501/ar02.html#en_US_2010_publink1000220742. "***Marital Status***. In general, your filing status depends on whether you are considered unmarried or married. For federal tax purposes, a marriage means only a legal union between a man and a woman as husband and wife."

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In most instances the inability to file jointly increases the tax bill for married same-sex couples. For example, for an LGBT family with only one income, filing separately means that they cannot take advantage of the larger joint deduction, subjecting the income earner to higher tax bills than he or she would pay if the couple filed jointly. This disadvantages many LGBT families, but has a significantly greater impact on those raising children on a single income, for whom every dollar is that much more critical to their family's security. There are some married same-sex couples, however, who will pay *more* in federal income taxes when the federal government respects their marriages because of the "marriage penalty." In fact, the 2004 CBO Report analyzing the budgetary impact of DOMA estimated that federal individual income tax and estate tax revenues would actually increase between $400 million a year to $700 million per year if the federal government were not prohibited from recognizing married same-sex couples.[13]

Emily and Sharon, Takoma Park, MD

Emily and Sharon met in 2007 and were married in Boston, MA in June 2010. Sharon and Emily moved from Washington, DC to Maryland in April of 2010. Washington, DC provides equal marriage rights to same-sex couples and while the state of Maryland does not yet provide same-sex couples with the freedom to marry, Maryland does respect marriages performed in other states.[14] When it came time to file their taxes, Emily and Sharon had to file federal returns as well as returns in both DC and Maryland. Even though the state of Maryland respects Sharon and Emily's marriage, state law requires the state tax return to mirror the federal return. Because DOMA prevents Sharon and Emily from filing as married on their federal return, they had no choice but to file as "single" in Maryland as well. However, because the District of Columbia treats all married people equally, Sharon and Emily were required to file as married and had to go through the process of creating a "dummy" federal return so that they could calculate their DC return. Because of the increased confusion and administrative onus, and to ensure they filed their taxes correctly, Emily and Sharon hired an accountant to complete their tax forms which resulted in a significant additional expense that they had not had to incur in previous years.

Through the process of creating the "dummy" federal return, Emily and Sharon discovered that had the federal government respected their marriage, they would be subject to the "marriage penalty" and would have owed in excess of $3,000 in additional taxes. Emily's income is significantly less than Sharon's, therefore, as a "single" person Emily qualifies for deductions she would not be eligible for had she and Sharon filed jointly with their combined income.

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[13] U.S. General Accounting Office, Defense of Marriage Act, GAO-04-353 (Washington, D.C.: January 23, 2004) *available at* http://www.gao.gov/new.items/d04353r.pdf.

[14] Maryland Attorney General's Office, *Marriage – Whether Out-of-State Same-Sex Marriage That Is Valid in the State of Celebration May Be Recognized in Maryland* (February 23, 2010) *available at* http://www.oag.state.md.us/Opinions/2010/95oag3.pdf.

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Spouses have the unlimited ability to transfer property or make gifts to one another without incurring any taxes. DOMA makes this benefit unavailable to married same-sex couples.[15] Married opposite-sex couples also have the ability to pass unlimited assets to a surviving spouse without taxation, but because of DOMA, same-sex spouses are not eligible for this benefit either. Property inherited by a same-sex spouse is subject to double taxation – taxed once upon the death of the first spouse and again upon the death of the second.[16] The burden of double taxation ultimately falls on the shoulders of the children and surviving family. Surviving children of married opposite-sex couples are better situated because they stand to inherent a larger proportion of their parents' property and assets than the surviving children of married same-sex parents. Same-sex couples may attempt to protect their families from higher tax rates by transferring title to assets during their lifetime, this may, however, subject these families to the gift tax.[17] Some same-sex couples choose to create living trusts[18] to avoid this double taxation. Creating a trust is expensive and complicated and will likely result in significant fees for accountants and attorneys that many families cannot afford. A trust may also restrict how and when these assets can be accessed so it further limits the ability of LGBT families to make personal decisions that are best for them.

Brian and Ken, Mt. Kisco, NY

Brian Sheerin and Ken Weissenberg met in New York in 1997. In 2000, the couple registered for a domestic partnership in New York City, the only form of relationship recognition that was available to them at the time, so that Ken could insure Brian under his employer's health care plan. They jointly adopted Jacqueline, their first daughter, in 2000, and Nicole, their second, in 2002. In 2004, almost immediately after it became available to them, Ken and Brian were legally married in Massachusetts. When Brian and Ken moved from Manhattan to their home in the suburbs, their apartment was in Ken's name only. Opposite-sex married couples can exclude the income from the sale of a house on their federal income tax, but because Ken and Brian's marriage is not recognized by the federal government, they were forced to pay $70,000 more in taxes than a similarly situated married opposite-sex couple would have paid that year.

Ken is a tax attorney and is intimately familiar with the extra federal tax burdens married same-sex couples must face because DOMA prevents federal recognition of their marriage. In order to

[15] 26 U.S.C. § 1041.
[16] 26 U.S.C. § 2056.
[17] 26 U.S.C. § 2523.
[18] *Inter vivos* trust (or "living trust") refers to a trust created and executed during the lifetime of a person. It is created to hold property for the benefit of another person. It is called a "living trust" because it is like a person's will but is prepared and goes into effect while the creator is living, not at the time of her death. Living trusts are created by an individual seeking to preserve his assets from taxation; however, assets preserved in living trusts conveyed upon the death of the creator naturally carry limitations and prohibitions more invasive than those of a general will.

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avoid incurring some of these additional tax liabilities Ken and Brian have gone to great lengths and significant expense to create "living trusts." While their "living trust" will protect Brian and Ken's joint property from double taxation, it cost them upwards of $50,000 for lawyers and accountants to draw up the appropriate documents and will cause complications and hardship for the surviving spouse because they will have more limited access to the funds in the trust. Even with the additional complications and extra expense, Brian and Ken are lucky because they have the knowledge, expertise, and means necessary to protect their assets. While married opposite-sex couples inherit from their spouses tax-free, not all married same-sex couples are able to take the extra steps to protect their families that Brian and Ken were able to take.

DOMA Increases Administrative and Financial Burdens to Both Employers and Employees

DOMA imposes additional financial and administrative burdens on employers who choose to provide equal benefits to their lesbian and gay employees. For example, if an employee is fortunate enough to work for an employer who provides benefits for same-sex spouses and that employee adds her wife to her employer-provided health insurance, that benefit is considered "imputed income" and is taxed by the federal government.[19] Married opposite-sex couples who take advantage of this same employer-sponsored health insurance are able to access this benefit tax-free. Recognizing how unfairly DOMA treats their lesbian and gay employees, an increasing number of employers have begun "grossing up" these employees to mitigate the cost of the increased tax burden to the employee. This results in even higher administrative and financial burdens on the employer because not only are they paying their employees more but the employer is now subject to higher payroll taxes for these employees.

Kathy and Julie, Laguna Niguel, CA

Kathy Kahn and Julie Johnson live in Laguna Niguel, California. Together for 30 years, Kathy and Julie were married in California in October of 2008, during the brief window when the freedom to marry was available to same-sex couples in the state. Julie and Kathy have a son, Reign. Julie is a stay-at-home mom; Kathy is a ballet teacher and an instructor at a community college and feels fortunate that her employer provides benefits for same-sex spouses. If Julie and

[19] *See* 26 U.S.C § 106 *and* PLR 9850011, 1998 PLR LEXIS 1650, Private Letter Ruling 9850011 4 (1998) (answering a question regarding the proper federal tax treatment of providing health benefits to same-sex domestic partners.) "(7) If a domestic partner covered under the Family Health Plan does not qualify as a spouse or dependent, the excess of the fair market value of the group medical coverage provided by the Fund to the domestic partner, over the amount paid by the employee for such coverage, is includible in the gross income of the employee under *section 61 of the Code*. . . . (9) The amount includible in the gross income of the employee by reason of the coverage of the domestic partner constitutes "wages" under *section 3401(a) of the Code* and is subject to income tax withholding under *section 3402 of the Code*. Such amounts also constitute "wages" within the meaning of *section 3121(a) of the Code* and *section 3306(b) of the Code* for FICA and FUTA purposes."

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Kathy were an opposite-sex couple, Julie would have access to Kathy's health insurance coverage tax-free. However, because DOMA prevents the federal government from recognizing Kathy and Julie's marriage, Julie's health insurance benefits are considered "imputed income." This results in a significantly higher tax burden for Kathy and costs her family approximately $2,800 in additional tax dollars per year. This has made life more difficult for Kathy and Julie as they have stretched to live off of one income while raising their son. If DOMA were repealed, Julie and Kathy would no longer have to incur this additional tax burden.

Married lesbian and gay employees are prohibited from using their pre-tax flexible spending accounts to pay out-of-pocket medical expenses incurred by their same-sex spouses. Employees can use such accounts to pay medical expenses for "dependents," which is statutorily defined as a spouse, child or, other qualifying tax dependent.[20] DOMA limits the definition of "spouse" only to a person of the opposite sex who is a husband or a wife.

Emily and Sharon, Takoma Park, MD

Emily and Sharon met in early 2007 and were married in June, 2010 in Boston, Massachusetts. They both work in the public interest field – Emily for a small non-profit and Sharon for the federal government. Both women have access to medical flexible spending accounts which allows each of them to designate a specific pre-tax amount per year to be set aside to use to pay out-of-pocket medical expenses. The effect of this benefit reduces the federal tax on the amount set aside each year by about one-third. The yearly caps on flexible spending accounts are set by each individual employer. Because Emily works for a very small employer her yearly cap is $2,400 while Sharon's is more than double that amount at $5,000.

In January of this year Emily and Sharon started working with a fertility specialist to start their family. They decided to use an anonymous donor with Emily serving as the birth parent. The out-of-pocket expenses for office visits, medical testing and medications are significant and the $2,400 in Emily's medical flexible spending account will run out quickly. Because of DOMA, Sharon is prohibited from using the funds in her flexible spending account to cover Emily's out-of-pocket medical expenses. A similarly-situated married opposite sex couple undergoing the exact same treatment from the same physicians would be able to use either (or both) the husband and wife's flexible spending accounts to cover any out-of-pocket expenses for either of them. DOMA is negatively impacting Sharon and Emily's ability to start their family.

[20] 26 U.S.C §§ 105, 106, 152(d).

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One of the most significant pieces of pro-family legislation ever passed in this country is the Family Medical Leave Act (FMLA).[21] FMLA requires public agencies and private employers with 50 or more employees to offer 12 weeks of unpaid medical leave to care for a new child; an ill spouse, parent, or child; the employee's own illness; an injured service member; or other emergencies arising from deployment. DOMA does not require employers to provide these same protections for lesbian and gay employees. While a parent standing *in loco parentis* can take leave for a child with whom they share no legal or biological relationship – for example the child of a same-sex spouse or domestic partner,[22] -- DOMA prevents employees from accessing FMLA leave to care for a same-sex spouse. This prohibition profoundly impacts LGBT families raising children. If a stay-at-home parent is sick, DOMA prevents the working spouse from accessing FMLA to care for him. This may result in a parent not getting the care that they need to recuperate, increased expenses for private at-home health care, and additional stress and strain on the family.

Naz and Lydia, Irvine, CA

Naz Meftah and her wife Lydia Banuelos have been together for more than 10 years. They registered as domestic partners as soon as the benefit became available to California residents back in 2001. They married in San Francisco in 2004, but were quickly informed that their marriage was not a legal one and would not be acknowledged by the state of California. In July of 2008, Naz and Lydia were married again – this time legally – in the state of California. They are one of approximately 18,000 same-sex couples who legally wed in CA before the passage of Proposition 8, which stripped the freedom to marry from same-sex couples in the state.

At the time of their 2008 marriage, Naz and Lydia had one son, born in 2007. Shortly after Naz and Lydia's 2008 marriage, they moved to Arizona where Lydia had secured a position as a pediatric ophthalmologist. Lydia was fortunate to be able to convince her new employer to provide her with access to spousal benefits so that she could add Naz and their son to her health insurance policy. While access to this important benefit was critical for their family, because the federal government refuses to recognize their marriage, Lydia had to pay taxes on this benefit as "imputed income."

Not too long after their move to Arizona, Naz became pregnant with triplets. Several weeks into her pregnancy Naz's doctor informed her that one of the fetuses did not survive. Given the

[21] Family Medical Leave Act, 29 U.S.C. § 2601 (West 1993, current through P.L. 103-3) and 29 CFR 825 (West 1993, current through P.L. 103-3).
[22] Department of Labor, Wage and Hour Division, *Administrator's Interpretation No. 2010-3*, Clarification of the definition of "son or daughter" under Section 101(12) of the Family and Medical Leave Act (FMLA) as it applies to an employee standing "in loco parentis" to a child (June 22, 2010).

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complicating factors of her medical condition, Naz had to fly to California to see a specialist who could perform the necessary surgery to ensure the health of her and her two remaining unborn babies. Lydia's employer refused to allow Lydia to take time off to travel with Naz to California for the surgery, citing company policy that required employees to give 30 days' notice to access extended leave. And because the federal government does not recognize Naz and Lydia's marriage, Lydia was not able to access the critical federal benefit of FMLA leave to care for Naz during this time. Because of DOMA, Naz had to make the stressful and unpleasant trip to California alone. Lydia was unable to be with her during the traumatic and dangerous surgical procedure and was prevented from caring for Naz during the week she spent recovering in California after the surgery. No family should have to endure this kind of treatment at the hands of our federal government.

DOMA Hurts Children and Tears Apart Families

Social Security survivor benefits are available to opposite-sex spouses upon the death of their partner.[23] However, due to DOMA, same-sex partners cannot access these benefits. Surviving same-sex spouses are also ineligible for the Social Security one time death benefit.[24] Denial of these critical social safety nets can be devastating to the financial security of a family, especially if the primary earner dies and is survived her wife and children. The Social Security Administration has determined that non-legal, non-biological children can access survivor benefits upon the death of a parent,[25] but a family cannot survive on a child's benefits alone.

One of the cruelest ways in which DOMA impacts LGBT families is in the immigration context. DOMA prevents American citizens from sponsoring their same-sex spouses for immigration purposes. With 44% of same-sex bi-national couples raising children in America, the inability of these American citizens and their American-citizen children to ensure that their spouse or other parent can stay in the U.S. means an LGBT family must choose between tearing their family apart or leaving the country that they love.

Carmelyn and Lule, New York, NY

Carmelyn and Lule met in 2001 and were married in Connecticut in 2009. They welcomed their daughter, Zelleka Luz, in March 2010. Carmelyn is an attorney and Lule is a managing director with a large financial services firm. Lule was born in Ethiopia and came to the United States on a

[23] 42 U.S.C. § 402.
[24] *Id.*
[25] Social Security Administration, *Memorandum Opinion for the Acting General Counsel*, Whether the Defense of Marriage Act Precludes the Nonbiological Child of a Member of a Vermont Civil Union from Qualifying for Child's Insurance Benefits Under the Social Security Act, The Defense of Marriage Act would not prevent the non-biological child of a partner in a Vermont civil union from receiving child's insurance benefits under the Social Security Act (October 16, 2007).

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student visa to finish high school in 1991. She maintained her student status throughout college and was then hired by an employer who sponsored her for an H-1B visa. It was during this time that Lule met Carmelyn and they began to build their life together. Several times over the years Lule's company experienced difficult financial periods and had to reduce their workforce. A job loss for Lule would have been catastrophic; she would have lost her H-1B visa and would have had to leave the country almost immediately.

Because DOMA prevents American citizens from sponsoring same-sex spouses for immigration purposes, Carmelyn is unable to sponsor Lule, so each time the company downsized they worried that they would be separated. Whenever Lule's employment situation became tenuous, the couple would tally all of their assets and begin planning to move to another country with more permissive immigration laws so they could remain together. They were ready to sacrifice the security of Carmelyn's job, their community and their family and friends. They were ready to give up their lives and leave the country they had both grown to call home to keep their family intact. Lule left her job with her previous employer and was hired by her current employer who decided to sponsor her for a Green Card. Due to the generosity of Lule's current employer, she now has the ability to live and work in the United States on a permanent basis, and she and Carmelyn can continue to raise their daughter in the U.S. without the constant fear of having to choose between tearing their family apart or staying together and leaving the country that they love.

Doug and Alex, Palm Springs, CA

Doug and Alex married in Connecticut in 2010 after over five years together. They currently live in Palm Springs, California, near Doug's two adult children who have grown to see Alex as their step-father. Alex is a Venezuelan citizen and is facing deportation for outstaying his visa, but if DOMA did not prevent the federal government from recognizing Alex and Doug's marriage, Doug could sponsor Alex for citizenship. Instead, Alex and Doug will have to choose between one or both of them leaving their children, perhaps permanently. This is a choice that no family should ever have to make.

DOMA Disrespects U.S. Servicemembers and Federal Employees

Shannon and Casey, Foxboro, MA

Shannon and Casey met in 1999 and married in Massachusetts in July 2010. Shannon is a Dual Status Technician with the Massachusetts National Guard: a federal employee who is required to be a part time Guardsperson. As part of her responsibilities, Shannon reports for work each day in her military uniform. Shannon has served our country honorably for more than ten years and has earned the Meritorious Service Medal and five Army Commendation Medals among other honors. She was deployed for a year after 9/11 and has served on shorter missions OCONUS.

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Shannon and Casey welcomed their twins, Grant and Gracie, in December 2010. In order to maximize their limited income and to best care for their newly-expanded family, Casey left her full-time tenured position as a high school teacher with the MA public school system. In making the decision to stay at home and raise their children, Casey not only sacrificed her career in public service but the family also forfeited her benefits including her health insurance and her pension.

DOMA prohibits the provision of equal benefits to federal employees who are married to same-sex spouses. While Casey is ineligible for the majority of benefits that are available to opposite-sex spouses of federal employees (such as use of Shannon's medical flexible spending account, access to Shannon's pension, tax free access to Shannon's 403b plan, etc.) it is the lack of access to health insurance coverage that is proving to be the most significant challenge to the family.

Shannon is able to pay the family rate and cover both children on her federal employee health insurance. However, because DOMA prevents the federal government from recognizing Casey as a spouse, Shannon is unable to cover Casey on the same family health insurance plan. A similarly situated opposite-sex couple would be able to add a covered spouse to the family plan for no additional cost. Due to DOMA, Casey must now access the COBRA coverage offered by her former employer, costing the family an additional $700 per month. This is an unwelcome expense that has a serious impact on their family finances as Shannon and Casey try to eare for their twins and make ends meet on one income.

To offset this additional expense they must now incur for Casey, the couple applied for low cost MassHealth insurance (a benefit available at the state level to Massachusetts residents). Ironically, because Massachusetts recognizes Shannon and Casey's marriage, they had to include Shannon's income on the application, ultimately disqualifying Casey for this benefit.

Since Shannon is a member of the MA National Guard and is frequently "activated" or "put on military orders" she and Casey face additional burdensome hurdles in providing and caring for their family. For example, shortly after Grant and Gracie were born Shannon was activated for more than 30 days. This entitled Shannon to TRICARE, the military's health insurance. Again, the children were covered by this valuable benefit, but because DOMA prevents Casey from being recognized as Shannon's spouse, Casey was not eligible for coverage. Military spouses are also entitled to obtain military dependent ID cards which allow them access to base medical facilities, the commissary and other service privileges located on base. However, because Casey is not recognized as a spouse, she is not eligible for this ID card. What is most troublesome about this situation, however, is that it also means that when Shannon is deployed Casey cannot bring Grant and Gracie on base for their medical appointments or to access any of the other programs and services that the children – as military dependents – are entitled to. Our service members and their families already sacrifice so much for our country and the military is an institution that takes great pride in caring for its families. DOMA prevents the military from fulfilling this

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mission as it creates two distinct classes of families – those who are respected, validated and cared for in times of great stress and need – and those who are not.

Sarah and Christine, Arlington, MA

Sarah and Christine have been together for eleven years. They met in 2000 and were legally married in the Commonwealth of Massachusetts in 2007. In April 2011 they welcomed their first child, Darcy. Christine is an engineer and works for the Environmental Protection Agency. Sarah is a law professor with Suffolk Law School in Boston, MA. Sarah has a serious chronic health condition requiring expensive medications that without insurance would cost several thousands of dollars each month. A lapse in Sarah's coverage at any time would be financially catastrophic for the entire family.

Once Darcy was born, Sarah and Christine engaged in extensive and expensive financial planning to try to mitigate at least some of the inequities that DOMA creates for married same-sex couples and their children. However, regardless of how much planning they do, there are still federal benefits and safety nets that will be unavailable to them. For example, should Christine die before Sarah, Sarah would not be entitled to Christine's federal pension or any federal death benefits.

In addition to all of the ways in which DOMA harms their family generally, Sarah and Christine face additional obstacles because Christine is a federal employee. DOMA prevents Christine from accessing most of the benefits afforded to federal employees with opposite-sex spouses, the most valuable of which is family health insurance coverage. While Sarah and Christine would prefer to have a family health insurance plan to cover all three of them, DOMA prohibits Christine from adding Sarah to her plan. Christine must purchase a "family" health insurance plan to cover herself and Darcy, and Sarah must purchase a second health insurance plan through her employer. Even with a very generous health insurance employer contribution, Sarah and Christine must pay an additional $160 per month in health insurance premiums to cover Sarah. When Darcy was born, Sarah and Christine contemplated having Sarah take a leave of absence from work in order to care for their newborn daughter, but because DOMA prevents Sarah from accessing Christine's federal employee health insurance plan they would have to pay out-of-pocket for Sarah's health care, an expense the family cannot absorb.

DOMA Creates a Climate that Breeds Confusion, Delay, and Denial

The tangible harms and direct impact of DOMA on LGBT families are clear. Due to this discriminatory law, married same-sex couples and their children are denied federal benefits and services, are assessed higher tax rates, and face additional financial, administrative and societal burdens. But there are additional indirect harms to families that are caused by DOMA as well. DOMA creates a climate ripe for animus and discrimination against LGBT families and

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emboldens those in both the public and private sector to disregard an LGBT family's rights to access programs, benefits, and services on which marital status has no bearing. Family Equality Council hears on a regular basis from LGBT families who experience this invidious discrimination. Following are three examples of the indirect harms DOMA inflicts on LGBT families.

Susan and Sara, West Brookfield, MA

Susan Burns and her partner, Sara, are both legal, adoptive parents of their daughter Nina. When Nina tried to apply for federal student aid using the FAFSA[26] form, listing both of her legal parents as the form requires, she received a shocking and hurtful email from the Department of Education referring to her as an "orphan." Her mother Susan spoke directly with personnel from the Department to explain that Nina has two legal mothers, but according to Susan the official "kept on referring to the Defense of Marriage Act" and was "confused" by the fact that Susan and Sara are both Nina's legal parents. They asked uninformed and invasive questions that Susan "can't imagine other adoptive parents being asked," such as "who is the biological mother" when Susan had clearly indicated that Nina is adopted by both of her parents. Susan was finally able to clear up the confusion by asking Nina's college for assistance with the FAFSA process. But the indignity and frustration of the process "added to the already tense experience of choosing colleges" and Susan and Nina are "not looking forward" to repeating the annual application process. Federal financial assistance is not dependent upon whether the student's parents are married. Here, the existence of DOMA only served to confuse the employees of the Department of Education and to insult and degrade Nina and her family.

Brian and Ken, Mt. Kisco, NY

Brian and Ken encountered confusion and delay when they applied for their daughter Nicole's social security card. Brian and Ken encountered several clerks who asked for proof of the adoption, doctor's notes indicating that the pair was taking care of their daughter's health, and utility bills to prove that they shared a residence. None of this information is required to apply for a social security card and it is not likely that an opposite-sex couple would have been asked to provide this documentation. While DOMA should not have been an issue in this instance, because DOMA exists many federal employees are confused about how DOMA applies and what benefits, programs, and services are affected. After four months and numerous visits to the Social Security Administration office, Brian and Ken were finally able to obtain Nicole's card. DOMA created confusion and unnecessary delays. If not for DOMA, Brian and Ken would have been recognized as Nicole's legal parents and the application would have been processed smoothly.

[26] The Free Application for Federal Student Aid, available online at http://www.fafsa.ed.gov/fotw1112/pdf/PdfFafsa11-12.pdf (last visited July 18 2, 2011).

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Carmelyn and Lule, New York, NY

Some of the most horrible stories we have heard from our families center around serious health crises. Six weeks prior to her due date, Carmelyn – pregnant with her and Lule's first child – suffered from severe preeclampsia and required an emergency c-section. Fifteen minutes before the surgery was to begin, there was confusion about Carmelyn's insurance coverage. Because Lule covered Carmelyn on her employer's health plan she immediately called her company's headquarters office, located in a state that does not recognize relationships between same-sex couples and has restrictive adoption laws that limit the ability of LGBT people to create legal relationships with their children. Lule explained the situation and was able to verify that Carmelyn was indeed a covered beneficiary on Lule's health plan. During the call, however, the out-of-state human resources representative told Lule that while Carmelyn was covered, the newborn child would not be covered under Lule's health plan. This confused Lule because she had already received verification from her local human resources officer in New York that the new baby would be covered at the time of birth. Carmelyn was about to go in for an incredibly dangerous procedure and Lule was concerned for the health of both her wife and her unborn child. This news only served to add to Lule's stress and anxiety level. When Lule asked the out-of-state human resources representative to explain why the child would not be covered, his response was that since same-sex marriage is not legal in that state, DOMA meant they did not have to cover the child. Knowing she was not going to resolve this issue with the uninformed representative at the headquarters office, Lule cleared up the confusion with her employer in New York the following day. Carmelyn and baby Zelleka came through the surgery and today the family is happy and healthy. No one should ever have to endure the hostility and poor treatment that Lule and Carmelyn's family had to endure – especially during a severe health crisis.

Respect for Marriage

DOMA effectively erases the existence of married same-sex couples in this country and creates two tiers of families: those who can access the 1,138 federal rights and responsibilities that come with the freedom to marry and those cannot. When married same-sex couples are prevented from accessing the bundle of rights offered through the federal recognition of marriage, married same-sex couples must then make other legal arrangements to try and protect their families and assets. This not only creates undue burdens on LGBT families but it also falls short of providing these families with the security afforded by these valuable federal benefits.

The number of LGBT families living in the United States grows larger each day. DOMA increases the financial burdens on these families through increased federal taxes and costly legal fees when couples attempt to fill in the gaps where they are unable to access the federal benefits and safety nets available to similarly situated opposite-sex married couples. DOMA breeds a

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climate of discrimination and animus that makes it more difficult for LGBT families to thrive. DOMA stigmatizes LGBT families and sends the message to the children being raised in these households that their families are not valued, that their parents are not respected, and that they are less worthy than other families. This is simply not the best that our country can do for these children and their parents. Our Constitution requires that all of us be treated equally by our federal government. DOMA violates that Constitutional guarantee; the only way to right this injustice is to pass the Respect for Marriage Act and repeal the discriminatory so-called "Defense of Marriage Act" now.

Thank you,

Jennifer Chrisler
Executive Director
Family Equality Council

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Senate Committee on the Judiciary
"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

Wednesday, July 20, 2011 at 10:00 a.m.
Room 216 of the Hart Senate Office Building

COURAGE CAMPAIGN MEMBERS
JONATHAN STRICKLAND COLEMAN and RICK KERBY

Married May 22, 2010

My name is Jonathan Coleman. I'm a gay American. My claim to all the rights, privileges and obligations that ordinarily come with U.S. citizenship is as valid as anybody else's. My family ancestry has been traced through at least two branches to pre-Revolutionary America, including an initial 1648 landing in Newport, Rhode Island.

I have been a licensed lawyer for over 22 years, and a taxpayer for longer than that. I have been a member of the Bar of the State of Florida since 1989, and a member of the Bar of the U.S. Supreme Court since 1998. Neither my home state of Florida, nor the U.S. Government, will recognize the validity of my marriage which took place in Washington D.C. in 2010. Why? Because I fell in love with another man and I've committed to spending my life with him.

It was a strange and depressing feeling leaving D.C., knowing that while our relationship was celebrated and recognized in D.C., as soon as we left the District's air space we were legal strangers to each other. It is also bizarre to think that as we drive up the coast, Rick and I are married in D.C., New York, Connecticut, Massachusetts, and Vermont, but not Florida, Georgia, the Carolinas, Georgia, Virginia, Maryland, Delaware, or Maine. I cannot think of a more bizarre and harmful policy than one that gives and takes away respect for one's relationship based on the whims of a prejudicial government or citizenry. I didn't get to vote on the fairness of anybody else's marriage, and fundamental rights to fairness and equality should not be up to a popular vote for anybody. It is legally, as well as morally, unfair that two heterosexuals who marry automatically have entitlement to a full array of significant federal benefits – Social Security, immigration, Medicare – that are so thoughtlessly denied to me and Rick.

Since my marriage, I have followed the anti-marriage equality forces and their arguments with great interest. Those organizations are often front groups for fundamentalist religious people, who don't seem to understand – or deliberately *misunderstand* – that the institution of marriage would actually be strengthened by allowing committed couples to obtain civil recognition, and that this country's promise of fairness and equality rings, at present, hollow for gay men and lesbians.

Marriage licenses are given by City Hall, not churches. America's promises are for all citizens, not just religious ones. It is long past time to "evolve" to full equality. Not tomorrow, not next week, but NOW.

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Ana Beatriz Cholo, Courage Campaign Communications Manager, anabeatriz@couragecampaign.org, 312-927-4845 (cell)

Courage Campaign is a multi-issue online organizing network that empowers more than 700,000 grassroots and netroots supporters to work for progressive change and full equality in California and across the country. Through a one-of-a-kind online tool called Testimony: Take A Stand, the Courage Campaign is chronicling the sights, sounds and stories of LGBT families and all who wage a daily struggle against discrimination across America. For more information about Testimony, please visit, http://www.couragecampaign.org/Testimony.

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Senate Committee on the Judiciary
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Wednesday, July 20, 2011 at 10:00 a.m.
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COURAGE CAMPAIGN MEMBERS
KATHLEEN CUMISKEY and ROBIN GARBER

Married April 18, 2006, Together Nine Years

My wife Robin Garber and I live in Staten Island, New York. We are on the brink of witnessing full marriage equality in our home state thanks to the passage of the Marriage Equality Bill in New York on June 24, 2011. Those seeking marriage in New York can no longer be discriminated against based on sexual orientation. This has been such a welcomed victory for us, even though we had traveled out of country to be legally wed in Toronto, Canada.

In 2008, our marriage was recognized as legal by Governor Paterson, so we have been legally married in New York State ever since. I have to say, that while on some level I knew that this privileged our relationship over other same-sex relationships in New York and elsewhere, it wasn't until June 24 of this year that we truly felt equal amongst our neighbors.

The air has changed in NYC. LGBT people feel more entitled and respected. But I want to feel that way no matter where I travel in my country.

Equality now stops at the border of our state. When we travel beyond New York, we will still have to carry around our very expensive box of documents. As long as the Defense of Marriage Act (DOMA) allows for any State, territory or possession of the United States to disrespect my marriage, we will have to carry this box everywhere. It includes our Last Will and Testament, our Power of Attorney, our Living Wills and Health Care Proxy. The box works to alleviate any anxiety that we may have because we may be denied the rights that any heterosexual married couple would be afforded simply by verbally identifying themselves as a "wife" or "husband."

Being legally married in my state did not prevent my insurance company from adding $7,000 to my annual salary because my wife's benefits were counted as added income – something that NEVER happens to heterosexual couples. We cannot file our taxes jointly because of DOMA. We can file jointly in our state, however. We are essentially second-class citizens. DOMA flies in the face of everything that we hold dear as Americans. The Respect for Marriage Act will distance us from this dark mark in U.S. history. Let us not delay justice any further.

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Vital and Health Statistics

Series 10 Number 246 December 2010

Family Structure and Children's Health in the United States: Findings From the National Health Interview Survey, 2001–2007

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control and Prevention
National Center for Health Statistics

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Family Structure and Children's Health in the United States: Findings From the National Health Interview Survey, 2001–2007

Data From the National Health Interview Survey

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control and Prevention
National Center for Health Statistics

Hyattsville, Maryland
December 2010
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Abstract

Objectives

This report presents statistics from the 2001–2007 National Health Interview Survey (NHIS) on selected measures of physical health and limitations, access to or utilization of health care, and behavior or emotional well-being for children under age 18 by family structure, sex, age, race, Hispanic origin, parent's education, family income, poverty status, home tenure status, health insurance coverage, place of residence, and region.

Source of Data

NHIS is a multistage probability sample survey conducted annually by interviewers of the U.S. Census Bureau for the Centers for Disease Control and Prevention's National Center for Health Statistics, and is representative of the civilian noninstitutionalized population of the United States. Information about one randomly selected child per family is collected in a face-to-face interview with an adult proxy respondent familiar with the child's health.

Highlights

Children in nuclear families were generally less likely than children in nonnuclear families to be in good, fair, or poor health; to have a basic action disability; to have learning disabilities or attention deficit hyperactivity disorder; to lack health insurance coverage; to have had two or more emergency room visits in the past 12 months; to have receipt of needed prescription medication delayed during the past 12 months due to lack of affordability; to have gone without needed dental care due to cost in the past 12 months; to be poorly behaved; and to have definite or severe emotional or behavioral difficulties during the past 6 months. Children living in single-parent families had higher prevalence rates than children in nuclear families for the various health conditions and indicators examined in this report. However, when compared with children living in other nonnuclear families, children in single-parent families generally exhibited similar rates with respect to child health, access to care, and emotional or behavioral difficulties.

Keywords: health and limitations • access to care • emotional or behavioral difficulties

Family Structure and Children's Health in the United States: Findings From the National Health Interview Survey, 2001–2007

by Debra L. Blackwell, Ph.D., Division of Health Interview Statistics

Introduction

As divorce rates remain high and cohabitation becomes more commonplace, an increasing number of U.S. children will spend a larger proportion of their lives in a nontraditional family. The proportion of U.S. children likely to live part of their childhood in a married stepfamily increased from about one-seventh in the early 1970s to one-quarter in the early 1980s; if unmarried stepfamilies are also included, the proportions would be higher (1). In 1990, 3.5% of U.S. children lived with a parent and his or her cohabiting partner (2), while in 2002, 6% lived with a cohabiting parent and partner (3). Graefe and Lichter estimated that about one of four children will live in a family headed by a cohabiting couple at some point during their childhood (4). Using different data, Bumpass and Lu concluded that 40% of children would live in a cohabiting couple family during childhood (5). Additionally, the U.S. Census Bureau estimated that in 2004, 10 million children under age 18, or 14% of all children, were living in households consisting of a biological or adoptive parent and another unrelated adult (6), while the Centers for Disease Control and Prevention's (CDC) National Center for Health Statistics (NCHS) reported that 35.8% of all births in 2004 were to unmarried women (7).

In view of the changing family structure distribution, new categories of families such as unmarried families or unmarried stepfamilies need to be studied so that the health characteristics of children in nontraditional families can be identified (1,8,9). Previous researchers have reported that children living in nontraditional families are disadvantaged financially, and are more likely to experience deleterious outcomes with respect to school (e.g., higher drop-out rates, poorer academic performance), behavior (e.g., delinquency, promiscuity), and mental health (9–17). A small number of published studies have found that children in two-parent families are more advantaged than children in other types of families with respect to health status or access to health care (18–21). However, these analyses were based on

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survey data that did not collect information on cohabitation and parent-child relationships (e.g., biological, step, etc.), making the identification of nontraditional family types impossible.

The National Health Interview Survey (NHIS), a multi-purpose health survey conducted by NCHS, initiated an important step in identifying nontraditional families with the implementation of a new household rostering system and marital status variables in 1997. Detailed family structure variables distinguished between married parent families (with biological or adoptive children), unmarried parent families (with biological or adoptive children), parent-stepparent families (with children), and parent-cohabiting partner families (with children). Thus, NHIS data provide an opportunity to investigate the association of family structure with the health status and characteristics of U.S. children.

This report presents national prevalence estimates for selected health status and access to health care indicators among children by type of family structure. Because the association between children's health and family structure is likely to be modified by personal (e.g., sex, age, race/ethnicity), social (parental education), and economic (e.g., family income, poverty status, home tenure status, and health insurance coverage) characteristics, these factors are also controlled for in the report's detailed tables.

The family structure indicator used in this report consists of seven mutually exclusive categories that take into account parental marital status as well as the type of relationship between children aged 0–17 and any parents present in the family. Because NHIS defines children as family members who are aged 0–17 and adults as family members who are aged 18 and over, adult children (those aged 18 and over) are considered related adults regardless of their relationship (biological, adoptive, step, or foster) to their parents.

- A *nuclear family* consists of one or more children living with two parents who are married to one another and are each biological or adoptive parents to all children in the family.
- A *single-parent family* consists of one or more children living with a single adult (male or female, related or unrelated to the child or children).
- An *unmarried biological or adoptive family* consists of one or more children living with two parents who are not married to one another and are each biological or adoptive parents to all children in the family.
- A *blended family* consists of one or more children living with a biological or adoptive parent and an unrelated stepparent who are married to one another.
- A *cohabiting family* consists of one or more children living with a biological or adoptive parent and an unrelated adult who are cohabiting with one another.
- An *extended family* consists of one or more children living with at least one biological or adoptive parent and a related adult who is not a parent (e.g., a grandparent). Any of the previously described family types that contained an adult child are categorized as an extended family.
- An *"other" family* consists of one or more children living with related or unrelated adults who are not biological or adoptive parents. Children being raised by their grandparents are included in this category, as are foster children living with at least two adults.

Data Source

Data from the 2001–2007 NHIS are pooled to provide national estimates for a broad range of health status indicators and measures of access to health care by family structure for the U.S. civilian noninstitutionalized population of children under age 18. Pooled analyses are typically done to increase sample sizes for small populations (e.g., unmarried biological or adoptive and cohabiting families). Weighted estimates from such an analysis can be interpreted as either an estimate for the midpoint of the study period or as an "average" across the study period (22). Data from the 2001–2007 NHIS were selected for this analysis because the 2000 NHIS does not contain complete family structure information, and the 2008 NHIS was not available at the time these analyses were conducted. The family structure indicator used for this report is obtained from the 2001–2007 in-house Person or Family data files; a public-use version is also available but it combines all unmarried biological or adoptive families and cohabiting families into a single category. Most health estimates are derived from the 2001–2007 public-use Sample Child data files of the annual NHIS Basic Module; the remaining health estimates are derived from the 2001–2007 public-use Person data files. These estimates, which users can replicate with NHIS public-use data, are shown in Tables 1–66 for various subgroups of the population, including those defined by sex, age, race and Hispanic origin, parent's education, family income, poverty status, home tenure status, health insurance coverage, place of residence, and region. Appendix I contains brief technical notes and Appendix II contains definitions of terms used in this report.

NHIS has been an important source of information about health and health care in the United States since it was first conducted in 1957. Its main objective is to monitor the health of the civilian noninstitutionalized U.S. population through the collection and analysis of data on a broad range of health topics. Persons in long-term care institutions (e.g., nursing homes; hospitals for the chronically ill, disabled, or mentally handicapped; wards for abused or neglected children), correctional facilities (e.g., prisons or jails, juvenile detention centers, halfway houses), active duty Armed Forces personnel (although their civilian family members are included), and U.S. nationals living in foreign countries are excluded from the sampling frame. More information on sample design can be found in "Design and Estimation for the National Health Interview Survey, 1995–2004" (23).

The NHIS questionnaire, called the Basic Module or Core, is repeated annually and consists of three main components: the Family Core, the Sample Child Core, and the Sample Adult Core (the latter is not used for this report). The Family Core collects information about all family members regarding household composition and sociodemographic characteristics, along with basic indicators of health status, activity limitations, and utilization of health care services. All members of the household aged 17 and over who are at home at the time of the interview are invited to participate and respond for themselves. For children and adults not at home during the interview, information is provided by a knowledgeable adult family member aged 18 and over residing in the household. Although considerable effort is made to ensure accurate reporting, the information from both proxies and self-respondents may be inaccurate because the respondent is unaware of relevant information, has forgotten it, does not wish to reveal it to an interviewer, or does not understand the intended meaning of the question. Note that NHIS does not obtain independent evaluations directly from doctors or other health care professionals.

The Sample Child Core obtains additional information on the health of one randomly selected child aged 0–17 in the family; a knowledgeable adult in the family (usually a parent) provides proxy responses for the sample child. The Sample Child Core is the primary data source for this report, while information regarding demographic characteristics is derived from the Family Core.

The interviewed sample for the 2001–2007 NHIS consisted of a total of 244,572 households, which yielded 630,884 persons in 249,570 families. There were 90,566 children aged 0–17 who were eligible for the Sample Child questionnaire. Data were collected for 82,553 children, a conditional response rate of 91.1%. The average final response rate for the Sample Child component during 2001–2007 was 79.3% (24–30). However, detailed family structure information was not available in the first and second quarters of 2004, so these sample child cases were omitted, and case weights for the sample child observations in the third and fourth quarters of 2004 were doubled to obtain an appropriate estimate of the U.S. child population for 2004. This adjustment yields a total of 83,849 observations for analysis. This sample results in a weighted, annualized estimate of 73.2 million children in the United States during 2001–2007.

Limitations of the Data

NHIS obtains information from respondents via an in-person interviewing process, with a typical interview averaging about 1 hour. No clinical measurements are taken. As a result, all NHIS data are based on subjective reports obtained from respondents who stated that they were knowledgeable about all family members' health status, access to medical care, and personal information. The NHIS interviewer has no way of verifying whether these family respondents are, in fact, knowledgeable. In addition, respondents may experience recall problems or have different cultural definitions of illness, either of which could result in inaccurate responses. Furthermore, as with all surveys, respondents may simply underreport characteristics or conditions that they consider undesirable. It is thus likely that some of the prevalence estimates presented in this report are conservative.

Despite the fact that multiple years of data were used for this analysis, cell counts in some of the more detailed cross-classification tables are small, particularly when a "rare" family structure is crossed with a "rare" health condition. The resulting percentages have relatively large standard errors that make the detection of statistically significant relationships difficult; some relationships between family structure and child health may thus go undetected as a result. Percentages with a relative standard error greater than 30% are identified by an asterisk in all tables; readers should use caution when attempting to interpret these statistics. For this reason, percentages indicated by an asterisk in the tables are not discussed in the text or shown in any figures in this report. In addition, frequencies may also be underestimates due to item nonresponse and unknowns, both of which are excluded from the tables. See Appendix I for more information about the number of unknowns with respect to each health characteristic.

NHIS is a cross-sectional survey that does not obtain retrospective information from adult respondents regarding their marital histories or living arrangements. The family structure indicator used in this report cannot account for children's transitions into and out of different families, nor can it be used to estimate health outcomes for children who have ever lived in a particular type of family (e.g., cohabiting or single-parent families). Thus, we cannot distinguish between family structure *per se* and family instability, that is, repeated transitions into and out of different family types (15). Family structure, as measured in this report, is the type of family in which the sample child was living at the time of interview. Consequently, the tables in this report can only be used to understand the extent to which selected child health outcomes and family structure vary together; causality or directionality in the family structure and child health relationship cannot be determined from NHIS data. Lastly, while the tables show estimates by various age groups, the prevalence estimates presented in the tables are not age-adjusted.

Methods

Estimation Procedures

Estimates presented in this report were weighted to provide national health estimates; the record weight of the sample child was used to generate all estimates. These weights were calibrated by NCHS staff to produce numbers consistent with the population estimates of the United States by age, sex, and race/ethnicity, and are based on population projections from the U.S. Census Bureau for noninstitutionalized civilians. Because 7 years of NHIS data were utilized, each weight was divided by seven before analyzing the data, in

order to annualize the resulting estimates.

The weights from the 2001 and 2002 NHIS were based on projections from the 1990 census, while the weights from the 2003–2007 NHIS were based on projections from the 2000 census. Prior to the release of the 2003 data, NCHS staff compared estimates for a number of health characteristics using the 1990 census-based weights and the 2000 census-based weights and found that health estimates were extremely consistent regardless of the weighting schema used (26). Thus, the change in the census-based population controls used to create the 2003–2007 NHIS case weights should have little impact on data analyses that utilize the combined 2001–2007 data.

For each health measure, weighted frequencies and weighted percentages are shown for all children according to their family structure. Estimates are further disaggregated by various sociodemographic characteristics, such as sex, age, race and Hispanic origin, parent's education, family income, poverty status, home tenure status, health insurance coverage, place of residence, and region. All counts are expressed in thousands. Counts for children of unknown status with respect to family structure and each health characteristic of interest are not shown separately in the tables, nor are they included in the calculation of percentages, in order to make the presentation of the data more straightforward. In most instances, the percentage unknown is small (typically less than 1%).

Additionally, some of the sociodemographic variables that are used to delineate various subgroups of the population have unknown values. Again, for most of these variables, the percentage unknown is small. Health estimates for children with these unknown sociodemographic characteristics are not shown in the tables. Readers should refer to Appendix I for more information on the quantities of cases with unknown or missing values. The 2001–2007 NHIS Imputed Family Income/Personal Earnings Files were used to minimize the exclusion of cases with incomplete information regarding family income and poverty status.

Variance Estimation and Significance Testing

NHIS data are based on a sample of the population and are therefore subject to sampling error. Standard errors are reported to indicate the reliability of the estimates. Estimates and standard errors were calculated using SUDAAN software that takes into account the complex sampling design of NHIS. The Taylor series linearization method was used for variance estimation in SUDAAN (31).

Standard errors are shown for all percentages in the tables but not for the frequencies. Estimates with relative standard errors of greater than 30% are considered unreliable and are indicated with an asterisk. The statistical significance of differences between point estimates was evaluated using two-sided *t* tests at the 0.05 level and assuming independence. Terms such as "greater than," "less than," "more likely," "less likely," "increased," "decreased," "compared with," or "opposed to" indicate a statistically significant difference between estimates, whereas "similar," "no difference," or "comparable" indicate that the estimates are not statistically different. A lack of commentary about any two estimates should not be interpreted to mean that a *t* test was performed and the difference found to be not significant. These statistical tests did not take multiple comparisons into account.

Measurement of Family Structure

NHIS is a cross-sectional, household-based survey that obtains information from its respondents at a specific time. It does not obtain detailed relationship histories from respondents because this would be beyond the scope of the survey. The household composition portion of the survey contains several filter questions at the outset of the interview that ask whether all persons in the household live and eat together or if any of them have another residence where they usually live. Persons who do not routinely live and eat together as well as those who may regularly visit but maintain a residence elsewhere are not included in the interview. Individuals drift into and out of cohabiting unions gradually over time (32), so the use of these filter questions may result in more accurate estimates of some nontraditional families. A household roster is then completed and the relationships of all family members to the "family reference person"—typically the person who owns or rents the home—are established. To facilitate completion of the roster, respondents are given a flash card listing 17 possible family relationships; "spouse (husband/wife)" and "unmarried partner" are listed as separate items. Current marital status is obtained for all family members aged 14 and over; respondents self-report whether they are currently married, widowed, divorced, separated, never married, or living with a partner, and they identify which family member is their spouse or partner. Also, for each family member aged 17 and under, several questions ascertain whether one or both parents are present in the household and the nature of the relationship between the parent or parents and child (i.e., biological, adoptive, step, or foster).

Family structure is measured by a variable with seven mutually exclusive categories (see the family structure description in the Introduction) that takes into account parental marital status and the type of relationship (e.g., biological, adoptive, step) between children aged 0–17 and any parents present in the family. Children aged 17 and under who are emancipated minors are excluded from the analysis. A related family member is someone who is connected by ancestry, marriage, or legal adoption to the child or children. In the case of **nuclear** and **unmarried biological or adoptive families**, both parents must be biological or adoptive to all children in the family. **Single-parent families** may consist of one or more children living with a single parent (male or female) who may or may not be biologically related to the child or

children in the family. **Blended families** (i.e., parent and stepparent) are those in which the two adults present are married to one another and at least one child in the family is the biological or adopted child of one adult and the stepchild of the other adult. **Cohabiting families** consist of one or more children residing with a biological (or adoptive) parent and that parent's cohabiting partner who is unrelated to the child or children. Families with one or more children living with at least one biological or adoptive parent and one or more related adults, such as a grandparent or an adult sibling, are referred to as an **extended family**. Note that NHIS defines persons aged 18 and over as adults. As a result, any of the family types described previously with one or more adult children are considered extended families. This will result in smaller counts and percentages of the remaining family types, particularly nuclear families, and to a lesser extent, single-parent families. Lastly, a family with one or more children living with two or more related or unrelated adults (none of whom is a biological or adoptive parent to that child) is considered, for the purposes of this report, as an **"other" family**. Children being raised by their grandparents would be included in this category, as would foster children (as long as a minimum of two adults are present).

Measurement of Health Outcomes

This report examines children's health in three broad categories: physical health or limitations, access to or utilization of health care, and behavior or emotional well-being. In all instances, a knowledgeable adult (typically a parent) provided information on behalf of all sample children aged 0–17. Note that the second footnote in each table contains the verbatim text of the survey question that was the source of the estimates in the table, along with other pertinent information. Unless otherwise noted, questionnaire items and response categories did not change across the 2001–2007 surveys.

Information regarding good, fair, or poor health status [i.e., less than optimal health (33–37)], and impairments that limited crawling, walking, running, or playing was obtained from separate questions in the Family Core that asked about the child's current (i.e., at the time of the interview) health. Information regarding receipt of special education or Early Intervention Services (EIS) was also obtained from the Family Core, and was based on current as well as previous enrollment. Chronic condition status was based on a series of separate questions in the Sample Child Core that asked whether a doctor or health professional had ever said that the sample child had Down syndrome, muscular dystrophy, cystic fibrosis, sickle cell anemia, autism, diabetes, arthritis, congenital heart disease, or any other heart condition. Likewise, prevalence estimates of ever having asthma, mental retardation, or any developmental delay were obtained from separate questions in the Sample Child Core that asked whether a doctor or other health professional had ever said that the sample child had these conditions. Frequency and percentage estimates of mental retardation and any developmental delay were combined for this analysis.

Information regarding hay fever, allergies (respiratory, skin, or digestive), and ear infections was obtained for sample children of all ages and was based on the 12-month period prior to the interview; information regarding frequent headaches or migraines was also based on the 12-month period prior to the interview, but was obtained only for sample children aged 3–17. Information on vision problems was obtained from a Sample Child Core question that asked whether the sample child had any "trouble seeing." If the child was aged 2 and over, the interviewer added "even when wearing glasses or contact lenses." Prevalence estimates of learning disabilities or attention deficit hyperactivity disorder (ADHD) were derived from separate questions in the Sample Child Core. Respondents were asked whether a representative from a school or a health professional had ever said that the sample child aged 3–17 had a learning disability. Similarly, respondents were asked whether a doctor or health professional had ever said that the sample child aged 3–17 had ADHD or attention deficit disorder (ADD). Frequency and percentage estimates of learning disabilities and ADHD or ADD were combined for this analysis.

Basic action disability (Tables 27–28) is a new summary measure that takes into account four basic domains or functions that a child needs in order to participate in age-appropriate activities (38,39). These domains consist of sensory functions (e.g., hearing, vision), movement (e.g., walking, running, playing), cognitive functioning (e.g., ability to remember, learning disabilities, mental retardation, Down syndrome, autism), and emotional or behavioral functions (ADHD, emotional, or behavioral difficulties). Accordingly, children aged 4–17 were considered to have a basic action disability if they had any one of the following: a lot of trouble hearing or deafness; trouble seeing; limitations in their ability to crawl, walk, run, or play; difficulty remembering; mental retardation; Down syndrome; autism; a learning disability; ADHD; or definite or severe emotional or behavioral difficulties [from the Strengths and Difficulties Questionnaire (SDQ)]. Information regarding difficulty remembering came from a Family Core question; all other information was obtained from questions in the Sample Child Core.

Data on the number of school days missed were obtained from a question in the Sample Child Core that asked how many school days the sample child aged 5–17 missed in the past 12 months due to illness or injury. (Tables in this report utilize a cut-point of six or more days.) Information regarding use of prescription medications was based on a question in the Sample Child Core that asked whether the sample child aged 0–17 had a problem for which he or she had regularly taken prescription medication for at least 3 months.

Information regarding health care insurance coverage was obtained from various questions in the Family Core about type of coverage at the time of interview. Information about having a usual place of health care was obtained

from a question in the Sample Child Core that asked whether there was a place (e.g., doctor's office, health clinic, etc.) that the sample child "usually" went when he or she was sick or the parent or guardian needed advice about the child's health. Information regarding emergency room (ER) visits was obtained from a Sample Child Core question that asked the number of times during the past 12 months that the sample child had gone to a hospital ER about his or her health, including those times that resulted in a hospital admission. In addition, information regarding receipt of medical checkups was obtained from another question in the Sample Child Core that asked whether the sample child had received a "well-child check-up—that is, a general check-up when he or she was not sick or injured" during the past 12 months. Note that children under age 1 are not included in the tables showing medical checkups. The Sample Child Core also obtained information regarding the child's contacts with "an optometrist, ophthalmologist, or eye doctor (someone who prescribes glasses)" during the past 12 months.

NHIS contains several questions that obtain information regarding delaying medical care during the past 12 months due to cost or affordability concerns. Having medical care delayed due to concerns over cost was obtained from a question in the Family Core; all children aged 0–17 are shown in the resulting tables. In addition, the Sample Child Core included questions that asked whether the child "needed prescription medication but didn't get it because [the family] couldn't afford it" and whether the child "needed eyeglasses but didn't get them because [the family] couldn't afford it." These questions were asked of sample children aged 2–17.

Information regarding dental care was obtained from separate questions in the Sample Child Core that asked when the sample child had last visited any kind of dentist (including orthodontists, oral surgeons, or other dental specialists), and whether the sample child had needed dental care (including checkups) during the past 12 months but had not received it due to concerns over cost. Note that only children aged 2–17 were included in the dental care tables. Information regarding behavior and emotional well-being was obtained from several questions from the SDQ that were included in the Sample Child Cores in 2001–2007. The SDQ is a behavioral screening questionnaire for children aged 4–17 that includes questions on both positive and negative behaviors as well as follow-up questions about the impact of these behaviors on the child and his or her family (40).

Data presented in this report are based only on those questions included in all 7 years of the 2001–2007 Sample Child Cores. Five behavior questions were asked of sample children aged 4–17 and were based on the 6-month period prior to the interview. Response categories for the five questions included "Not true," "Somewhat true," and "Certainly true" (as well as "Refused" or "Don't know"). The tables in this report include those cases where it was "certainly true" that the sample child was often unhappy, depressed, or tearful; "not true" that the sample child was generally well-behaved and usually did what adults requested; "certainly true" that the sample child had many worries or often seemed worried; "not true" that the sample child had a good attention span and saw chores or homework through to the end; and "certainly true" that the sample child got along better with adults than with other (age-appropriate) children.

The final SDQ question asked whether, "overall," the sample child had difficulties with emotions, concentration, behavior, or being able to get along with other people. Response categories included "No," "Yes, minor difficulties," "Yes, definite difficulties," "Yes, severe difficulties," "Refused," or "Don't know." Tables 63–64 show children with definite or severe emotional or behavioral difficulties. Tables 65–66 are based on two questions in the Sample Child Core that asked, "During the past 12 months, have you seen or talked to a mental health professional such as a psychiatrist, psychologist, psychiatric nurse, or clinical social worker about [child's name]'s health?" and, for sample children who had seen or talked with a general doctor or pediatrician during the past 12 months, "Did you see or talk with this general doctor because of an emotional or behavioral problem that [child's name] may have?" Only children with definite or severe emotional or behavioral difficulties are included in these tables.

Further Information

Readers interested in NHIS data can obtain the latest information about NHIS by periodically checking the NCHS website: http://www.cdc.gov/nchs/nhis.htm. The website features downloadable public-use data and documentation for recent surveys, as well as important information about any modifications or updates to the data or documentation. Readers wishing access to in-house NHIS data should contact the NCHS Research Data Center via http://www.cdc.gov/rdc/.

Researchers may also wish to join the NHIS electronic mailing list. To do so, visit http://www.cdc.gov/subscribe.html. Fill in the appropriate information and click the "National Health Interview Survey (NHIS) researchers" box, followed by the "Subscribe" button at the bottom of the page. The list consists of approximately 3,000 persons worldwide who receive e-mail about NHIS surveys (e.g., new releases of data or modifications to existing data), publications, and conferences.

Selected Results

This section includes selected graphs and a discussion of results based on the estimates shown in Figures 1–28 and Tables 1–66. Results are shown for three broad categories: physical health or limitations, access to or utilization of health care, and behavior or emotional well-being.

In addition, the results presented below utilize the following shorthand terms in describing mutually exclusive family types (see Appendix II):

- A *nuclear family* consists of one or

more children living with two parents who are married to one another and are each biological or adoptive parents to all children in the family.

- A *single-parent family* consists of one or more children living with a single adult (male or female, related or unrelated to the child or children).
- An *unmarried biological or adoptive family* consists of one or more children living with two parents who are not married to one another and are each biological or adoptive parents to all children in the family.
- A *blended family* consists of one or more children living with a biological or adoptive parent and an unrelated stepparent who are married to one another.
- A *cohabiting family* consists of one or more children living with a biological or adoptive parent and an unrelated adult who are cohabiting with one another.
- An *extended family* consists of one or more children living with at least one biological or adoptive parent and a related adult who is not a parent (e.g., grandparent, adult sibling). Any of the previously described family types that contained an adult child are categorized as an extended family. As a result, counts and percentages of the remaining family types—in particular, nuclear families and single-parent families—will be smaller.
- An *"other" family* consists of one or more children living with related or unrelated adults who are not biological or adoptive parents. Children being raised by their grandparents are included in this category, as well as foster children.

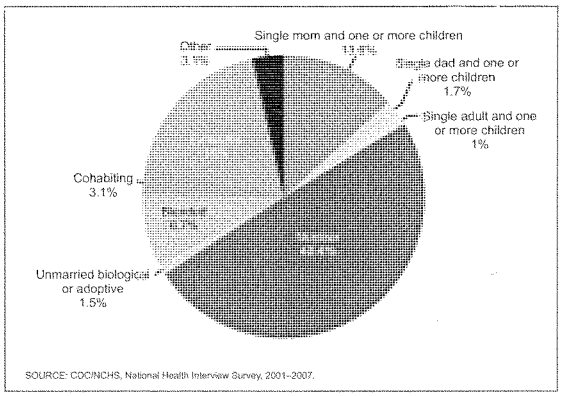

Figure 1. Percent distribution of family structure for children under age 18: United States, 2001–2007

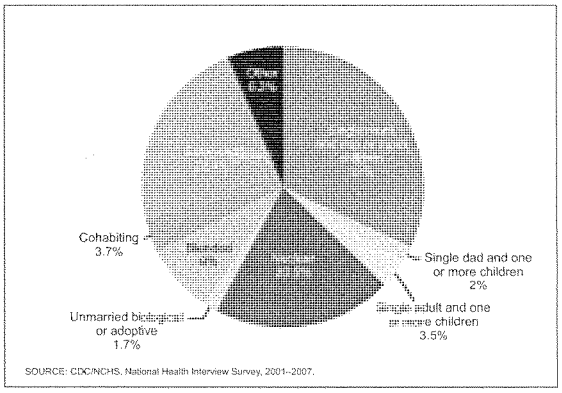

Figure 2. Percent distribution of family structure for non-Hispanic black children under age 18: United States, 2001–2007

Family Structure Characteristics

The percent distribution of family structure for U.S. children in 2001–2007 is shown in Figure 1. These percentages can be interpreted as either an estimate for the midpoint of the study period or as an "average" across the study period. Note that single-parent families are disaggregated into single mother, single father, and single adult (such as an adult sibling, aunt or uncle, or grandparent) in order to facilitate comparisons with previous publications. Roughly 48% of all children were living in a "traditional" nuclear family, and approximately 2% of children lived in an unmarried biological or adoptive family. In other words, one-half of all children lived with two biological or adoptive parents in 2001–2007. In addition, roughly 14% of children lived with a single mother (either biological or adoptive) in 2001–2007, while nearly 2% lived with a single father and 1% lived with a related or unrelated single

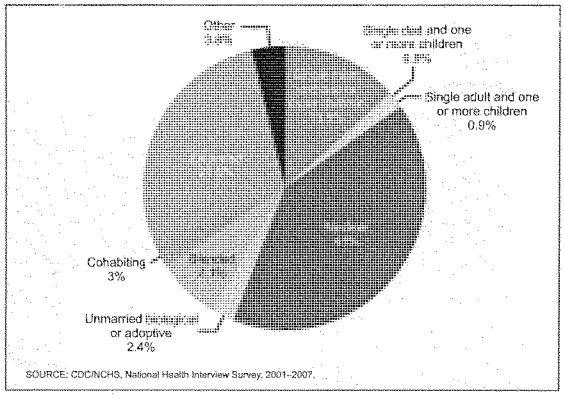

Figure 3. Percent distribution of family structure for Hispanic children under age 18: United States, 2001–2007

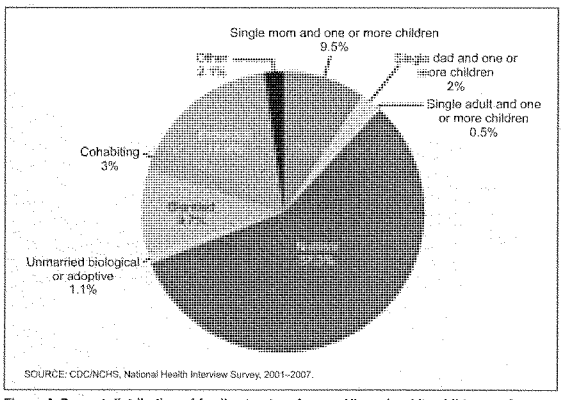

Figure 4. Percent distribution of family structure for non-Hispanic white children under age 18: United States, 2001–2007

adult. Approximately 19% of children resided with a biological or adoptive parent and another adult relative (such as an adult sibling or a grandparent) in an extended family in 2001–2007, 9% resided with a biological or adoptive parent and stepparent in a blended family, and 3% lived with a biological or adoptive parent and that parent's cohabiting partner. Lastly, other families consisting of one or more children living with two or more related or unrelated adults who are not biological or adoptive parents made up approximately 3% of the distribution. Only 0.1% of children could not be assigned to a designated category.

The results in Figure 1 change considerably when the percent distribution of family structure is disaggregated by race/ethnicity or poverty status, the two correlates of family structure mentioned most commonly in the literature (41). Figures 2–4 show percent distributions of family structure for non-Hispanic black, Hispanic, and non-Hispanic white children. Fifty-seven percent of non-Hispanic white children lived in nuclear families, compared with 21% of non-Hispanic black children and 41% of Hispanic children. In contrast, non-Hispanic black and Hispanic children were more likely than non-Hispanic white children to live in single-parent or extended families. For example, 10% of non-Hispanic white children lived with a single mother, compared with 14% of Hispanic children and 32% of non-Hispanic black children. A similar picture emerges if family structure is disaggregated by poverty status (Figures 5–7). Thirty-three percent of poor children (those in families with income below the poverty threshold) lived in single-mother families, compared with 18% of near poor children (those in families with income of 100% to less than 200% of the poverty threshold) and 6% of not poor children (those in families with income 200% of the poverty threshold or greater). Poor children were also much less likely to be living in nuclear families: 25% of poor children lived in nuclear families, while 37% of near poor, and 61% of not poor children lived in nuclear families.

Figure 8 shows the percent distribution of family structure across the 7-year study period. Note that in this figure (and in the remainder of the report), children living with single mothers, single fathers, and single adults are combined into the single-parent category described in the Introduction. While the trend lines appear relatively flat, there are nevertheless measurable changes in the distributions during the study period. For example, the percentage of nuclear families declined

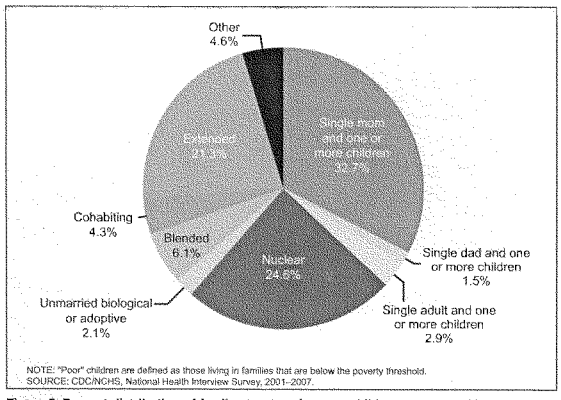

Figure 5. Percent distribution of family structure for poor children under age 18: United States, 2001–2007

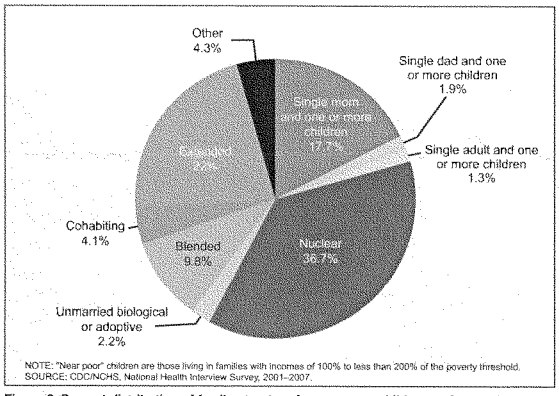

Figure 6. Percent distribution of family structure for near poor children under age 18: United States, 2001–2007

from 49.6% in 2001 to 47.3% in 2007; blended families also declined from 9.8% in 2001 to 8.3% in 2007. On the other hand, the percentage of other families more than doubled during the study period, from 1.7% in 2001 to 3.7% in 2007.

Measures of Physical Health and Limitations

Health status and chronic conditions

Overall, 12.6 million U.S. children under age 18 (17.2%) were in good, fair, or poor health (Tables 1–2) and 1.8 million U.S. children under age 18 (2.5%) had one or more chronic conditions (Tables 3–4).

- As Figure 9 illustrates, children in nuclear (12%) and blended (17.5%) families were least likely to be in good, fair, or poor health, while children in other families (30%) were most likely to be in good, fair, or poor health. Children in single-parent families (3.2%) were more likely to have one or more chronic conditions than children in nuclear (2.2%), unmarried biological or adoptive (1.9%), or extended (2.4%) families, and were comparable to children living in the remaining family types (Figure 10).
- Nearly 22% of Hispanic children living in nuclear families were in good, fair, or poor health compared with Hispanic children living in single-parent (28.8%), unmarried biological or adoptive (27.8%), extended (30.8%), or other (35.4%) families. Non-Hispanic white children in nuclear families (9.2%) were least likely to be in good, fair, or poor health relative to non-Hispanic white children in the remaining family types. Likewise, non-Hispanic black children in nuclear families (16.7%) were least likely to be in good, fair, or poor health relative to non-Hispanic black children in the remaining family types.
- Among poor families, children in nuclear families (27.1%) were less likely to be in good, fair, or poor health than children in extended (36.4%) or other (40.4%) families. Among near poor families, 19.2% of children in nuclear families were in good, fair, or poor health compared with 22.5% of children in single-parent families, 23.3% in blended families, 26.4% in extended families, and 32.9% in other families. Among not poor families, children in nuclear families (8.5%) were least likely to be in good, fair, or poor health. Children living in not poor single-parent families (3.3%) were more likely to have one or more chronic conditions than

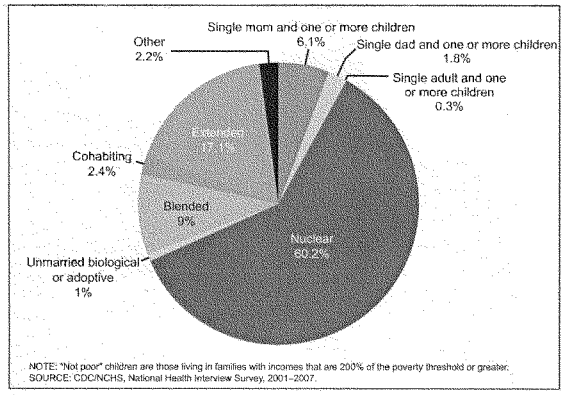

Figure 7. Percent distribution of family structure for not poor children under age 18: United States, 2001–2007

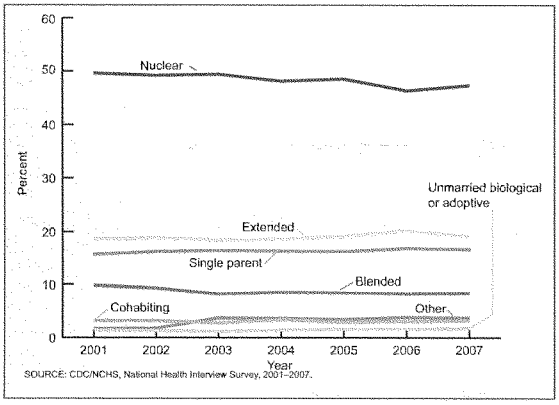

Figure 8. Percent distribution of family structure across the study period for children under age 18: United States, 2001–2007

children in not poor nuclear (2.3%) or extended (2.2%) families. Family structure was unrelated to the prevalence of chronic conditions among children living in poor or near poor families.

- Family structure was unrelated to the prevalence of chronic conditions among children whose more highly educated parent was either a high school dropout or a high school graduate or equivalent. However, when at least one parent had more than a high school diploma, children in nuclear families (2.3%) were less likely than children in single-parent (3.6%) or cohabiting (4.3%) families to have one or more chronic conditions.
- Among children with private health insurance, those living in nuclear families (9%) were least likely to be in good, fair, or poor health. Among children with Medicaid, those living in extended (32.5%) and other (35.3%) families were most likely to be in good, fair, or poor health.

Asthma, hay fever, and allergies

In the past 12 months, 9 million U.S. children under age 18 (12.7%) had ever had asthma, 7.2 million children (9.9%) had hay fever, 8.4 million U.S. children (11.6%) had respiratory allergies, and 8.8 million children (12%) had digestive or skin allergies (Tables 5–12).

- Children living with biological or adoptive parents—either in nuclear families or unmarried biological or adoptive families—were less likely to have ever suffered from asthma than children in the remaining family types (Figure 11).
- Children in single-parent families were more likely than children in nuclear families to have asthma regardless of their gender, race/ethnicity, parent's education, family's poverty status, place of residence, or region.
- Among children with private health insurance, those living in nuclear families (10.4%) were less likely to have asthma than children in single-parent (15.3%), unmarried biological or adoptive (15.5%), blended (13.7%), extended (13.9%), or other (18.7%) families. Among children with Medicaid, those living in nuclear (11.4%) and unmarried biological or adoptive (9.3%) families were less likely to have asthma than children in single-parent (20%), blended (15.3%), cohabiting (16.5%), extended (16.4%), or other (17%) families.
- Children living in unmarried biological or adoptive families (5.8%) were least likely to have hay fever in the past 12 months (Figure 12). Children in unmarried

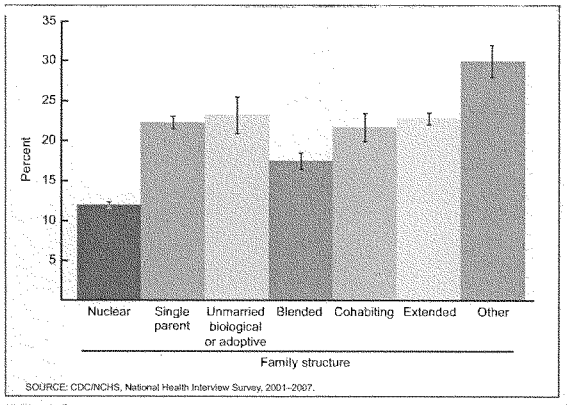

Figure 9. Percentages of children under age 18 in good, fair, or poor health, by family structure: United States, 2001–2007

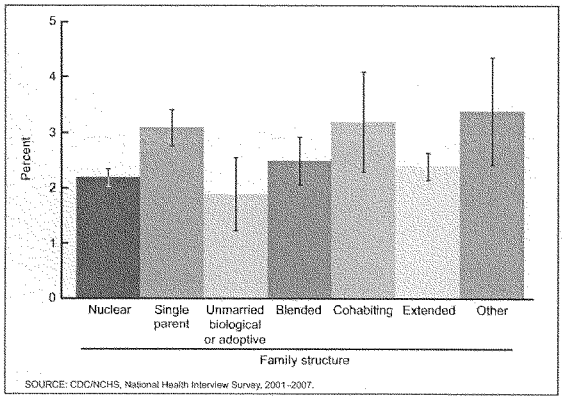

Figure 10. Percentages of children under age 18 with one or more selected chronic conditions, by family structure: United States, 2001–2007

biological or adoptive families (8.4%) were also less likely to have respiratory allergies in the past 12 months than children in nuclear (11.3%), single-parent (12.8%), blended (12%), extended (11.2%), or other (12.8%) families, and were comparable to children in cohabiting families (Figure 13).

- Among Hispanic children, those in unmarried biological or adoptive families (5.6%) were less likely than children in single-parent (8.2%) or blended (8.8%) families to have hay fever. Among non-Hispanic white children, those in unmarried biological or adoptive families (7.2%) were less likely than children in nuclear (11.2%), single-parent (12%), blended (10.9%), extended (12.2%), or other (11.4%) families to have hay fever. Family structure was unrelated to the prevalence of hay fever among non-Hispanic black children.
- Family structure was unrelated to the prevalence of hay fever among children whose more highly educated parent was a high school dropout. When at least one parent was either a high school graduate or had more than a high school diploma, children in unmarried biological or adoptive families were less likely to have hay fever than children in nuclear, single-parent, blended, or extended families.
- Among near poor families, children living in cohabiting families (5.4%) were less likely to have hay fever than children living in single-parent (9.2%), blended (8.7%), or other (10.4%) families. Among not poor families, children living in unmarried biological or adoptive families (5.8%) were least likely to have hay fever. Children living in unmarried biological or adoptive families that owned or were buying their homes were also least likely to have hay fever (6.3%). Among families that rented their homes, children in unmarried biological or adoptive families (5.7%) were less likely than children in single-parent (8.3%), blended (8.1%), or other (9.7%) families to have hay fever.
- Family structure was unrelated to the prevalence of respiratory allergies among Hispanic children. Non-Hispanic white children in unmarried biological or adoptive families (9%) were less likely to have respiratory allergies in the past 12 months than non-Hispanic white children in nuclear (12.2%), single-parent (15.5%), blended (13.4%), extended (14.1%), or other (15.3%) families. Among non-Hispanic black children, those in cohabiting families (7.7%) were less likely to have respiratory allergies than children in single-parent families (11.1%).

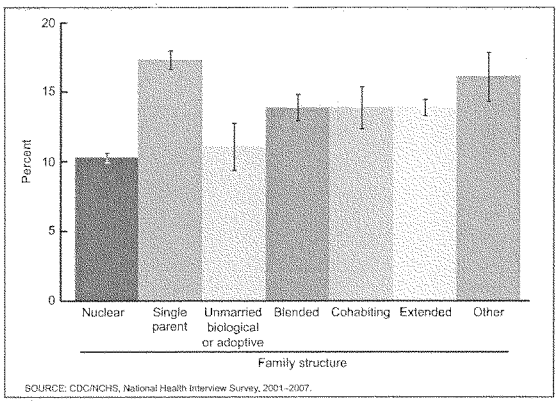

Figure 11. Percentages of children under age 18 who ever had asthma, by family structure: United States, 2001–2007

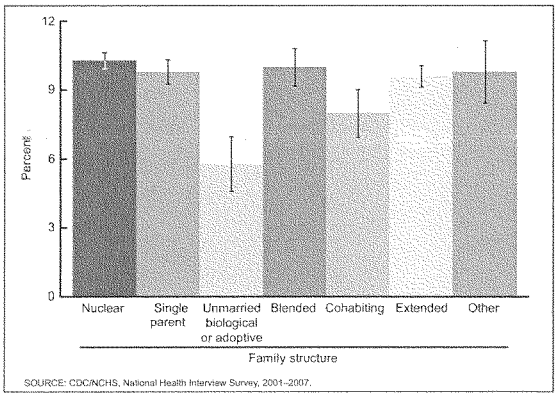

Figure 12. Percentages of children under age 18 who had hay fever in the past 12 months, by family structure: United States, 2001–2007

- When the more highly educated parent was a high school dropout, children in nuclear families (7.2%) were less likely to have respiratory allergies in the past 12 months than children in single-parent families (9.1%). When at least one parent was a high school graduate, children in unmarried biological or adoptive families (7.1%) were less likely to have respiratory allergies than children in single-parent (11.2%) or extended (10.1%) families. When at least one parent had more than a high school diploma, children in unmarried biological or adoptive families (10.8%) were less likely than children in single-parent (15.3%) or other (20%) families to have respiratory allergies.
- Among poor families, children in nuclear families (9.2%) were less likely to have respiratory allergies than children in single-parent families (11.8%). Among near poor families, children in unmarried biological or adoptive families (6.9%) were less likely to have respiratory allergies than children living in single-parent (12.9%), blended (10.6%), or other (13%) families. Among not poor families, children in unmarried biological or adoptive families (8.6%) were less likely to have respiratory allergies than children in the remaining family types, with the exception of other families.
- Among children living in large metropolitan statistical areas (MSAs), children in unmarried biological or adoptive families (5.4%) were least likely to have respiratory allergies. Among children living in small MSAs, children in unmarried biological or adoptive families (10%) were less likely to have respiratory allergies than children in single-parent families (14.1%). Family structure was unrelated to the prevalence of respiratory allergies among children who did not live in an MSA.
- Children in single-parent families (13.1%) were more likely to have digestive or skin allergies in the past 12 months than children in nuclear (11.8%) or extended (11.4%) families, and were comparable to children living in the remaining family types.
- Hispanic children living in single-parent families (10.4%) were more likely than Hispanic children in nuclear (8.7%) or extended (8.2%) families to have digestive or skin allergies. Family structure was unrelated to the prevalence of digestive or skin allergies among non-Hispanic children.
- Among poor families, children living in unmarried biological or adoptive families (6.2%) were less likely than children in single-parent

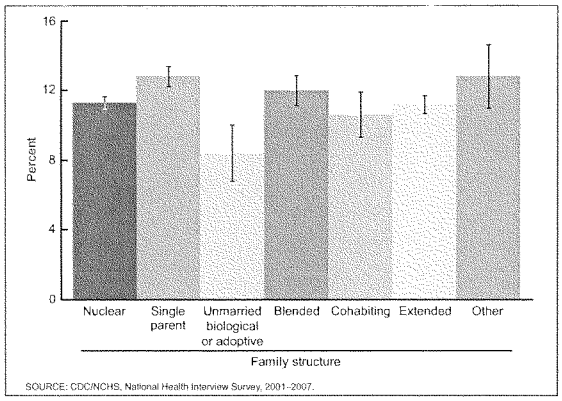

Figure 13. Percentages of children under age 18 who had respiratory allergies in the past 12 months, by family structure: United States, 2001–2007

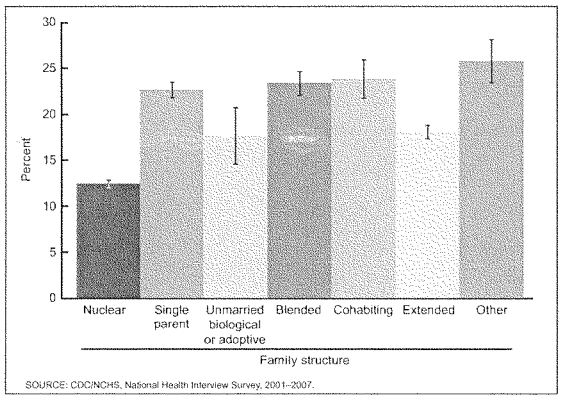

Figure 14. Percentages of children aged 4–17 who had a basic action disability, by family structure: United States, 2001–2007

(13.2%), blended (12%), extended (11%), or other (11.1%) families to have digestive or skin allergies. Family structure was unrelated to the prevalence of digestive or skin allergies among children living in near poor or not poor families.

Headaches or migraines and ear infections

Overall, nearly 3.7 million U.S. children aged 3–17 (6%) had frequent headaches or migraines in the past 12 months, while 4.2 million U.S. children under age 18 (5.8%) had three or more ear infections the past 12 months (Tables 13–16).

- Children aged 3–17 in nuclear families (4.5%) were less likely to have frequent headaches or migraines in the past 12 months than children in single-parent (8%), blended (6.6%), cohabiting (7.6%), extended (7.1%), or other (7.6%) families, and were comparable to children living in unmarried biological or adoptive families.
- Among children aged 12–17, those in nuclear families (7.6%) were less likely to have headaches or migraines than children in single-parent (11.6%), cohabiting (12.8%), extended (9.7%), or other (11.4%) families.
- Hispanic children living in nuclear families (4%) were less likely to have frequent headaches or migraines than children in single-parent (7.9%), blended (5.9%), cohabiting (7.4%), or extended (5.8%) families. Non-Hispanic white children living in nuclear families (4.8%) were less likely to have frequent headaches or migraines than children in nonnuclear families, with the exception of unmarried biological or adoptive families. Non-Hispanic black children living in nuclear families (4.1%) were less likely to have frequent headaches or migraines than those in single-parent (7.7%), blended (6.5%), extended (7.2%), or other (9.5%) families.
- Among poor families, children in nuclear families (6.6%) were less likely to have frequent headaches or migraines than children in single-parent (8.8%) or other (13.2%) families. Among near poor families, children in nuclear families (5.4%) were less likely than children in single-parent (8.5%) or extended (7.3%) families to have frequent headaches or migraines. Among not poor families, children in nuclear families (4.1%) were less likely than children in single-parent (6.6%), blended (6.4%), cohabiting (7.3%),

or extended (6.7%) families to have frequent headaches or migraines.

- Among children of all ages, those in unmarried biological or adoptive families (8.3%) were more likely to have three or more ear infections in the past 12 months than children in nuclear (5.9%), single-parent (6%), blended (5.1%), extended (5.4%), or other (5.3%) families, and were comparable to children living in cohabiting families.
- Hispanic children living in unmarried biological or adoptive families (9.1%) were more likely than Hispanic children in nuclear (5.8%), single-parent (5.9%), blended (4.8%), or extended (5.6%) families to have three or more ear infections in the past 12 months. Non-Hispanic white children in unmarried biological or adoptive families (9.4%) were more likely than non-Hispanic white children in nuclear (6.4%), blended (5.4%), or extended (6%) families to have three or more ear infections. Family structure was unrelated to the prevalence of ear infections among non-Hispanic black children.
- Among children living in the Northeast, those in unmarried biological or adoptive families (12.9%) were more likely to have three or more ear infections in the past 12 months than children in nuclear (5.9%), single-parent (4.7%), blended (5.9%), extended (5%), or other (6%) families. Among children in the South, those in unmarried biological or adoptive families (8.8%) were more likely to have three or more ear infections than children in blended (5.4%) or other (4.9%) families. Family structure was unrelated to the prevalence of ear infections in the Midwest and West regions of the United States.

Developmental delays and limitations

Overall, 2.6 million U.S. children under age 18 (3.6%) had mental retardation or any developmental delay; 1.4 million U.S. children under age 18 (1.9%) had an impairment or health problem that limited their crawling, walking, running, or playing; and 1.3 million U.S. children under age 18 (1.8%) received special education or EIS for an emotional or behavioral problem. In addition, 1.7 million U.S. children under age 18 (2.3%) experienced vision problems and 9.7 million U.S. children aged 4–17 (17.2%) had a basic action disability (Tables 17–26).

- Children living in nuclear families (3%) were less likely than children in single-parent (4.6%), blended (3.8%), cohabiting (4.5%), extended (3.6%), or other (6.6%) families to have mental retardation or any developmental delay, and were comparable to children living in unmarried biological or adoptive families. Children in other families had the highest prevalence rates of mental retardation or any developmental delay.
- Among Hispanic children, those in nuclear families (2.4%) were less likely than children in single-parent (4.2%) or other (5.1%) families to have mental retardation or any developmental delay. Among non-Hispanic white children, those living in nuclear families (3.3%) were less likely to have mental retardation or any developmental delay than children living in single-parent (4.9%), cohabiting (5.5%), or other (7.7%) families. Among non-Hispanic black children, those in nuclear families (2.8%) were less likely than children in single-parent families (4.1%) to have mental retardation or any developmental delay.
- Children in nuclear families (1.4%) were less likely than children in single-parent (2.7%), blended (2.6%), extended (2%), or other (2.6%) families to have an impairment or health problem that limited their crawling, walking, running, or playing, and were comparable to children living in unmarried biological or adoptive families or cohabiting families.
- When the more highly educated parent was a high school dropout, children in nuclear families (1.1%) were less likely than children in single-parent families (3%) to have an impairment or problem limiting activity. When at least one parent was a high school graduate, children in nuclear families (1.8%) were less likely than children in single-parent (2.6%) or blended (3.9%) families to have an impairment or problem limiting activity. When at least one parent had more than a high school diploma, children in nuclear families (1.4%) were less likely to have such an impairment or health problem than children in single-parent (2.7%), blended (2%), or extended (2.1%) families.
- Among poor families, children living in nuclear families (1.7%) were less likely to have impairments or health problems limiting activity than children in single-parent (3.2%), blended (4.5%), or extended (2.7%) families. Among near poor families, children in nuclear families (2%) were less likely to have impairments or health problems limiting activity than children in single-parent families (2.9%). Among not poor families, children living in nuclear families (1.3%) were less likely to have impairments or health problems limiting activity than children in single-parent (2%), blended (2%), or extended (1.7%) families.
- Less than 1% of children living in nuclear families received special education or EIS for an emotional or behavioral problem compared with 3.3% of children in single-parent families, 2.3% of children in blended families, 3.3% of children in cohabiting families, 2.1% of children in extended families, and 5.2% of children in other families. Children living in nuclear families were comparable to those living in unmarried biological or adoptive families regarding the receipt of special education or EIS. Children in other families were most likely to receive special education or EIS for an emotional or behavioral problem.
- Among children with Medicaid, those living in nuclear families (1.5%) were less likely to receive special education or EIS for emotional or behavioral problems

than children in single-parent (4.4%), blended (3.7%), cohabiting (4.6%), extended (3.3%), or other (8%) families. With the exception of children living in unmarried biological or adoptive families, children with Medicaid living in other families were most likely to receive special education or EIS for an emotional or behavioral problem.

- Children living in nuclear families (1.8%) were less likely than children in single-parent (3.2%), blended (2.6%), cohabiting (3.6%), extended (2.6%), or other (3%) families to have vision problems, and were comparable to children living in unmarried biological or adoptive families. Among children aged 5–17, those in nuclear families (2.2%) were less likely than children in single-parent (3.8%), blended (3.2%), cohabiting (4.4%), extended (3.1%), or other (3.4%) families to have vision problems, even when wearing glasses or contact lenses.
- Among poor families, children in nuclear families (2.6%) were less likely to have vision problems than children in single-parent families (4%). Family structure was not related to vision problems among children living in near poor families. Among not poor families, children in nuclear families (1.6%) were less likely than children in single-parent (2.5%), blended (2.4%), or extended (2.5%) families to have vision problems.
- Children aged 4–17 living in nuclear families (12.5%) were less likely than children in single-parent (22.7%), unmarried biological or adoptive (17.7%), blended (23.4%), cohabiting (23.9%), extended (18.1%), or other (25.8%) families to have a basic action disability (Figure 14).
- When the more highly educated parent was a high school dropout, children in nuclear families (11.3%) were less likely than children in single-parent (23.9%), blended (21.5%), cohabiting (25.8%), or extended (15.9%) families to have a basic action disability. When at least one parent was a high school graduate, children in nuclear families (14.4%) were less likely than children in single-parent (22.7%), blended (25.4%), cohabiting (22.4%), or extended (19.4%) families to have a basic action disability. When at least one parent had more than a high school diploma, children in nuclear families (12.3%) were least likely to have such a disability.
- Among children with Medicaid health insurance, those living in nuclear families (16.8%) were less likely to have a basic action disability than children in single-parent (26.7%), blended (28.1%), cohabiting (25.5%), extended (22.8%), or other (32.3%) families.

Learning disabilities and missed school days

Overall, 6.9 million U.S. children aged 3–17 (11.4%) had a learning disability or ADHD. In addition, 8.1 million U.S. children aged 5–17 (15.8%) missed 6 or more days of school in the past 12 months due to illness or injury (Tables 27–30).

- Children aged 3–17 living in nuclear families (8.1%) were less likely than children in single-parent (14.9%), blended (16.1%), cohabiting (15.6%), extended (12.1%), or other (19%) families to have a learning disability or ADHD (Figure 15), and were comparable to those living in unmarried biological or adoptive families.
- Roughly 11% of boys living in nuclear families had a learning disability or ADHD compared with 20.4% of boys in single-parent families, 21.5% in blended families, 19.9% in cohabiting families, 15.7% in extended families, and 22.7% in other families. Five percent of girls living in nuclear families had a learning disability or ADHD compared with 9.5% of girls in single-parent families, 10.5% in blended families, 11% in cohabiting families, 8.1% in extended families, and 15% in other families.
- Among Hispanic children, those in nuclear families (6.6%) were less likely than children in single-parent (11.3%), blended (11.7%), extended (8.1%), or other (11.4%) families to have a learning disability or ADHD. Among non-Hispanic white children, those living in nuclear families (9%) were less likely to have a learning disability or ADHD than children living in single-parent (17.4%), blended (18%), cohabiting (18.2%), extended (15.1%), or other (22.3%) families. Among non-Hispanic black children, those in nuclear families (5.8%) were less likely than children in single-parent (13.2%), blended (12.1%), cohabiting (13.7%), extended (11.4%), or other (20.2%) families to have a learning disability or ADHD.
- Children with private health insurance living in nuclear families (7.8%) were less likely to have a learning disability or ADHD than children with private health insurance living in single-parent (13%), blended (15.6%), cohabiting (15.6%), extended (10.8%), or other (14.1%) families. Children with Medicaid living in nuclear families (11.1%) were less likely to have a learning disability or ADHD than children with Medicaid living in single-parent (17.3%), blended (19.5%), cohabiting (16.4%), extended (15.9%), or other (24.6%) families. Similarly, 5.7% of uninsured children living in nuclear families had a learning disability or ADHD compared with 14.1% of uninsured children living in single-parent families, 12.9% in blended families, 13.2% in cohabiting families, 9.8% in extended families, and 12.2% in other families.
- Children in nuclear families were generally less likely than children in the remaining family types to have a learning disability or ADHD regardless of parent's education, income, poverty status, place of residence, or region.
- Children aged 5–17 living in nuclear families (13.3%) were less likely to miss school for 6 or more days in the past 12 months due to illness or injury than children aged 5–17 living in single-parent (19.7%),

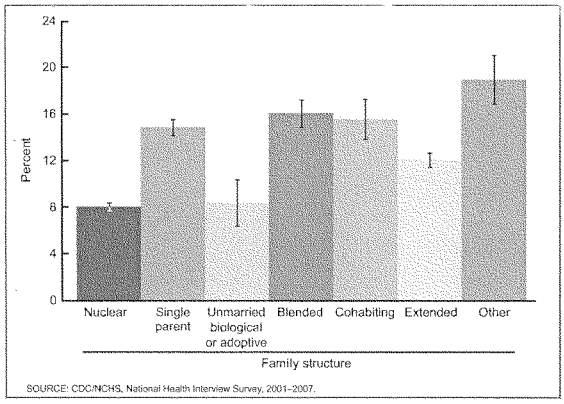

Figure 15. Percentages of children aged 3–17 who had ever been told of having a learning disability or ADHD, by family structure: United States, 2001–2007

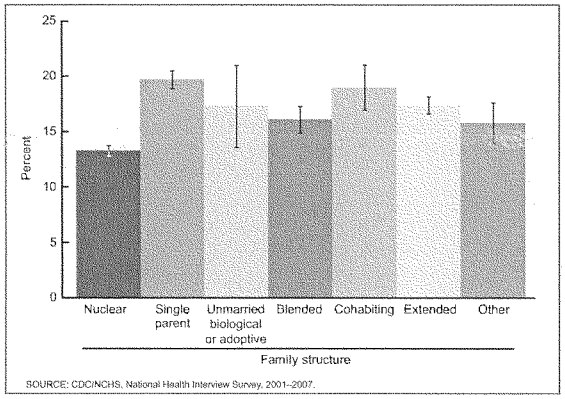

Figure 16. Percentages of children aged 5–17 who missed 6 or more days of school in the past 12 months due to illness or injury, by family structure: United States, 2001–2007

blended (16.1%), cohabiting (19%), extended (17.4%), or other (15.8%) families, and were comparable to children living in unmarried biological or adoptive families (Figure 16).

- Among Hispanic children, 10.5% of those in nuclear families missed 6 or more school days in the past 12 months compared with 19.9% of children in single-parent families, 13.5% in blended families, 17.7% in cohabiting families, and 13.5% in extended families. Among non-Hispanic white children, 14.8% of those in nuclear families missed 6 or more school days in the past 12 months compared with 23.5% of children in single-parent families, 18% in blended families, 21.2% in cohabiting families, 21.5% in extended families, and 19.3% in other families. Among non-Hispanic black children, 7.6% of those in nuclear families missed 6 or more school days in the past 12 months compared with 14.2% of children in single-parent families, 11.1% in blended families, 14.1% in extended families, and 12.8% in other families.
- When the more highly educated parent was a high school dropout, 13.1% of children living in nuclear families missed 6 or more days of school in the past 12 months compared with 24.4% of children in single-parent families, 22.3% in blended families, and 19.9% in cohabiting families. When at least one parent was a high school graduate, children in nuclear families (16%) were less likely than children in extended families (20.1%) to miss 6 or more school days. When at least one parent had more than a high school diploma, 12.7% of children in nuclear families missed 6 or more days of school compared with 18.9% of children in single-parent families, 21% in unmarried biological or adoptive families, 15.2% in blended families, 17.8% in cohabiting families, and 17.3% in extended families.
- Among poor families, children in nuclear families (16.3%) were less likely than children in single-parent (22.3%) or blended families (22.3%) to miss 6 or more days of school in the past 12 months. Among near poor families, children in nuclear families (13.9%) were less likely than children in single-parent (20.6%), blended (18.2%), cohabiting (19.3%), or extended (17.5%) families to miss 6 or more days of school. Among not poor families, children in nuclear families

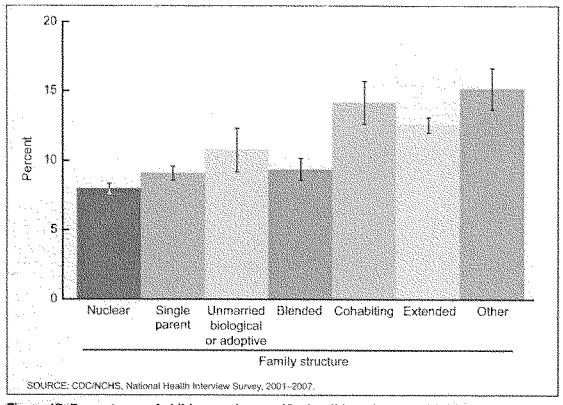

Figure 17. Percentages of children under age 18 who did not have health insurance, by family structure: United States, 2001–2007

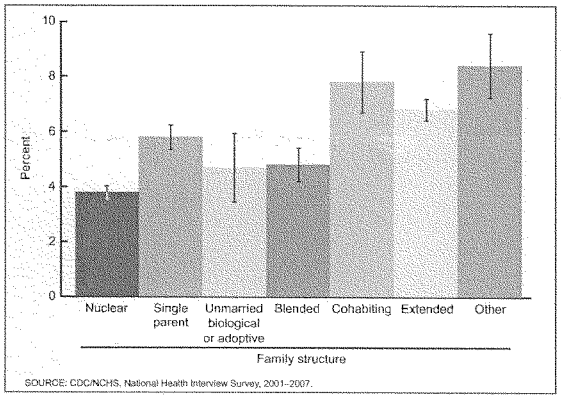

Figure 18. Percentages of children under age 18 without a usual place of health care, by family structure: United States, 2001–2007

(12.8%) were less likely than children in single-parent (15.9%), cohabiting (18%), or extended (17.1%) families to miss 6 or more school days.

Measures of Access to or Utilization of Health Care

Lack of health insurance coverage

Overall, 7 million U.S. children under age 18 (9.6%) lacked health insurance coverage (Tables 31–32).

- Children living in nuclear families (8%) were less likely than children in single-parent (9.1%), unmarried biological or adoptive (10.8%), blended (9.4%), cohabiting (14.2%), extended (12.6%), or other (15.2%) families to lack health insurance coverage (Figure 17).
- Among children under age 5, 6% of those living in nuclear families lacked health insurance coverage compared with 8.9% of children in unmarried biological or adoptive families, 12.6% of children in cohabiting families, 11.6% of children in extended families, and 12.6% of children in other families. Among children aged 5–17, 8.9% of children living in nuclear families lacked health insurance coverage compared with 13.9% of children in unmarried biological or adoptive families, 14.8% of children in cohabiting families, 12.8% of children in extended families, and 16% of children in other families.
- Hispanic children in single-parent families (12.5%) were less likely to lack health insurance coverage than Hispanic children in nuclear (19.9%), unmarried biological or adoptive (18.8%), blended (17.6%), cohabiting (18.5%), extended (22.9%), or other (26.3%) families. However, non-Hispanic children in nuclear families (5.7%) were less likely to lack health insurance coverage than non-Hispanic children in single-parent (8.4%), blended (7.9%), cohabiting (13.3%), extended (8.6%), or other (12%) families.
- Among children living in families with a combined family income less than $20,000 in the previous calendar year, 9.7% in single-parent families did not have health insurance coverage compared with 20.8% in nuclear families, 15.6% in blended families, 14.9% in cohabiting families, 16.9% in extended families, and 16.1% in other families. Similar percents with respect to lacking health insurance coverage were obtained for children living in poor families or when the

more highly educated parent did not graduate from high school.

- Among children living in the West, those in unmarried biological or adoptive families (16.7%) were more likely than children in nuclear (10.2%), single-parent (11.5%), or blended (11%) families to lack health insurance coverage. This pattern was not apparent in the remaining three regions of the United States.

Lack of usual place of care

Overall, 3.7 million U.S. children under age 18 (5%) lacked a usual place of health care (Tables 33–34).

- Children living in nuclear families (3.8%) were less likely than children in single-parent (5.8%), blended (4.8%), cohabiting (7.8%), extended (6.8%), or other (8.4%) families to lack a usual place of health care, and were comparable to children living in unmarried biological or adoptive families (Figure 18).
- Hispanic children living in nuclear families (9.9%) were less likely than Hispanic children in cohabiting (13.9%), extended (13.2%), or other (15.9%) families to lack a usual place of health care. Non-Hispanic white children living in nuclear families (2.2%) were less likely than non-Hispanic white children in single-parent (5.3%), blended (3.6%), cohabiting (7.6%), extended (3.4%), or other (6.6%) families to lack a usual place of health care. Family structure was unrelated to lacking a usual place of health care among non-Hispanic black children.
- When the more highly educated parent was a high school dropout, children living in nuclear families (14.5%) were more likely to lack a usual place of health care than children in single-parent (8.3%), unmarried biological or adoptive (6.8%), or blended (7%) families. However, when at least one parent was a high school graduate, children in nuclear families (5%) were less likely to lack a usual place of health care than children in cohabiting (7.5%) or extended (6.3%) families. Similarly, when at least one parent had more than a high school diploma, children in nuclear families (2.4%) were less likely to lack a usual place of care than children in single-parent (4.4%), blended (4.3%), cohabiting (6.2%), or extended (3.9%) families. Similar patterns of percentages with respect to lacking a usual place of health care were obtained for children living in poor, near poor, and not poor families.
- Children living in nuclear families that owned or were buying their homes (2.6%) were less likely to lack a usual place of health care than children in single-parent (4.8%), blended (3.6%), cohabiting (6.6%), extended (5.1%) or other (6.4%) families that owned or were buying their homes. Children living in nuclear families that rented their homes (8.5%) were more likely to lack a usual place of health care than children in single-parent (6.3%) or unmarried biological or adoptive (4.5%) families that rented, but were less likely to lack a usual place of health care than children in extended (10.7%) or other (13.2%) families that rented their homes.
- Among children living in the Northeast, 1.3% of those in nuclear families lacked a usual place of health care compared with 2.5% of children in extended families. Among children living in the Midwest, 2.6% of those in nuclear families lacked a usual place of health care compared with 4.2% of children in single-parent families, 5.5% of children in cohabiting families, and 4.6% of children in extended families. Among children living in the South, 4.7% of those in nuclear families lacked a usual place of health care compared with 7.3% of children in single-parent families, 10.2% of children in cohabiting families, 8.1% of children in extended families, and 9.8% of children in other families. Among children living in the West, 5.7% of those in nuclear families lacked a usual place of health care compared with 8.2% of single-parent families, 8.7% of children in blended families, 9.8% of children in cohabiting families, 9.6% of children in extended families, and 12% of children in other families.

Prescription medication usage

Overall, 9.4 million U.S. children under age 18 (12.9%) had a problem that required regular use of a prescription medication for at least 3 months (Tables 35–36).

- Children in unmarried biological or adoptive families (9.2%) were least likely to have had a problem requiring the regular use of a prescription medication for at least 3 months (Figure 19).
- Among young children under age 5, 11% of those living in single-parent families had a problem that required regular use of a prescription medication for at least 3 months compared with 7.2% of children in nuclear families, 6.1% in unmarried biological or adoptive families, 6.8% in blended families, and 7.5% in extended families.
- Hispanic children living in unmarried biological or adoptive families (6.2%) were less likely to have a problem requiring regular use of a prescription medication than Hispanic children in single-parent (11%), blended (9.5%), or other (11.9%) families. Among non-Hispanic white children, those living in unmarried biological or adoptive families (11.4%) were less likely to have a problem requiring regular use of a prescription medication than children in single-parent (18.6%), blended (17.7%), extended (17.1%), or other (19%) families. Non-Hispanic black children living in nuclear families (10.2%) were less likely to have a problem requiring prescription medication than non-Hispanic black children in other families (15.1%).
- Among poor families, children in nuclear families (9.1%) were less likely than children in single-parent (15.5%), blended (15%), extended (11.6%), or other (14.5%) families to have a problem requiring prescription medication. Among near

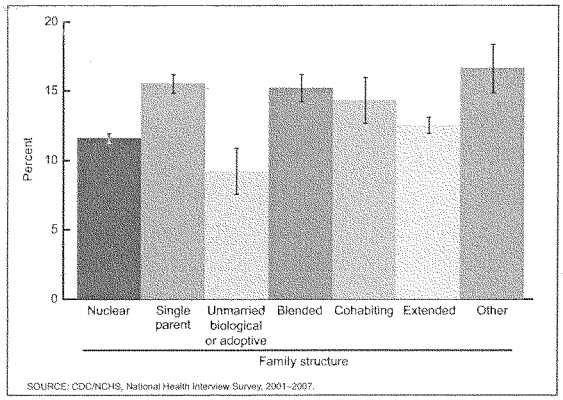

Figure 19. Percentages of children under age 18 with a problem for which prescription medications were used for at least 3 months, by family structure: United States, 2001–2007

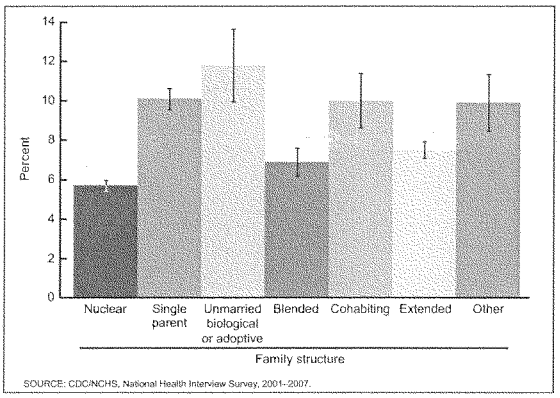

Figure 20. Percentages of children under age 18 who had two or more visits to the emergency room in the past 12 months, by family structure: United States, 2001–2007

poor families, children in nuclear families (9.7%) were less likely than children in single-parent (15.7%), blended (15.3%), cohabiting (15.1%), or other (16.9%) families to have a problem requiring prescription medication. Among not poor families, children in unmarried biological or adoptive families (7.9%) were least likely to have a problem requiring prescription medication.

- Children living in unmarried biological or adoptive families that owned or were buying their homes (10.6%) were less likely to have a problem requiring prescription medication than children in single-parent (16.3%), blended (15.7%), or other (19.2%) families that owned or were buying their homes. Children living in unmarried biological or adoptive families that rented their homes (8%) were less likely to have a problem requiring prescription medication than children in single-parent (15%), blended (14%), cohabiting (13.5%), or extended (11%) families that rented their homes.
- Among children with private health insurance, children in unmarried biological or adoptive families were least likely to have a problem requiring prescription medication. Among children with Medicaid, 12% of children in nuclear families had a problem that required prescription medication compared with 17.1% of children in single-parent families, 16.5% in blended families, 15.5% in cohabiting families, 14.3% in extended families, and 20.3% in other families.

Receipt of medical care

Overall, 5.2 million U.S. children under age 18 (7.2%) had two or more visits to a hospital ER in the past 12 months; 19.4 million U.S. children aged 1–17 (28.4%) did not have a medical checkup in the past 12 months; and 14.9 million U.S. children aged 2–17 (23%) saw or talked with an eye doctor during the past 12 months. In addition, nearly 2.8 million U.S. children under age 18 (3.8%) had medical care delayed during the past 12 months due to concerns over the cost, 1.8 million U.S. children aged 2–17 (2.8%) did not receive needed prescription medication due to lack of affordability, and 1.4 million U.S. children aged 2–17 (2.2%) did not get needed eyeglasses due to lack of affordability (Tables 37–48).

- Children living in nuclear families (5.7%) were least likely to have two or more ER visits in the past 12 months (Figure 20).
- Among children under age 5, 7.2% of those in nuclear families had two

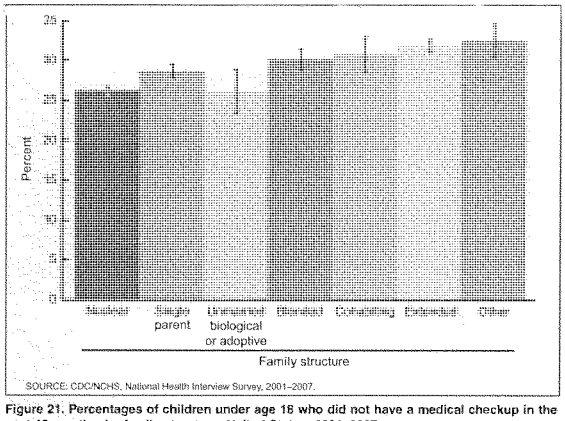

Figure 21. Percentages of children under age 18 who did not have a medical checkup in the past 12 months, by family structure: United States, 2001–2007

or more ER visits in the past 12 months compared with 17% of children in single-parent families, 13.1% in unmarried biological or adoptive families, 10.4% in blended families, 15% in cohabiting families, 12% in extended families, and 15% in other families. Among older children aged 12–17, 4.9% of those in nuclear families had two or more ER visits in the past 12 months compared with 8.3% of children in single-parent families, 8.5% in cohabiting families, 5.8% in extended families, and 9.4% in other families.

- Among children with private health care insurance, 5% of those in nuclear families had two or more ER visits in the past 12 months compared with 6.7% of children in single-parent families, 10.9% in unmarried biological or adoptive families, and 5.8% in extended families. Among children covered by Medicaid, 8.8% of those in nuclear families had two or more ER visits in the past 12 months compared with 13.5% of children in single-parent families, 12.7% in unmarried biological or adoptive families, 13.8% in cohabiting families, and 11.3% in extended families.
- Children living in nuclear families (26.2%) were less likely to lack a medical checkup in the past 12 months than children in single-parent (28.7%), blended (30.2%), cohabiting (30.8%), extended (31.9%), or other (32.6%) families, and were comparable to children living in unmarried biological or adoptive families (Figure 21).
- Nearly 15% of children under age 5 living in nuclear families did not have a medical checkup in the past 12 months compared with 19.8% of children in the same age group living in cohabiting families and 19.3% of children in the same age group living in extended families.
- Among Hispanic children, those in single-parent families (30.2%) were less likely to lack a medical checkup in the past 12 months than children in nuclear (34%), cohabiting (37.4%), extended (38.3%), or other (39.3%) families. Among non-Hispanic white children, those in unmarried biological or adoptive families (23.3%) were less likely to lack a medical checkup than children in single-parent (32.9%), blended (31.5%), cohabiting (32.6%), extended (31%), or other (34.8%) families. Among non-Hispanic black children, those in unmarried biological or adoptive families (14.4%) were less likely to lack a medical checkup than children in nuclear (21.1%), single-parent (22.4%), blended (23.5%), extended (24.5%), or other (24.9%) families.
- Among poor families, 26.5% of children living in unmarried biological or adoptive families did not have a medical checkup in the past 12 months compared with 37.1% of children living in nuclear families, 35.9% in extended families, and 36% in other families. Among not poor families, 23% of children living in nuclear families did not have a medical checkup in the past 12 months compared with 28% of children in single-parent families, 29.9% in blended families, 29.9% in cohabiting families, 28.5% in extended families, and 28.3% in other families.
- Children living in unmarried biological or adoptive families (12.5%) were less likely to have seen or spoken with an eye doctor during the past 12 months than children in nuclear (22.7%), single-parent (23.6%), blended (23.8%), cohabiting (20.4%), extended (24%), or other (22.3%) families.
- Among young children aged 2–4, 4% of those living in unmarried biological or adoptive families had seen an eye doctor in the past 12 months compared with 6.4% of children in nuclear families and 6.9% of children in single-parent families. Among children aged 5–11, 13.5% of those in unmarried biological or adoptive families had seen an eye doctor in the past 12 months compared with 23% of children in nuclear families, 23.7% in single-parent families, 24.8% in blended families, 21.1% in cohabiting families, 20% in extended families, and 23.1% in other families. Among older children aged 12–17, children in nuclear families (34%) were more likely to have seen an eye doctor in the past 12 months than children in

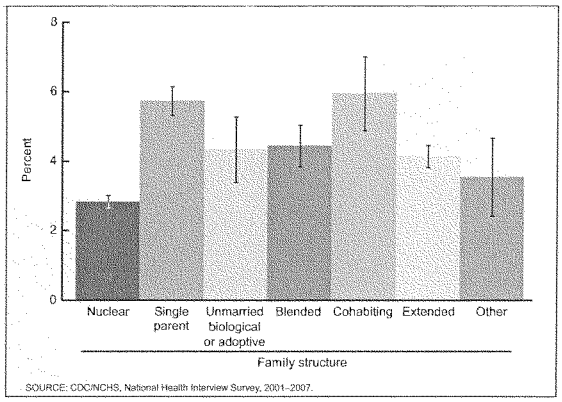

Figure 22. Percentages of children under age 18 who had medical care delayed during the past 12 months due to concerns over cost, by family structure: United States, 2001–2007

single-parent (29.7%), blended (28.6%), cohabiting (27%), extended (31.7%), or other (26.7%) families.

- Children living in cohabiting families (5.9%) were more likely to have medical care delayed during the past 12 months due to concerns over cost than children in nuclear (2.8%), blended (4.4%), extended (4.1%), or other (3.5%) families, and were comparable to children living in single-parent or unmarried biological or adoptive families (Figure 22).
- Family structure was unrelated to delays in receiving medical care due to concerns over cost among children whose more highly educated parent was a high school dropout. When at least one parent had more than a high school diploma, children in nuclear families (2.4%) were less likely to have medical care delayed due to cost than children in single-parent (6.8%), unmarried biological or adoptive (5.2%), blended (3.7%), cohabiting (5.8%), or extended (3.9%) families.
- Among children with private health insurance, those in nuclear families (1.7%) were less likely than children in single-parent (4.1%), blended (2.4%), or extended (2.4%) families to have medical care delayed due to concerns over cost. Among children with Medicaid, family structure was unrelated to delays in receiving medical care due to concerns over cost. Among uninsured children, those in other families (9.9%) were less likely to have medical care delayed due to concerns over cost than children in nuclear (14.2%), single-parent (25.5%), blended (20.6%), cohabiting (18.1%), or extended (15.2%) families.
- Children aged 2–17 living in nuclear families (1.8%) were least likely to have receipt of needed prescription medication delayed during the past 12 months due to lack of affordability.
- Among Hispanic children, those in nuclear families (3.5%) were less likely to have receipt of needed prescription medication delayed due to lack of affordability than children in single-parent (5%), cohabiting (6.7%), or extended (5%) families. Among non-Hispanic white children, those in nuclear families (1.4%) were less likely to have receipt of needed prescription medication delayed due to lack of affordability than children in single-parent (4.7%), blended (2.4%), cohabiting (4.2%), or extended (2.9%) families. Among non-Hispanic black children, those in other families (2.3%) were less likely to have receipt of needed prescription medication delayed due to lack of affordability than children in single-parent (4%) or blended (4.5%) families.
- Children living in nuclear families that owned or were buying their homes (1.3%) were less likely to have prescription medication delayed due to lack of affordability than children in single-parent (3.4%), blended (2.3%), cohabiting (4.1%), or extended (2.8%) families that owned or were buying their homes. Children living in unmarried biological or adoptive families that rented their homes (2.6%) were less likely to have prescription medication delayed due to lack of affordability than children in single-parent (5.1%), blended (4.7%), cohabiting (4.6%), or extended (5.5%) families that rented their homes.
- Among children with private health insurance coverage, 1% of those in nuclear families had prescription medication delayed due to lack of affordability compared with 3.2% of children in single-parent families, 1.9% of children in blended families, and 2% of children in extended families. Among children covered by Medicaid, 1.6% of those in other families had prescription medication delayed due to lack of affordability compared with 2.6% of children in nuclear families, 3.8% of children in single-parent families, 3.7% of children in blended families, 3.6% of children in cohabiting families, and 4% of children in extended families. Among uninsured children, 14.8% of those in single-parent families had prescription medication delayed due to lack of affordability compared with 8.2% of children in nuclear families, 9.3% of children in blended families, 10% of children in extended families, and 9.7% of children in other families.
- Children aged 2–17 living in nuclear families (1.3%) were less likely to

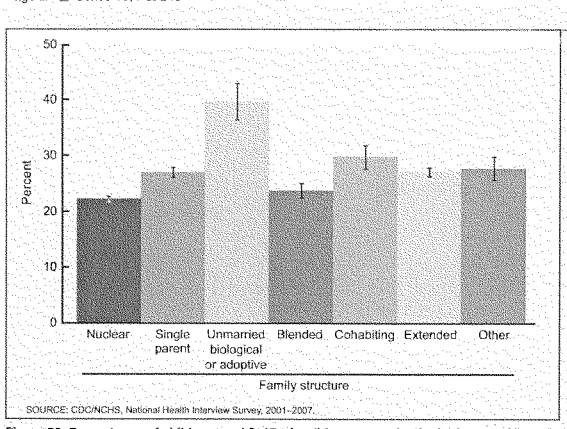

Figure 23. Percentages of children aged 2–17 who did not see a dentist in the past 12 months, by family structure: United States, 2001–2007

have receipt of needed eyeglasses delayed during the past 12 months due to lack of affordability than children living in single-parent (3.4%), blended (2.7%), cohabiting (2.8%), extended (2.9%), or other (2.5%) families, and were comparable to children living in unmarried biological or adoptive families.

- Among Hispanic children, 2.5% of those living in nuclear families were delayed in receiving needed eyeglasses in the past 12 months compared with 3.7% of children in extended families. Among non-Hispanic white children, 1.1% of those in nuclear families were delayed in receiving needed eyeglasses compared with 3.7% of children in single-parent families, 2.4% in blended families, 2.7% in cohabiting families, and 2.3% in extended families. Among non-Hispanic black children, 1.3% of those in nuclear families were delayed in receiving needed eyeglasses compared with 3.1% of children in single-parent families, 2.8% in blended families, and 3.2% in extended families.
- Among children with private health insurance coverage, 2.9% of those in single-parent families were delayed in receiving needed eyeglasses in the past 12 months compared with 0.7% of children in nuclear families, 1.8% of children in blended families, and 1.7% of children in extended families. Among children covered by Medicaid, 3.4% of those in extended families were delayed in receiving needed eyeglasses compared with 1.9% of children in nuclear and 1.9% in other families. Among uninsured children, 9.1% of those in single-parent and also in blended families were delayed in receiving needed eyeglasses compared with 5.7% of children in nuclear families; children in single-parent families (but not those in blended families) were also more likely to experience delays in receiving needed eyeglasses than children in cohabiting families (5.6%).

Dental care

Overall, 15.9 million U.S. children aged 2–17 (24.6%) had not seen a dentist in the past 12 months, and 4.2 million U.S. children aged 2–17 (6.4%) did not receive needed dental care in the past 12 months due to cost (Tables 49–52).

- Children aged 2–17 living in unmarried biological or adoptive families (39.6%) were least likely to have seen a dentist in the past 12 months (Figure 23).
- Among children aged 12–17, 13.3% of those in nuclear families had not seen a dentist in the past 12 months compared with 22.3% of children in single-parent families, 22% in unmarried biological or adoptive families, 18.1% in blended families, 25.1% in cohabiting families, 20.9% in extended families, and 25.3% in other families.
- Among Hispanic children aged 2–17, 29.9% of those in single-parent families had not seen a dentist in the past 12 months compared with 35% of children in nuclear families, 41.2% in unmarried biological or adoptive families, 37.2% in cohabiting families, 36.8% in extended families, and 40.2% in other families. Among non-Hispanic white children aged 2–17, 18.8% of those in nuclear families had not seen a dentist in the past 12 months compared with 24.4% of children in single-parent families, 43.1% in unmarried biological or adoptive families, 22.4% in blended families, 27.8% in cohabiting families, and 23.6% in other families. Among non-Hispanic black children, 26.7% of those living in nuclear families had not seen a dentist in the past 12 months compared with 31.5% of children in extended families.
- Among children with private health insurance, 18.2% of those in nuclear families did not see a dentist within the past 12 months compared with 19.9% of children in single-parent families, 35.6% of children in unmarried biological or adoptive families, and 20.2% of children in blended families. Among children with Medicaid, 23.4% of those in other families did not see a dentist within the past 12 months compared with 30% of children in nuclear families, 29% of children in single-parent families, 38.3% of children in unmarried biological or adoptive families, 31.1% of children in cohabiting families, and 30.6% of

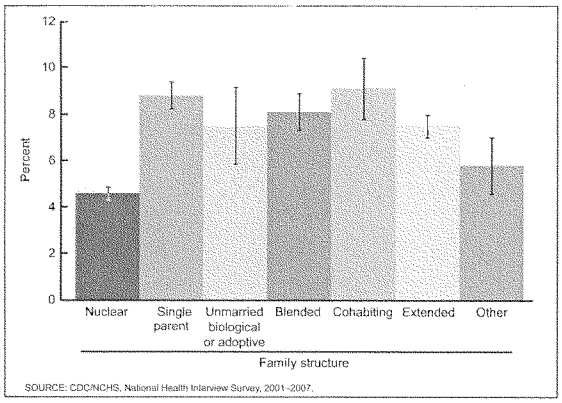

Figure 24. Percentages of children aged 2–17 who did not receive needed dental care in the past 12 months due to cost, by family structure: United States, 2001–2007

children in extended families. Among uninsured children, 42.9% of those in blended families did not see a dentist within the past 12 months compared with 49.4% of children in nuclear families, 55% of children in unmarried biological or adoptive families, 54.6% of children in extended families, and 55.3% of children in other families. Overall, 50% of uninsured children did not see a dentist within the past 12 months.

- Children aged 2–17 living in nuclear families (4.6%) were less likely than children of the same age in single-parent (8.8%), unmarried biological or adoptive (7.5%), blended (8.1%), cohabiting (9.1%), or extended (7.5%) families to lack receipt of needed dental care in the past 12 months due to cost, and were comparable to children living in other families (Figure 24).
- Nearly 8% of Hispanic children living in nuclear families did not receive needed dental care due to cost compared with 10.7% of Hispanic children living in blended families and 9.3% in extended families. Among non-Hispanic white children, 3.9% of those living in nuclear families did not receive needed dental care due to cost compared with 10.3% of children in single-parent families, 7.2% in unmarried biological or adoptive families, 8.1% in blended families, 10.4% in cohabiting families, and 6.6% in extended families. Among non-Hispanic black children, 3.4% of those living in cohabiting families did not receive needed dental care due to cost compared with 6.7% of children in single-parent families, 6.5% in blended families, and 6.5% in extended families.
- Among poor families, 5.3% of children living in other families did not receive needed dental care due to cost compared with 9.3% of children in nuclear families, 9.1% in single-parent families, 11.5% in blended families, 11.8% in cohabiting families, and 10.3% in extended families. Among near poor families, 8.7% of children living in nuclear families did not receive needed dental care due to cost compared with 10.6% of children in single-parent families, 12.1% in blended families, and 10.9% in extended families. Among not poor families, 3.1% of children living in nuclear families did not receive needed dental care due to cost compared with 6.9% of children in single-parent families, 5.9% in blended families, 8.1% in cohabiting families, and 4.9% in extended families.

Measures of Behavior or Emotional Well-being

During the past 6 months, approximately 1.7 million U.S. children aged 4–17 (3%) were often unhappy, depressed, or tearful; 2 million U.S. children aged 4–17 (3.6%) were generally not well-behaved or did not usually do what adults requested; 3.3 million U.S. children aged 4–17 (5.9%) had many worries or often seemed worried; 6.2 million U.S. children aged 4–17 (11.2%) generally exhibited a poor attention span or did not usually see chores and homework through to the end; and 6.3 million U.S. children aged 4–17 (11.3%) certainly got along better with adults than children. Lastly, 2.9 million U.S. children aged 4–17 (5.1%) had definite or severe emotional or behavioral difficulties and 1.1 million U.S. children aged 4–17 with definite or severe emotional or behavioral difficulties had no contact with a mental health professional or general doctor for an emotional or behavioral problem during the last 12 months (39.9%) (Tables 53–66).

- Two percent of children aged 4–17 living in nuclear families were often unhappy, depressed, or tearful during the past 6 months compared with 4.4% of children in single-parent families, 3.7% of children in blended families, 3.4% of children in extended families, and 4.9% of children in other families, and were comparable to children living in unmarried biological or adoptive families or cohabiting families.
- Among Hispanic children, 3% of those in nuclear families were often unhappy, depressed, or tearful during the past 6 months compared with 4.9% of children in single-parent families and 5.6% in blended families. Among non-Hispanic white children, 1.7% of those in nuclear families were often unhappy, depressed, or tearful during the past

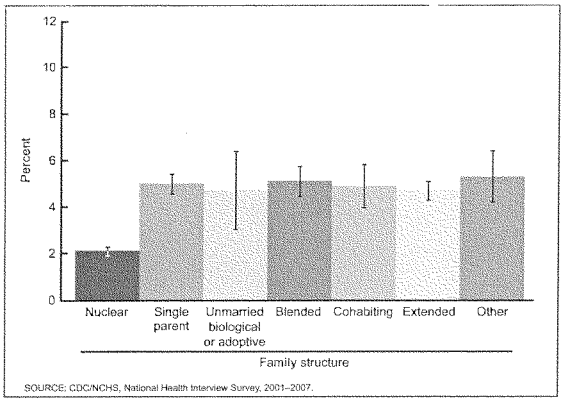

Figure 25. Percentages of children aged 4–17 who were generally not well behaved or did not usually do who adults requested in the past 6 months, by family structure: United States, 2001–2007

6 months compared with 4.1% of children in single-parent families, 3.1% in blended families, and 3.3% in extended families. Among non-Hispanic black children, 2.2% of those in nuclear families were often unhappy, depressed, or tearful during the past 6 months compared with 4.2% of children in single-parent families and 5.1% in other families.

- When the more highly educated parent was a high school dropout, 3.7% of children living in nuclear families were often unhappy, depressed, or tearful during the past 6 months compared with 6.7% of children in single-parent families and 7.7% in blended families. When at least one parent was a high school graduate, children in nuclear families (2.3%) were less likely than children in single-parent (3.7%), blended (4.2%), or extended (3.4%) families to often exhibit unhappy, depressed, or tearful behavior. When at least one parent had more than a high school diploma, 1.8% of children in nuclear families were often unhappy, depressed, or tearful compared with 3.7% of children in single-parent families, 2.9% in blended families, and 3.1% in extended families. Similar percentages for often exhibiting unhappy, depressed, or tearful behavior are obtained when family structure is disaggregated by poverty status.
- About 2% of children aged 4–17 in nuclear families were generally not well-behaved or did not usually do what adults requested during the past 6 months compared with 5% of children in single-parent families, 4.7% of children in unmarried biological or adoptive families, 5.1% of children in blended families, 4.9% of children in cohabiting families, 4.7% of children in extended families, and 5.3% of children in other families (Figure 25).
- Among Hispanic children, 3.5% of those in nuclear families were generally not well-behaved or did not usually do what adults requested during the past 6 months compared with 6% of children in single-parent families, 5.7% in blended families, and 5.1% in extended families. Among non-Hispanic white children, 1.8% of those in nuclear families were generally not well-behaved or did not usually do what adults requested during the past 6 months compared with 4.1% of children in single-parent families, 5.1% in blended families, 3.7% in cohabiting families, 4.2% in extended families, and 4.9% in other families. Among non-Hispanic black children, 2% of those in nuclear families were generally not well-behaved or did not usually do what adults requested during the past 6 months compared with 5.9% of children in single-parent families, 4.5% in blended families, 8% in cohabiting families, 5.7% in extended families, and 6.8% in other families.
- Among poor families, 4.2% of children in nuclear families were generally not well-behaved or did not usually do what adults requested during the past 6 months compared with 6.8% of children in single-parent families, 8.3% in blended families, 7% in extended families, and 8.7% in other families. Among near poor families, 2.7% of children in nuclear families were generally not well-behaved or did not usually do what adults requested compared with 5% of children in single-parent families, 5.9% in blended families, 6.2% in cohabiting families, and 5.1% in extended families. Among not poor families, 1.8% of children in nuclear families were generally not well-behaved or did not usually do what adults requested compared with 3% of children in single-parent families, 4.2% in blended families, 3.4% in cohabiting families, 3.7% in extended families, and 3.7% in other families.
- Children aged 4–17 living in nuclear families (4.1%) were less likely than children in single-parent (8.5%), blended (7.3%), cohabiting (7.6%), extended (6%), or other (9.8%) families to have many worries or often seem worried during the past 6 months, and were comparable to children living in unmarried biological or adoptive families (Figure 26).
- Among Hispanic children, 4.5% of those in nuclear families had many worries or often seemed worried during the past 6 months compared

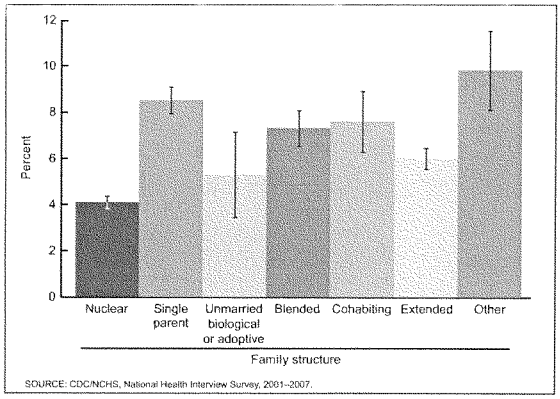

Figure 26. Percentages of children aged 4–17 who had many worries or often seemed worried in the past 6 months, by family structure: United States, 2001–2007

with 8.1% of children in single-parent families, 7.6% in blended families, 6.2% in extended families, and 7.9% in other families. Among non-Hispanic white children, 4.1% of those in nuclear families had many worries or often seemed worried compared with 10.5% of children in single-parent families, 7.7% in blended families, 8.4% in cohabiting families, 6.5% in extended families, and 12.4% in other families. Among non-Hispanic black children, 3.3% of those in nuclear families had many worries or often seemed worried compared with 5.5% of children in single-parent families, 5.2% in extended families, and 7.3% in other families.

- Children living in nuclear families that owned or were buying their homes (3.9%) were less likely to have many worries or often seem worried than children in single-parent (8.6%), blended (6.7%), cohabiting (8.5%), extended (5.2%), or other (10%) families that owned or were buying their homes. Children living in nuclear families that rented their homes (5.3%) were less likely to have many worries or often seem worried than children in single-parent (8.4%), blended (8.6%), extended (8.3%), or other (8.6%) families that rented their homes.
- Nearly 8% of children aged 4–17 in nuclear families generally exhibited a poor attention span or did not usually see chores and homework through to the end during the past 6 months compared with 14.7% of children in single-parent families, 15.6% of children in blended families, 16% of children in cohabiting families, 11.9% of children in extended families, and 18% of children in other families, and were comparable to children living in unmarried biological or adoptive families.
- Ten percent of boys living in nuclear families generally exhibited a poor attention span or did not usually see chores and homework through to the end during the past 6 months compared with 18.1% of boys in single-parent families, 19.6% in blended families, 18.8% in cohabiting families, 14.4% in extended families, and 21.4% in other families. Nearly 6% of girls living in nuclear families generally exhibited a poor attention span or did not usually see chores and homework through to the end during the past 6 months compared with 11.4% of girls in single-parent families, 11.4% in blended families, 12.9% in cohabiting families, 9.3% in extended families, and 14.4% in other families.
- When the more highly educated parent was a high school dropout, 8.4% of children living in nuclear families generally exhibited a poor attention span or did not usually see chores and homework through to the end compared with 15% of children in single-parent families, 17.5% in blended families, 16.2% in cohabiting families, and 11.3% in extended families. When at least one parent was a high school graduate, children in nuclear families (9.8%) were less likely than children in single-parent (14.9%), blended (16.6%), cohabiting (16.1%), or extended (13.9%) families to generally exhibit a poor attention span or not usually see chores and homework through to the end. When at least one parent had more than a high school diploma, 7.4% of children in nuclear families generally exhibited a poor attention span or did not usually see chores and homework through to the end compared with 14.2% of children in single-parent families, 14.9% in blended families, 15.9% in cohabiting families, 11.2% in extended families, and 24% in other families.
- About 9% of children aged 4–17 in nuclear families certainly got along better with adults than children during the past 6 months compared with 13.8% of children in single-parent families, 12.4% of children in blended families, 12.5% of children in cohabiting families, 13% of children in extended families, and 15.2% of children in other families, and were comparable to children living in unmarried biological or adoptive families.
- Among Hispanic children, 12.7% of those in nuclear families certainly got along better with adults than children during the past 6 months compared with 17.5% of children in single-parent families and 19.5% in other families. Among non-Hispanic

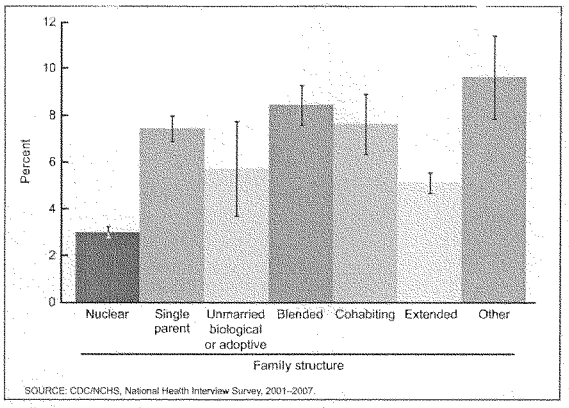

Figure 27. Percentages of children aged 4–17 who had definite or severe emotional or behavioral difficulties, by family structure: United States, 2001–2007

white children, 7.6% of those in nuclear families certainly got along better with adults than children during the past 6 months compared with 11.4% of children in single-parent families, 12.0% in blended families, 11.3% in cohabiting families, 11.7% in extended families, and 14% in other families. Family structure was not related to the extent to which non-Hispanic black children certainly got along better with adults than children during the past 6 months.

- When the more highly educated parent was a high school dropout, 13% of children living in nuclear families certainly got along better with adults than children during the past 6 months compared with 19.7% of children in single-parent families. When at least one parent was a high school graduate, 8.5% of children in unmarried biological or adoptive families certainly got along better with adults than children during the past 6 months compared with 13.6% of children in single-parent families, 14.2% in blended families, and 14% in extended families. When at least one parent had more than a high school diploma, 8.1% of children living in nuclear families certainly got along better with adults than children during the past 6 months compared with 11.5% of children in single-parent families, 11.3% in blended families, 11.8% in extended families, and 15.1% in other families.
- As Figure 27 illustrates, children aged 4–17 living in nuclear families (3%) were less likely to have definite or severe emotional or behavioral difficulties than children in single-parent (7.4%), unmarried biological or adoptive (5.7%), blended (8.4%), cohabiting (7.6%), extended (5.1%), or other (9.6%) families.
- Nearly 4% of boys living in nuclear families had definite or severe emotional or behavioral difficulties compared with 9.3% of boys in single-parent families, 7.7% in unmarried biological or adoptive families, 10.8% in blended families, 9.6% in cohabiting families, 6.2% in extended families, and 9.7% in other families. Two percent of girls living in nuclear families had definite or severe emotional or behavioral difficulties compared with 5.5% of girls in single-parent families, 5.9% in blended families, 5.4% in cohabiting families, 3.9% in extended families, and 9.5% in other families.
- Among Hispanic children, 2.1% of those in nuclear families had definite or severe emotional or behavioral difficulties compared with 5.8% of children in single-parent families, 6.8% in blended families, 5.7% in extended families, and 7.1% in other families. Among non-Hispanic white children, 3.3% of those in nuclear families had definite or severe emotional or behavioral difficulties compared with 8.2% of children in single-parent families, 8.5% in unmarried biological or adoptive families, 9% in blended families, 7.6% in cohabiting families, 6.4% in extended families, and 11.1% in other families. Among non-Hispanic black children, 2.3% of those in nuclear families had definite or severe emotional or behavioral difficulties compared with 6.4% of children in single-parent families, 6.8% in blended families, 7.3% in cohabiting families, 5.5% in extended families, and 9.4% in other families.
- Among children living in poor families, 3.8% of those in nuclear families had definite or severe emotional or behavioral difficulties during the past 6 months compared with 8.9% of children in single-parent families, 9.4% in blended families, 7.2% in cohabiting families, 6.6% in extended families, and 9.7% in other families. Among children living in near poor families, 3.1% of those in nuclear families had definite or severe emotional or behavioral difficulties compared with 7.6% of children in single-parent families, 11.1% in blended families, 9.5% in cohabiting families, 5.4% in extended families, and 11% in other families. Among children living in not poor families, 2.9% of those in nuclear families had definite or severe emotional or behavioral difficulties compared with 5.4% of children in single-parent families, 7.2% in blended families, 6.7% in cohabiting

families, 4.5% in extended families, and 8.5% in other families.

- Among children with private health insurance, 2.8% of those living in nuclear families had definite or severe emotional or behavioral difficulties during the past 6 months compared with 5.6% of children in single-parent families, 7.4% in blended families, 5.8% in cohabiting families, and 4.2% in extended families. Among children with Medicaid, 4.6% of those living in nuclear families had definite or severe emotional or behavioral difficulties during the past 6 months compared with 9.5% of children in single-parent families, 11.3% in blended families, 10.1% in cohabiting families, 7.6% in extended families, and 13.4% in other families. Among uninsured children, 2% of those living in nuclear families had definite or severe emotional or behavioral difficulties during the past 6 months compared with 7.2% of children in single-parent families, 9.3% in blended families, 5.6% in cohabiting families, 4% in extended families, and 5.1% in other families.
- Among children aged 4–17 with definite or severe emotional or behavioral difficulties, 27.8% of those in other families had no contact with a mental health professional or general doctor for an emotional or behavioral problem during the last 12 months compared with 39.9% of children with definite or severe emotional or behavioral difficulties in nuclear families, 40.2% of children with such difficulties in single-parent families, and 43.5% of children with such difficulties in extended families.

Conclusion

The findings presented in this report indicate that children living in nuclear families—that is, in families consisting of two married adults who are the biological or adoptive parents of all children in the family—were generally healthier, more likely to have access to health care, and less likely to have definite or severe emotional or behavioral difficulties than children living in nonnuclear families. For example, children in nuclear families were generally less likely than children in nonnuclear families to be in good, fair, or poor health; to have a basic action disability; or to have learning disabilities or ADHD. They were also less likely than children in nonnuclear families to lack health insurance coverage, to have had two or more ER visits in the past 12 months, to have receipt of needed prescription medication delayed during the past 12 months due to lack of affordability, or to have gone without needed dental care in the past 12 months due to cost. Additionally, children living in nuclear families were less likely to be poorly behaved or to have definite or severe emotional or behavioral difficulties during the past 6 months than children living in nonnuclear family types.

These findings are consistent with previous research that concluded that children living with two parents were advantaged relative to children living in other types of families (18–21). Using data from the Child Health Supplement of the 1988 NHIS, Dawson (18,19) reported that children living with two biological parents were less likely to experience behavioral or emotional problems than children living in other family types. Dawson found small and inconsistent differences in prevalence estimates by family structure for most chronic conditions and indicators of physical health, but noted that children living in households with two parents were less likely to have had chronic asthma in the past 12 months than children living in households without fathers (18). Heck and Parker (20) found that children in two-parent families were less likely than children living with single mothers to have unmet health care needs and more likely to have employer-sponsored health insurance. Bramlett and Blumberg (21) reported that children living with two biological parents were more likely than children in single-mother or grandparent-only families to be in excellent or very good health and less likely to have asthma-related health issues during the past year, to have ADHD, or to have moderate to severe emotional or behavior problems.

Relative to children living in nuclear families, children in single-parent families clearly had higher prevalence rates for the various health conditions and indicators examined in this report. However, when compared to children living in other nonnuclear families, children living in single-parent families generally exhibited comparable prevalence rates with respect to child health, access to care, and emotional or behavioral difficulties. This report combined children living with single mothers, single fathers, or some other related single adult into one category because the vast majority of single adult families in 2001–2007 were headed by mothers. If single-parent families were disaggregated by type of parent (i.e., mother, father, or some other adult), it is possible that children living in single-mother families might have slightly higher rates of health problems and less access to health care than children in single-father families, as well as other nonnuclear families, as earlier research (18–21) has found.

Children living in blended (i.e., stepparent), cohabiting, unmarried biological or adoptive, extended, and other families were generally disadvantaged relative to children in nuclear families, and were, for the most part, comparable to children living in single-parent families regarding most health status and access to care measures. However, few, if any, consistent patterns emerged in the prevalence estimates of children living in nonnuclear families. Interestingly, children living in unmarried biological families share some of the health characteristics of both nuclear and cohabiting families. Results in this report suggest that children in unmarried biological families generally fared well in terms of the prevalence of asthma, hay fever, and allergies and they were also least likely to have had a problem requiring the regular use of a prescription medication for at least 3 months. Conversely, they were more likely than children in the remaining family types to have three or more ear infections in the past 12 months and

least likely to have seen a dentist or had contact with an eye doctor in the past 12 months. Regarding some health measures, however, results were inconclusive due to the relatively small number of children in unmarried biological families. Additional research is needed to determine whether this particular family type is consistently and positively associated with indicators of child health, access to care, and behavioral or emotional well-being.

The association of children's health status, access to or utilization of care, and emotional well-being with family structure was mitigated in some instances by the introduction of various personal, social, and economic characteristics. Yet differences in child health and access to care by family structure generally persisted regardless of population subgroup, with children living in nuclear families remaining advantaged relative to children in nonnuclear families.

The findings in this report cannot be used to infer that family structure "caused" a particular child health outcome or that a child health outcome "caused" family structure. In fact, previous research has shown that causality may flow in both directions; that is, family structure may have consequences for child health outcomes, while children's health may have consequences for family structure (42,43). Ideally, a methodological approach should be used that more accurately reflects how children's health may select them into particular family structures, which, in turn, may have ramifications for their health outcomes. However, the cross-sectional design of NHIS and the lack of information in the data about marriage or union onset or duration makes this task impossible. However, there are certainly different ways to model family structure that are beyond the scope of this report. For example, analysts may wish to distinguish between mother-stepfather and father-stepmother families. Moreover, although the date at which marriages or unions began cannot be determined from NHIS, it is possible to determine whether single mothers have ever been married. It may make a difference whether children are living with a never- versus ever-married mother (44). A postdivorce mother may have more goods and resources (e.g., alimony and child support payments) available to her than a never-married mother. No attempt was made in the current analysis to determine the marital status of single parents (formerly married versus never married) or to distinguish between mother-stepfather, father-stepmother, mother-cohabiting male partner, or father-cohabiting female partner families. The 2001–2007 NHIS data do allow for these possibilities, however.

Despite the data limitations discussed previously, the findings summarized in this report remain important, particularly given the sweeping changes in family formation and living arrangements currently taking place in the United States. This report is based on 7 years of NHIS survey data that contain numerous child health and access to health care measures for a sample of nearly 84,000 children. In addition, this study incorporates a detailed indicator of family structure that takes into account both parental marital status and the nature of parent-child relationships (e.g., biological, step, etc.), making the identification of nontraditional families possible. Very few nationally representative data sources contain reliable measures of both family structure and child health. Thus, NHIS provides a unique opportunity to understand the complicated relationships that exist between family structure and child health in the United States today.

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July 15, 2011

Sen. Patrick Leahy
Chair, U.S. Senate Judiciary Committee
437 Russell Senate Bldg
United States Senate
Washington, DC 20510

Dear Sen. Leahy:

I am writing you in support of repealing the Defense of Marriage Act (DOMA). Apart from the social injustices, DOMA has hurt us economically by forcing us to pay higher federal income taxes and higher deductibles on our health insurance than married heterosexuals of similar circumstances.

My partner Greg Trulson and I have been in a committed, loving relationship for 19 years. In 1996, due to my partner's job transfer through IBM, we moved to Duxbury, Vermont where we purchased a log home and turned it into a thriving B&B to supplement our income. When Vermont became the first state to legalize civil unions, Greg and I were thrilled to be residents of the most enlightened state in the country! We celebrated by exchanging vows on November 10, 2001. Then, after the marriage equality law passed, we repeated our vows and were legally married on November 10, 2009.

In 2003, we found ourselves more dependent on our B&B income after IBM gave my partner early retirement after 22 years of service. No longer just a "side business," our growing B&B had become our main source of income and we became even more aware of economic pitfalls of legal discrimination.

According to our accountants at Spaulding & Madden (please see attached), in the six years between the years 2004 and 2009, our federal income tax payment was $24,487 more because we had to file as "Single" rather than "Married Filing Jointly." That is an average of more than $4000 per year that we had to pay more. In addition, our accountants had to do extra work, because in order to file our taxes in Vermont, the accountants needed to do a mock Federal filing as if we were "Married Filing Jointly." Thus, over the years, we have had to pay for extra accounting services. This "Gay Marriage Penalty" is unfair.

Furthermore, because we are self-employed, we are paying our own premiums on health insurance. To make it affordable we have chosen to have Health Savings Accounts (HSA), which allow us to deposit funds that are free of federal taxes. However, we have a high deductible of $2500 each. Because we are not allowed to buy a Family insurance plan, our combined deductible is $5000. In order for our insurance to kick-in during a given year, we each need to pay $2500 out of our own pockets.

As very small business owners, we contribute greatly to the local economy by marketing to and attracting visitors from all around the world to our 86-acre destination property. We support the local economy by hiring local vendors for catering, equipment, weddings and other special events; plus local contractors for major renovations and repairs. We - and our guests - heavily patronize local restaurants, markets, and attractions. In addition, Greg and I personally contribute to cultural and business organizations throughout the state. And as a couple with no children, we contribute greatly each year to local and state taxes to help maintain our roads and schools. We are happy to pay our fair share of taxes, but DOMA unfairly punishes us.

There is no reason why our long-term committed relationship should be deprived of benefits that other couples are provided. I urge the Judiciary Committee to support the Respect for Marriage Act and get rid of unfair discrimination.

I greatly appreciate the opportunity to submit this letter to you. I thank you for your consideration and hard work on behalf of equality.

Sincerely,

Wilfredo T. Docto

Wilfredo T. Docto

Co-Owner, Moose Meadow Lodge LLC
Owner, Docto Association Management LLC
President, Vermont Gay Tourism Association
Treasurer, Waterbury Tourism Council
President, Eleva Chamber Players

Enclosure

Tax Year	Actual Tax Paid by Greg Trulson (single tax rate)	Actual Tax Paid by Wilfredo Docto (single tax rate)	Actual Total Tax Paid (single tax rate)	Total Tax Owed if able to file Jointly (joint rate)	Tax Difference (single rate vs. if able to file jointly)
2004	$0.00	$3,209.00	$3,209.00	$1,454.00	$1,755.00
2005	$0.00	$4,684.00	$4,684.00	$454.00	$4,230.00
2006	$0.00	$7,051.00	$7,051.00	$693.00	$6,358.00
2007	$0.00	$7,536.00	$7,536.00	$1,197.00	$6,339.00
2008	$0.00	$6,369.00	$6,369.00	$618.00	$5,751.00
2009	$0.00	$54.00	$54.00	$0.00	$54.00
2010					
Totals	$0.00	$28,903.00	$28,903.00	$4,416.00	$24,487.00

2010 figures unavailable at this time due to extensions being filed awaiting business K1 forms

SUMMARY: Taxpayers paid $24,487 more in income tax for 2004 through 2009 due to not being able to file jointly

BILL DRINKWATER AND ERNEST REID, Cumberland, RI

Dear Senator Whitehouse,

We understand you are sponsoring the Respect for Marriage Act which would repeal the discriminatory Defense of Marriage Act. We support you fully in this effort. It is long pass time to get rid of DOMA, a hateful law that should not have been passed in the first place.

We live in Cumberland Rhode Island and we have been a couple for over 20 years. We live quietly and go about our business without bothering anyone. We will be taking advantage of the new Civil Union Law in Rhode Island, but that will have no effect on federal laws. This should not be. It makes no sense to set us outside the protections of federal law, to make us less than full citizens of the United States.

I was born 59 years ago and Ernie was born 55 years ago. We have been citizens of the United States all our lives but since the passage of DOMA our government has seen fit to take rights away from us. Why is this? We have not hurt anyone. Ernie's and my Union will not cause harm to anyone. The states that have passed marriage and civil union rights over the past few years have not seen the brake down of society as the proponents of DOMA would have you believe.

Please ask you colleagues in the Senate to support the return of our civil rights; it is the only civil thing to do.

Thank you kindly.

Sincerely,
Bill Drinkwater & Ernest Reid, Jr.
Cumberland, Rhode Island

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Remarks on the Defense of Marriage Act
Senator Al Franken

Thank you Mr. CHAIRMAN. I want to thank Congressman Nadler and Congressman Lewis for joining us. I want to especially thank the witnesses who have come to share their stories with us. What you are doing is very important, not just for the millions of Americans directly affected by the so-called Defense of Marriage Act, but for our entire nation.

DOMA is an injustice. It is an immoral and discriminatory law. Our nation was founded on the premise that all people are created equal, and that all persons should receive equal treatment under the law. Our society may be different than it was then, but those principles remain the same. That's why I am an original co-sponsor of the Respect for Marriage Act. And that's why I think the day we repeal DOMA will be a great day for this nation, akin to the ratification of the Nineteenth Amendment and the passage of the

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Civil Rights Act. And I think your presence here, Congresssman Lewis, speaks to that in a very powerful way.

DOMA creates real pain and real hardships for countless Minnesotans and Americans. We recently ended Don't Ask Don't Tell. That means that LGBT servicemen and women can serve their country openly. But because of DOMA, those service members' same-sex spouses can't get access to TRICARE, the military health care system. If tragedy strikes and one of those servicemen or servicewomen dies in combat, their same-sex spouses can't receive the many death benefits that this country offers opposite-sex partners.

For most Americans, when their spouse becomes seriously ill, the Family Medical Leave Act allows them to take up to twelve weeks of leave to care for their partner. Under DOMA, same-sex spouses have no such right.

The injustices created by DOMA are too many to count.

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Written Testimony of
Rev. Dr. C. Welton Gaddy, President of Interfaith Alliance
Submitted to
U.S. Senate Committee on the Judiciary
for the Hearing Record on
"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"
July 20, 2011

By almost any measure, the United States of America is clearly moving toward marriage equality. Respectfully, I ask you, our elected representatives, not to hold back the egalitarian movement of fair-minded American citizens. Though I would like to say that the time for the Defense of Marriage Act has passed, the reality is that at no time should this piece of legislation have had any place in our nation. You surely understand that you are neither protecting anyone's religious freedom by allowing DOMA to continue, nor are you preserving the sanctity of marriage. As a Christian, a Baptist minister, a married man and a patriotic American, I ask you to place yourselves on the right side of history and in compliance with the Constitution and end DOMA's discriminatory compromise of basic equality for all citizens.

I offer these thoughts not as a casual observer or a passive supporter of marriage equality. For many years I personally struggled with this issue. That struggle eventually brought me to a place at which arguments against gay marriage, against even accepting civil unions, were no longer credible or sustainable when held up to the light of my faith commitment and my devotion to the Constitution. Over the last few years, I have researched the issue of same-gender marriage thoroughly and written about it extensively. I have traveled across the United States speaking to people—gay and straight, Christians and atheists, liberals and conservatives. What has become undeniably apparent to me is, thankfully, that the vehemence with which many of you, our elected officials, continue to oppose same gender marriage is not shared by the majority of Americans[1].

As the President of Interfaith Alliance, a national, non-partisan organization that celebrates religious freedom and is dedicated to protecting faith and freedom and whose 185,000 members nationwide belong to 75 faith traditions as well as those without a faith tradition, I have written a paper that could be of use in the debate over this legislation entitled *Same-Gender Marriage and Religious Freedom: A Call toQuiet Conversations and Public Debates*, available at www.interfaithalliance.org/equality. The conversation around and support of same-gender marriage is a large part of our work.

The so-called Defense of Marriage Act has denied same-gender couples (including those married in states where same-gender marriage is legal) the federal recognition and benefits allowed to all other married Americans for far too long. The passage of the Respect for Marriage Act is a crucial step forward in the fight to right this national wrong and uphold the religious freedom and equality of all Americans, regardless of their religious beliefs or sexual orientation.

The constitutional guarantee of religious freedom is the best perspective from which to view the subject of same-gender marriage and around which to convene a national dialogue on the legality of

[1] "Majority of Americans say they support same-sex marriage, adoption by gay and lesbian couples," Public Religion Research Institute, May 19, 2011 http://www.publicreligion.org/research/published/?id=579

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same-gender marriage. Law, not scripture, is the foundation of government regulations related to marriage in our nation. In America's diverse religious landscape there are many theological positions on same-gender marriage, some of which support the institution and some that oppose the institution. But the First Amendment's religious freedom provisions ensure that repealing DOMA and legalizing same-gender marriage on a federal level will not result in a government imposition on religious institutions of a particular view of marriage or limit their speech as it relates to marriage.

Many people seem either to ignore or to be unaware of the fact that, despite the soaring language and lofty images used to describe marriage in most religious traditions, in the United States, marriage is a civil institution. Decisions about who is married and who is not married are the prerogative of the government--not a house of worship, a spiritual leader, or a religious tradition. Lawful marriage does not occur in the United States without a marriage license and a certificate of marriage, both of which must be acquired from an agency of the civil government. The government of the United States recognizes marriage completely without reference to religion. In the United States, marriage is a legal institution--sanctioned and restricted by government. To confuse the civil institution of marriage with a religious institution to be protected by the government is to seriously misunderstand marriage and its relationship to government in the United States.

Our religious freedom protects every house of worship from government intrusion to impose a particular view of marriage or to demand a religious blessing for a special kind of marriage – such as same-gender marriage. The United States Constitution provides a way for the government to keep its promise of guaranteeing equal rights for all people while, at the same time, protecting the freedom of religious institutions to practice their respective doctrines and values. Both religious bodies and governmental institutions can function with integrity while supporting liberty for everybody.

Our elected representatives have a sworn obligation to make decisions guided by the U.S. Constitution, not the sectarian morality derived from a singular religious tradition. To them is entrusted responsibility for providing for the public welfare of all individuals. When it comes to the question of same-gender marriage, the goal should not be to demand that people change their theology. A far better goal is to ask people not to attempt to impose their theology on those who hold a different theological point of view. Marriage should be a right that is available to *every* citizen, but never an act, ritual, or formal ceremony that any house of worship, denomination, or religious leader should be required to legally perform in contradiction to his or her beliefs.

By passing the Respect for Marriage Act, same-gender couples will no longer be denied equal rights by their government, based on a civil prohibition shaped by one American group's theological beliefs. And all religious communities will have the religious freedom to refrain from conducting marriages that violate the teachings of their faith, just as those religious communities whose faith teaches the value and holiness of same-gender marriages will have the religious freedom to sanction these unions.

Thank you for the opportunity to submit testimony on this important issue.

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How DOMA Hurts Americans: A Summary of the GAO Reports[1] on Section 3 of the Federal Defense of Marriage Act

Executive Overview

The Defense of Marriage Act (DOMA) was enacted in 1996, before any state began issuing marriage licenses to same-sex couples. DOMA has two substantive parts:

- Section 2 permits states to disregard the marriages of same-sex couples, even when the marriage is legally recognized in another state.
- Section 3 of DOMA provides a definition of "marriage" and "spouse" for purposes of all federal laws and programs. It states: "In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only the legal union of a man and a woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." 1 U.S.C. § 7.

This Summary focuses on Section 3 of DOMA and how it harms married same-sex couples in any of the states where their marriages are licensed or recognized in whole or in part. The federal government does not license marriages; it has always deferred in the past to a state's determination of a person's marital status to determine eligibility for the protections and responsibilities in those federal laws and programs that affect married persons. But DOMA overrides a state's determination that a person is married, thus rendering spouses in a same-sex couple "single" and disqualifying them from federal spousal protections and responsibilities across the board.

The federal programs to which same-sex married couples are denied equal access represent some of the critical legal safety nets that couples count on when they marry, as they plan their lives and futures together, as they raise children and deal with hard times, and for which they contribute their U.S. tax dollars. In particular, this document addresses how:

- DOMA Threatens the Security of our Senior Citizens.
- DOMA Adds Costs to Businesses, Employers and Employees.
- DOMA Discriminates Against Taxpayers.
- DOMA Disserves Our Service Members and Veterans.
- DOMA Tears Apart Families and Hurts Children.

[1] Report of the United States General Accounting Office, GAO/OGC-97-16, Defense of Marriage Act (Jan. 31, 1997), at 1, *available at* http://www.gao.gov/archive/1997/og97016.pdf. In 2004, the Government Accountability Office updated its 1997 Report and found 1,138 federal laws implicated by DOMA. Rep. "GAO-04-353R Defense of Marriage Act - Update to Prior Report" (Jan. 24, 2004), *available at* http://www.gao.gov/new.items/d04353r.pdf.

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Not surprisingly, some federal marital benefits are premised on the expectation that spouses mutually support one another and thus impose financial responsibilities on spouses. Benefits like Supplement Security Income, Medicaid and Medicare are "means tested" so that a spouse's income is included as part of the recipient's income in assessing financial eligibility for the program. Yet, due to DOMA, married same-sex couples do not face the same limitations as other married beneficiaries of these programs because the federal government ignores their marriages. Part of the reason why the Congressional Budget Office estimated that the federal government would save $1 billion each year through 2014 if the federal government recognized marriages of same-sex couples nationwide is because of projected savings in those very programs, even as the federal government might spend more in areas such as Social Security and Federal Employee Health Benefits.

Some marital protections are non-pecuniary, but still critically important for those who need them. For instance, married persons enjoy the right under federal law to invoke the marital confidences and spousal privileges in federal court, *see* Fed. R. Evid. 501, the right to sponsor a non-citizen spouse for naturalization, *see* 8 U.S.C. § 1430, and to obtain conditional permanent residence for that spouse, *id.* § 1186b(2)(A).

Finally, married persons are also subject to a number of legal obligations, such as conflict-of-interest rules governing federal employment and participation in federally funded programs, *e.g.*, 5 U.S.C. § 3110, and restrictions on employment with or appointment to the judiciary, *see* 28 U.S.C. § 458.

I. DOMA Threatens the Security of Our Senior Citizens.

DOMA exacts substantial costs to older Americans as they near and enter retirement by stripping away the federal safety net that our senior citizens have depended on for generations to grow old with dignity and security.[2]

Social Security:

The Social Security program was created to provide for workers and retirees in their old age as well as to ensure that a worker's family will have money to live on if the worker dies or becomes disabled. People are eligible for these invaluable protections only if they have paid into the system for a sufficient amount of time. DOMA denies the following protections to gay and lesbian retirees and widows/widowers.

- Social Security Disability Benefits: If a worker is eligible for disability benefits, a spouse and also a divorced spouse may qualify for up to 50% of the disabled worker's benefit amount.[3]
- Social Security Spousal Benefit: When two people are retired and collecting Social Security, a lower earning or non-earning spouse can increase his or her benefit by up to one half of the higher earner's payment by virtue of their marriage, as long as they meet age requirements and have been married at least 9 months.[4]

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[2] DOMA's impact on Medicaid and Medicare is beyond the scope of this summary.
[3] 42 U.S.C. § 402 (b), (c).
[4] 42 U.S.C. § 402 (b), (c). *See also* Social Security Online, Benefits for your spouse, http://www.socialsecurity.gov/retire2/yourspouse.htm.

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- Social Security Benefit for Surviving Spouse: After death, an individual with a lower Social Security payment may receive his or her spouse's higher benefit, instead of his or her own benefit, as long as they are at least 60 years of age, had been married at least 9 months, and are not currently married to someone else.[5] Even a divorced spouse benefits from this protection.[6]
- Social Security One Time Death Benefit: This is a one-time lump sum payment made to the surviving spouse or, if no surviving spouse exists, to a minor child of the deceased insured worker.[7]

Retirement benefits:

DOMA strikes at the heart of private spousal retirement protections. Most private retirement plans (whether provided by an employer or employee organization) are subject to a federal law known as ERISA (Employee Retirement Income Security Act) and the federal Internal Revenue Code.[8] ERISA provides substantive rights to spouses.[9]

- Qualified Joint and Survivor Annuity (QJSA): Under ERISA, the default method of distribution to an employee with a defined benefit or money purchase pension plan is the joint and survivor annuity, unless the spouse affirmatively waives his or her right to receive the survivor annuity.[10] Such an annuity provides a benefit to the retiree during his or her life, and then continues the benefit as an annuity paid to the surviving spouse in the amount of at least 50% and not more than 100% of what the retiree received during his or her lifetime.[11] These annuity and spousal waiver protections are not required to be available to married same-sex couples and non-spousal annuitants, although an employer may draft a plan to provide annuity options with non-spousal annuitants.
- Qualified Pre-retirement Survivor Annuity (QPSA): Under ERISA, when an employee vested in a defined benefit or money purchase pension plan dies before retirement, an opposite-sex surviving spouse must be offered a QPSA, unless the spouse affirmatively waives his or her right to receive the QPSA. A QPSA generally is a 50% survivor annuity for the life of the surviving spouse. As with the QJSA, the QPSA and spousal waiver protections are not required to be available to married same-sex couples and non-spousal annuitants, although an employer may draft a plan to permit same-sex couples and non-spousal annuitants to receive a pre-retirement survivor annuity.
- Required Minimum Distributions: The tax law provides favorable treatment to a spousal beneficiary of most forms of retirement plans, allowing the spouse to defer the payment of death benefits (and associated taxes) from a decedent's plan until the spouse attains

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[5] 42 U.S.C. § 402 (e), (f).
[6] *Id.*
[7] 42 U.S.C. § 402 (i).
[8] 29 U.S.C. §§ 1001 et seq.; *see also* Health Plans and Benefits, http://www.dol.gov/dol/topic/health-plans/erisa.htm.
[9] 29 U.S.C. § 1002 (2) (employee pension benefit plan). The substantive rights include the right to: (1) approve, with respect to certain types of retirement plans, the method of distribution to the participant; (2) receive benefits in the event of the participant's death as a default beneficiary; and (3) share in the participant's benefits in the event of a divorce or legal separation.
[10] 29 U.S.C. § 1055. *See also* 26 U.S.C. § 417 (spouse may consent to a different form of benefit, such as a lump sum payment).
[11] 29 U.S.C. § 1055(d); 26 U.S.C. § 417(b).

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age 70½.[12] In contrast, because of DOMA, a surviving spouse of the same-sex whose decedent spouse was older will be required to commence distributions earlier than an opposite sex spouse, resulting in accelerated income and a loss of a valuable tax-deferral opportunity.

- Benefits Upon Divorce: As a general matter, benefits from a retirement plan that is subject to ERISA are reserved to the employee/retiree.[13] But if that employee or retiree divorces, the retirement assets may be viewed as marital property and some or all may be awarded on a tax-free basis to a non-employee (former spouse) through a "Qualified Domestic Relations Order" (QDRO).[14] Such an order is a court decree that relates to child support, alimony payment or marital rights of a former spouse. A procedure for allowing for the tax-free division of an IRA upon divorce or legal separation is also available.[15] In each case, after any transfer, the non-employee spouse becomes responsible for income taxes on distribution.

  Because of DOMA, same-sex couples have no access to a QDRO or other procedure for dividing retirement benefits upon divorce, making it difficult to fairly divide the marital property of a couple upon divorce, such as when one ex-spouse had been the primary earner and the other had primarily cared for children or other dependents.

Federal Civilian Retirement Benefits:

The Federal Employees Retirement System (FERS) and the Civil Service Retirement System (CSRS) provide certain retirement benefits to qualified federal retirees and their spouses, unless they are same-sex spouses.

- FERS provides automatic coverage for employees hired after 1983 and consists of a three-pronged approach to providing retirement security: Social Security, a "Basic Benefit Plan," and a "Thrift Savings Plan." All three of these options provide surviving spousal benefits upon the death of a qualified retiree, but do not provide benefits to a surviving spouse of the same sex as the employee.[16]
- CSRS covers all employees hired before 1984 who did not transfer into the FERS. It provides an annuity for a surviving spouse of an employee who died during employment[17] or after retirement. However, gay and lesbian surviving spouses are not covered because of DOMA.[18]

Retirement Protections with "Spousal IRA":

Married couples filing their income taxes jointly may fund an IRA for a non-working spouse, who thus may build retirement assets even while taking time out of the workforce to care

[12] 26 U.S.C. § 401(a)(9).
[13] 29 U.S.C. § 1056(d)(1); 26 U.S.C. § 401(a)(13)(a).
[14] 29 U.S.C. § 1056(d)(3); 26 U.S.C. § 401(a)(13)(B), 414 (p).
[15] 26 U.S.C. § 408(d)(6).
[16] For more detail about FERS and Social Security in general, *see* FERS: An Overview of Your Benefits, http://www.opm.gov/forms/pdfimage/RI90-1.pdf.
[17] Retirement Facts 1: Civil Service Retirement System, at 6, http://www.opm.gov/forms/pdfimage/RI83-1.pdf.
[18] *Id.* at 7.

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for children or elderly parents.[19] This ability does not exist for a non-income earning, same-sex spouse.

II. DOMA Adds Costs to Businesses, Employers and Employees.

In 2010, 86% of full-time U.S. workers in private industry had access to medical benefits, and 74% to an employer-provided retirement plan.[20] DOMA harms both employers and employees, by making it more difficult and costly for businesses to provide these benefits on an equal basis to married gay and lesbian employees.

Among the spousal benefits that employers are either prohibited from providing or are unable to provide their gay and lesbian married employees without incurring substantial administrative and financial burdens, are:

- Tax-advantaged fringe benefits: Employers may provide a variety of fringe benefits to employees, such as allowing an employee to use pre-tax dollars to pay health insurance premiums, or to fund a "flexible spending account" which is then used to reimburse certain medical costs with pre-tax dollars.[21] The only persons for whom an employee can use such an account are "dependents" as defined by law, such as a spouse, a child, and other qualifying tax dependents.[22]

  As a result of DOMA, an employee cannot use any of these tax-advantaged benefits for his or her same-sex spouse, unless the spouse qualifies as a tax dependent. A spouse in a same-sex couple will not qualify as a dependent unless a number of requirements are met, including having little or no earnings.

- Taxation of spousal benefits: DOMA imposes discriminatory tax treatment that burdens both employers and employees. When a married employee receives employer-provided health benefits, the value of the health insurance for the spouse, child or other qualifying tax dependent is not subject to federal income tax even though such benefits are a form of compensation to the employee.[23] But as a result of DOMA, that exclusion does not apply to same-sex spouses; the employer and the employee must treat the fair market value of the spouse's coverage as taxable income to the employee.[24] On average, this "imputed"

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[19] 26 U.S.C. § 219.

[20] METLIFE, 8th Annual Study of Employee Benefit Trends (2010), *available at* www.metlife.com/assets/institutional/services/insights-and-tools/ebts/Employee-Benefits-Trends-Study.pdf. Typically, these benefits are offered through an "employer sponsored group health plan," or "group health plan." See 29 U.S.C. § 1167(1).

[21] *See generally* 26 U.S.C. § 125(a) (cafeteria plans; pre-tax treatment limited to opposite sex spouses or dependents, as defined under 26 U.S.C. §152). Amounts received by an employee, directly or indirectly, from a health or accident plan or through a "flexible savings account" are excluded from gross income under 26 U.S.C. § 105.

[22] Married employees with spouses of the same sex cannot use these benefits for a spouse by using pre-tax wages unless the spouse is also a tax dependent. For these purposes, a tax dependent is someone who lives in the same household as the taxpayer and the taxpayer furnishes more than one-half of the cost of maintaining such household during the taxable year. 26 U.S.C. §§ 105, 106, 152(d).

[23] 26 U.S.C. § 106.

[24] *See* Private Letter Ruling ("PLR") 200524016, 2005 PLR LEXIS 278 at *23-24 (Mar. 17, 2005); PLR 200339001, 2003 PLR LEXIS 879 at **9-11 (June 13, 2003); PLR 9850011, 1998 PLR LEXIS 1650 at*10-13 (Sept. 10, 1998); PLR 9717018, 1997 PLR LEXIS 85 at *11-12 (Jan. 22, 1997).

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income requires that employees with partners pay $1,069 more annually than married employees with similar coverage.[25]

For businesses and employers, determining and recording the amount of "imputed" income due to spousal health coverage adds administrative costs and burdens to payroll systems. There are also increased payroll taxes since employers pay a portion of federal social security (FICA) and unemployment (FUTA) taxes based on employee's wages.[26]

A growing number of businesses, including Google, Credit Suisse, JetBlue, and Cisco, have begun reimbursing their gay and lesbian employees for the additional tax burden they must pay due to DOMA's unfair treatment of their spousal health benefits as taxable income.[27] These companies incur even greater costs by reimbursing their employees for the federal government's discrimination and also paying additional payroll taxes on those reimbursements.

- Family Medical Leave: The Family Medical Leave Act (FMLA) provides 12 work weeks of unpaid leave in any 12-month period to a spouse with a "serious health condition."[28] Because of DOMA, FMLA does not require employers to provide the same protections for gay and lesbian employees. This defeats the FMLA's goal of helping workers balance family and work commitments, although some employers take on the burden of crafting "workarounds" to provide access to leave.

Generally speaking, access to health coverage through a spouse's plan is a major benefit of marriage. Unfortunately, many employers refuse to provide spousal health insurance to their gay and lesbian employees, citing DOMA as their reason.

- Health Benefits and "ERISA Plans": Most large employers as well as unions and employee organizations provide health coverage through "self-insured" arrangements, and, under present law, are exempt from state laws regulating employee benefit plans. These self-insured entities are governed by the terms of the plan document as well as by ERISA.[29]

  Regulation of benefit plans by ERISA rather than by state law has important consequences for married same-sex couples. In contrast to state insurance contracts that recognize same-sex spouses, self-insured plans have the discretion to provide coverage to employees with spouses of the same sex, or not to, even as they cover other married employees.[30] Some self-insured entities have chosen not to provide the same coverage for

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[25] *See* Center for American Progress & UCLA Williams Institute, Unequal Taxes on Equal Benefits, at 7 (Dec. 2007).
[26] *Id.* at 5-7.
[27] *See generally* http://bucks.blogs.nytimes.com/2010/12/14/a-progress-report-on-gay-employee-health-benefits/.
[28] 29 U.S.C. § 2612(a)(1)(A)-(D). FMLA covers many, but not all employers. *See, e.g.* 29 U.S.C. § 2611(4)(A)(i) (FMLA applies to employer "who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year"); 29 U.S.C. § 2611(2)(B)(ii) (worker is not an "eligible employee" if the employee is at a worksite with less than 50 employees and the employer has less than 50 employees within 75 miles of that worksite).
[29] 29 U.S.C. §§ 1001 et seq.; *see also* Health Plans and Benefits, http://www.dol.gov/dol/topic/health-plans/erisa.htm.
[30] *See, e.g.*, New Jersey Civil Union Review Comm., First Interim Report of the New Jersey Civil Union Review Commission, February 19, 2008, http://www.state.nj.us/lps/dcr/downloads/1st-InterimReport-CURC.pdf.

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same-sex spouses and point to their interest in conforming to the federal definitions of "marriage" and "spouse" in DOMA as the basis for their decision.[31]

In addition, there are a number of health insurance-related spousal benefits that employers are otherwise required to provide to their employees on an equal basis, unless that married employee is gay or lesbian. These include:

- Continuing Health Coverage: COBRA requires private employers with 20 or more employees to offer continued coverage for a defined period of time to employees and their covered dependents under certain circumstances, such as job termination, death and divorce.[32] DOMA excludes married gay and lesbian couples from automatic protection, leaving it up to the individual employer to decide on continuing coverage.
- Open Enrollment Periods: Under "HIPAA" (Health Insurance Portability and Accountability Act), marriage is a "qualifying event" that allows an employee to immediately add a new spouse to his health plan if the health plan allows for spousal coverage.[33] Upon marriage to a spouse of the same sex, however, the employee must defer enrolling for coverage until the annual open enrollment period.
- Hardship Distributions From Retirement Accounts: In emergencies, an employee may use a pre-retirement "hardship distribution" from a retirement plan (such as a 401(k) plan) to pay a spouse's medical expenses. Married same-sex couples facing the same emergencies do not have this automatic protection, although some employers assume the burden of crafting their plans to permit pre-tax hardship distributions for a "primary beneficiary" designated by the participant.[34]

Finally, due to DOMA, federal employees are denied certain spousal employment benefits, including:

- Federal Employee Health Benefits: The Federal Employees Health Benefits Program (FEHB) is the key program providing health benefits (including dental, vision, and participation in Health Care Flexible Savings Accounts, among others) to federal employees, retirees and their survivors. A "member of family" includes "the spouse of an employee or annuitant."[35] Under existing law and regulations, the spouse of an employee who selects "Self and Family" coverage is automatically enrolled for purposes of the FEHB program and receives health care coverage.[36] All of these protections are denied to the employee for the benefit of his or her spouse of the same sex.

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[31] *Cf.* Anthony Faiola, Civil Union Laws Don't Ensure Benefits, Wash. Post, June 30, 2007, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2007/06/29/AR2007062902201.html (references situation where Federal Express refused to provide benefits to employees with same-sex partners in New Jersey on the basis of federal law while similarly providing benefits in California as a result of specific legislation signed into law to mandate coverage by employers doing business with the state).

[32] Continuation of Health Coverage-COBRA, *available at* http://www.dol.gov/dol/topic/health-plans/cobra.htm. Since COBRA is a right available through federal law, DOMA allows employers to deny COBRA continuation coverage to same-sex spouses.

[33] Health Insurance Portability and Accountability Act, 29 U.S.C. §§ 1181-1183. *See also* Portability of Health Coverage, *available at* http://www.dol.gov/dol/topic/health-plans/portability.htm.

[34] IRS Notice 2007-7 (Jan. 27, 2007); see also Pension Protection Act of 2006, (P.L. 109-280).

[35] 5 U.S.C. § 8901(5).

[36] FEHB For Dependents, *available at* http://www.opm.gov/insure/health/eligibility/dependents.asp. *See also* 5 U.S.C. §§ 8701-8914.

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- Health Benefits – Continuation after Death and Divorce: Family health insurance through the FEHB program continues for the family as long as a spouse or dependent child receives a survivor benefit.[37] Some divorced spouses may retain FEHB coverage indefinitely as long as they pay for the coverage,[38] while others can retain coverage for 36 months as long as they pay the premiums and an administrative fee.[39]
- Family Leave: Most federal employees may use up to a total of 12 administrative workweeks of sick leave each year to care for a family member with a serious health condition. Spouses are included as family members.[40]
- Compensation for Work-Related Injury or Death: If a federal employee becomes disabled from a work-related injury, the employee is paid 33% of his or her salary if the employee has no dependents, and 75% if the employee does have dependents, such as a spouse.[41] If death results from the injury, a surviving spouse receives either 50% of the deceased employee's salary, or 45% plus another 15% for each additional child.[42]

III. DOMA Discriminates Against Taxpayers.

The 2004 GAO report identifies a total of 198 statutes involving marital status and taxation.[43] DOMA essentially forces the IRS to ignore reality and pretend that gay and lesbian married couples are single individuals or a head of household for purposes of taxation. The following are just a few examples of how DOMA discriminates against gay and lesbian taxpayers.

Income Taxation:

- Filing Status: Marital status is the central consideration in determining filing status, as only married couples have the option to file joint or separate returns.[44] Only married couples filing jointly may pool deductions on such a return, such as the deduction for uncompensated medical expenses to meet the required threshold for a federal tax deduction.[45] Yet, DOMA forces gay and lesbian taxpayers to disrespect their very own marriages when they complete and sign their federal forms by requiring married same-sex couples to file their federal tax returns as unmarried persons. No one likes being compelled to tell an untruth, even if it is a lawful one.

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[37] OPM-Federal Retirees – FAQ: Death Benefits, *available at* http://www.opm.gov/retire/faq/post/faq4.asp#survivingspouse.
[38] FEHB Continuation Coverage for Former Spouses, *available at* http://www.opm.gov/insure/health/eligibility/former_spouses.asp.
[39] FEHB Frequently Asked Questions About Divorce, *available at* http://www.opm.gov/insure/archive/health/qa/qa.asp?divorce#15 (no gay or lesbian married federal employee or his or her divorced or surviving spouse has these benefits).
[40] 5 U.S.C. §§ 6382-6383. *See also* Sick Leave to Care for a Family Member, *available at* http://www.opm.gov/oca/leave/HTML/12week.asp.
[41] U.S. Department of Labor, Employment Standards Administration, Division of Federal Employees' Compensation, CA-11: When Injured at Work: Information Guide for Federal Employees, *available at* http://www.dol.gov/owcp/dfec/regs/compliance/ca-11.htm.
[42] 5 U.S.C. § 8133.
[43] Report of the United States General Accounting Office (1997), *supra* note 3, at 5-6, 11.
[44] 26 U.S.C. § 6013.
[45] 26 U.S.C. § 213 (uncompensated medical expenses of the taxpayer, his or her spouse, or his or her dependents are deductible from income to the extent that such expenses exceed 7.5 percent of the taxpayer's adjusted gross income). The taxpayers must file as "married filing jointly" in order to pool such deductions. 26 U.S.C. § 6013.

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- Tax Preparation: DOMA also makes tax preparation complicated and expensive. Like others, married same-sex couples typically commingle their finances and share expenses. However, for tax reporting, DOMA requires them to unwind what is joint and re-allocate expenses on an individual basis.

  In states that respect the marriages of same-sex couples, those couples must file their state tax returns under the correct married status. However, some items on a "married" state return require the taxpayer to have a married federal return in place first. This means that married same-sex couples must still prepare a *pro forma* "married" federal return (that is never actually filed because the IRS cannot accept due to DOMA) in order to complete their state income taxes returns correctly. Preparation of a federal "dummy" return can be as significant additional expense.

  Of course, some married same-sex couples will pay more in federal income taxes when the federal government respects their marriages because of the so-called "marriage penalty." Typically, spouses who earn comparable amounts will pay more tax than if they had filed two returns as unmarried persons. *But see* Section V, *below*. The 2004 CBO Report analyzing the budgetary impact of federal recognition of marriages between persons of the same sex estimates that federal individual income tax and estate tax revenues would actually increase between $400 million a year to $700 million per year if DOMA did not mandate the nonrecognition of marriages of same-sex couples.[46]

- Divorce Taxation: Beyond division of retirement accounts (*see above*, Section I), tax laws help a married couple unwind their economic partnership and divide their marital assets equitably during a divorce, without extra tax burdens.
  - Property transferred between spouses due to a divorce is not taxable.[47] But if a same-sex couple divorces, transfers of the home and other assets are taxable.
  - If alimony (also known as "spousal support") or separate maintenance payments are ordered to be paid to a former spouse, the amounts paid are deductible to the person making the payments on his or her tax returns, thereby lowering the amount of tax due.[48] None of these exemptions from taxation extend to same-sex divorced couples as a result of DOMA.

Gift and Estate Taxation:

- Transfers between Spouses: Spouses have an unlimited ability to make gifts and transfer property to one another without incurring taxes. But this is not true for same-sex married spouses because of DOMA.[49] As a practical matter, a homeowner may be reluctant to make his or her same-sex spouse a joint owner of the home because of the gift tax consequences.
- Bequests to Surviving Spouses and Estate Tax: The estate tax marital deduction allows a full deduction from an individual's gross estate tax equal to the fair market value of any

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[46] The Potential Budgetary Impact of Recognizing Same-Sex Marriages (June 1, 2004), *available at* http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf. The CBO reaches this result by assuming access to equal marriage in all 50 states and the recognition of those marriages by the federal government.
[47] 26 U.S.C. § 1041 (no gain or loss realized on transfers between spouses related to divorce).
[48] 26 U.S.C. § 215 (a).
[49] 26 U.S.C. § 1041.

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property passing to the decedent's spouse.[50] This marital deduction lets married couples postpone the federal estate tax that otherwise would have to be paid on a married person's estate by deferring any tax on property that passes to the surviving spouse until the surviving spouse's death. DOMA strips away this crucial deduction from surviving gay and lesbian spouses.

IV. DOMA Disserves Our Service Members and Veterans.

A critical injustice created by DOMA is the discrimination imposed on married gay and lesbian service members and veterans. The following are invaluable protections that DOMA denies to our service members and veterans.

Service Members:

- Health Care: Gay and lesbian spouses of qualified active duty military, active duty service families, and retirees are denied health coverage through TRICARE, the Department of Defense's managed health care program, due to DOMA.[51]
- Retirement: Members on active duty for 20 years or more are eligible for retirement under a number of different systems that depend on the date the retiree first entered the military. Surviving spouses generally receive 55% of the retired pay under the Uniformed Services Survivor Benefit Plan or one of its corollaries, which is denied to same-sex surviving spouses due to DOMA.[52]
- Death Gratuity: A one-time non-taxable cash payment of $100,000 is made in the event that a service member on active duty or in a variety of other circumstances dies. It is paid to survivors in a prescribed order, starting with the surviving spouse, unless that spouse is gay or lesbian.[53]

Veterans:

The 2004 GAO found 104 statutes related to marriage and veterans, none of which apply to married gay and lesbian veterans. All of these benefits are denied to the spouse or surviving spouse of a gay and lesbian veteran due to DOMA. A sampling is below.

- Death Benefits: There are several spousal benefits related to a veteran's death. If the veteran's death is service connected, the surviving spouse may choose either monthly dependency and indemnity compensation payments or a death pension.[54] Such a spouse is also entitled to a one time payment, and if there is no spouse, it is provided to the next of kin.[55]

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[50] I.R.C. § 2056 (a) (bequests, etc., to surviving spouse).
[51] *TRICARE Eligibility, available at* http://www.tricare.mil/mybenefit/home/overview/Eligibility/WhoIsEligible/ActiveDutyAndFamilies.
[52] *Spouse Coverage*, http://www.defenselink.mil/militarypay/survivor/sbp/04_cost_spouse.html.
[53] 10 U.S.C. 1475-1476. *See also, Death Gratuity*, http://www.military.com/benefits/survivor-benefits/death-gratuity.
[54] 38 U.S.C. §§ 1311 (entitlement to monthly dependency and indemnity compensation), 1317 (survivor's choice regarding benefits).
[55] 10 U.S.C. § 1477(b) (automatic distribution of benefit to spouse in the absence of any designated recipient). Note that a service member may designate someone to receive this benefit under §§ 1475 or 1476 even if not legally related to the eligible individual.

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In some instances, death pensions may be available to low-income survivors of service members.[56] "Dependency and Indemnity Compensation" or "Death Pension" is available when the veteran was 100% disabled for a period of 10 or more years immediately prior to death and the surviving spouse is income eligible.

- Disability Benefits: Veterans with at least a 30% disability are entitled to increased disability compensation if they have a spouse. [57] In 2010, that amount was $150/month.
- Other Allowances: There is an allowance for spousal benefits when a service member has disappeared.[58]
- Other Benefits: There are a variety of benefits that flow to spouses by virtue of being married to a veteran. These include:
  - Being interred at military cemeteries with the deceased veteran, if the veteran is eligible;[59]
  - Educational assistance for spouses, including payments for college education and training;[60]
  - Job counseling, training and placement services for the spouses of veterans;[61]
  - Employment preferences with the federal government for widows and widowers as well as certain disabled veterans;[62] and
  - Medical care from the government for spouses of certain veterans.[63]

V. DOMA Tears Apart Families and Hurts Children

All of the harms described above not only harm same-sex married couples but any children they may have. Denying federal marital protections to the parents affects the economic stability of the entire family. Just a few examples include:

- Social Security Parent Benefits: Sometimes tragedy strikes and a parent dies in his or her working years. The spouse of a qualified deceased worker may be entitled to a benefit as a spouse ("parent's benefits")[64] in addition to Social Security payments for the children through age 18 ("children's benefits"). Children may be 19 if still enrolled full time in primary or secondary school or 22 if diagnosed with a disability.[65] Gay and lesbian parents who are married to a deceased worker are not eligible for this crucial protection.
- Federal Income Taxes: Many married same-sex couples have children, and in those families, some have only one working parent or a parent or parents working a reduced schedule in order to care for those children. These families are the ones most likely to "benefit" from being able to file their taxes jointly as "married" rather than as an

[56] 38 U.S.C. § 1543 (net-worth limitation on non-service connected death pension).
[57] 38 U.S.C. § 1115.
[58] 38 U.S.C. § 1158.
[59] 38 U.S.C. § 2402.
[60] 38 U.S.C. § 3501.
[61] 38 U.S.C. § 4101 (establishing eligibility of spouses).
[62] 5 U.S.C. § 2108.
[63] 38 U.S.C. § 1781.
[64] 42 U.S.C. § 402 (g).
[65] 42 U.S.C. § 402 (d).

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"individual" or "head of household." However, these couples pay more in federal income taxes than identically-situated taxpayers whose marriages the federal government respects, thereby taking money away that could be used for the family's needs.

Most harmful to children is when DOMA literally tears a family apart because one parent is not a lawful permanent resident of the United States. Although family unity has been a staple of our immigration law since at least 1952,[66] DOMA withholds important protections to gay and lesbian families, some of whom are parents to children living in the United States.

- Immediate Relative Spousal Visas: A citizen of the U.S. may file a petition[67] for an "immediate relative" visa for a non-citizen spouse, unless that spouse is gay or lesbian due to DOMA.[68] Immediate relatives are not subject to any direct numerical limitations on entry visas.[69]
- Naturalization for Spouses of U.S. Citizens: A U.S. citizen's spouse, who has obtained the status of lawful permanent resident, may become a United States citizen if the spouse has: (1) continuously resided in the United States for at least 3 years since being admitted for permanent residence; (2) lived "in marital union" with the citizen spouse during that 3-year period; (3) been physically present in the United States for periods totaling at least 18 months of that 3-year period; (4) continuously resided in the United States from the time of application for citizenship to admission; (5) for all relevant times been a person of good moral character; and (6) complied with all other requirements for naturalization.[70] This invaluable protection to keep a family together in the same country is denied to same-sex married couples due to DOMA.

Conclusion

While the breadth of DOMA's harms is breathtaking as laid out in the 1997 and 2004 GAO reports, when one considers the groups of individuals who are hurt the most – including senior citizens, service members and veterans, taxpayers, employers and employees, and families and children – the stark picture of DOMA's discrimination comes into focus. DOMA is counterproductive in that it burdens the ability of married gay and lesbian Americans to grow old with dignity and security, fulfill their constitutional obligation as citizens and taxpayers, and protect their families and children.

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[66] *See, e.g., Fornalik v. Perryman*, 223 F.3d 523, 525 (7th Cir. 2000) ("United States immigration law … sets family unity as one of the principal goals of the statutory and regulatory apparatus").
[67] Form I-130 "Petition for Alien Relative" (Rev. 06/05/02) Y (Fee Change 01/21/05), *available at* http://www.uscis.gov/files/form/i-130.pdf.
[68] 8 U.S.C. § 1154(a)(1)(A)(i), (b) and (c) (the right to file a petition and investigation of facts); 8 U.S.C. §1151(b)(2)(A)(i) ("Immediate relative" means "the children, spouses and parents of a citizen of the United States ….") *See also* 8 CFR §§ 103.2, 204.1, 204.2 (general information about immediate relative and family-sponsored petitions).
[69] *See* 8 U.S.C. §1151(b).
[70] 8 CFR § 319.1. For other circumstances in which spouses of U.S. citizens can be admitted to citizenship, *see generally* 8 U.S.C. §§ 1430(a), (b), (d), (e) (married persons and employees of certain non-profit organizations); 8 CFR §§ 319.2, 319.3.

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JAMES GECKLER, Providence

Dear Ladies and Gentlemen of the Judiciary Committee,

I thank you for taking a moment to hear this testimonial as to how the Defense of Marriage Act (DOMA) affects me and my partner, as well as this great nation. As you consider a response to the Respect for Marriage Act and the discriminatory policy of DOMA, I ask that you think of your relationship to your spouse, or your family members' relationships, and ask yourself, "what if this hindered my relationship? What if this was a law that impacted my relationship?" In doing so, you allow yourself to consider what millions of couples experience on a day-to-day basis, how much more effort, energy, worry, and concern that takes place when doing what heterosexual American couples consider doing, such as moving to another state, filing taxes, applying for health insurance, etc.

While DOMA allows states the ability to define marriage as they see fit (something the Constitution already provides), it also, on a federal level, allows states to openly discriminate against same-sex couples who visit. My partner and I both have family that live in a state that bans same-sex marriage. We visit our family frequently. Should something happen to me where I am incapacitated and unable to make medical decisions, my partner, whom I've been with for nine years and with whom I've had discussions regarding medical care, would be denied access to visit me and denied the right to make these medical decisions. The repeal of DOMA and enacting of the Respect for Marriage Bill could provide us some federal protections in predicaments such as this.

The Respect for Marriage Act would place the federal government on par with states that do afford same-sex marriage recognition by providing similar financial supports and legal supports, such as filing for joint tax returns and allowing one partner to pay for health insurance coverage on their spouse pretax, a protection that heterosexual couples are afforded. I recently obtained a job in a state that provides civil unions, but, when I completed the paperwork for insurance, was told I had some forms to fill out due to my relationship status. By signing the forms, I acknowledged that I still had to pay taxes on the insurance coverage for my same-sex partner, in short acknowledging that my relationship with my partner was recognized by the federal government as unequal to my heterosexual coupled co-workers and colleagues.

I'm sure you have heard many testimonials today and will hear countless more as the day progresses. You may even hear testimonials that ask you keep DOMA in place because their writers feel their relationships are more special, more sacred than my own. I don't ask these individuals to accept my relationship. I ask the government of this great nation where I was born to look at its citizens and ask what can be done to protect them and feel just as equal as their fellow citizens.

Thank you in advance for doing the right thing!

Regards,
James M. Geckler
U.S. Citizen

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Statement of Ted Hallowell

Before the Committee on the Judiciary

United States Senate

Submitted for the Record of a Hearing Entitled

"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

July 20, 2011

70639.111

Dear Senators and Committee Members:

Thank you all for your time and for hearing all the many, many stories of love and courage by my fellow LGBT brothers and sisters. I know deep in your hearts you all desire to do what is right.

My uncle Lyman Hallowell and John Dapper met the day World War II ended (VJ Day), August 14, 1945. My uncle Lyman had served in the war, enlisting in the Army Air Corps in 1942 and serving through 1944, when he was honorably discharged. They met while employed at 20th Century Fox Studios in Los Angeles, and they've been together ever since. That's right – two men, together and inseparable for almost 66 years!

As an art director and film editor, Johnny and Lyman worked in Hollywood on film and television, and in New York on Broadway. During their life together, they traveled to over 150 countries. On August 14, 2008, they were married in San Diego, California, during the all-too-short period of time when it was legal and available to same-sex couples. I have attached a photograph of them to this statement.

Sadly, on Monday, July 11, 2011, my dear Uncle Lyman passed away at the age of 96. I and my partner of 30 years, Raul Fernandez, are so blessed to have had Lyman and Johnny in our lives for the past 25 years. They have been an enduring example of love and commitment, caring for each other through so many of life's ups and downs. Lyman had an enlarged heart and a leaky valve, as well as prostate cancer for many years. Even so, about five years ago when Johnny had quadruple bypass

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surgery, Lyman—at the age of 92—was his primary caregiver for weeks after Johnny returned from the hospital.

They have been amazing role models, and my Uncle Lyman was my sage and mentor. He was the kindest, wittiest, most loving, and most intelligent man I've ever known. He even worked *The New York Times* crossword puzzle every week for the past 50 years! In so many ways, he was much more a "father" to me than my real father ever was. I loved him beyond measure and will miss him eternally.

The past few days have been extremely difficult, and I'm now faced with helping Johnny (who is now 88) adjust to life without Lyman. I have to help make sure he is safe and taken care of, because he has advanced stages of dementia and has a great deal of trouble remembering anything. Tragically, at times he even has forgotten that his husband has passed away. He really cannot survive on his own, living at home, and his sister (who is in her 70s, herself) is living with Johnny until we can find an appropriate place for him to be properly taken care of.

Numerous federal laws and programs are supposed to provide stability and protection to people in such difficult times. Yet Johnny is disqualified from receiving the protections a surviving spouse ordinarily would get, because of DOMA. DOMA is discriminatory, hateful, and hurtful. After 66 years of being with his spouse and partner, Johnny should be treated like every other surviving spouse in this country.

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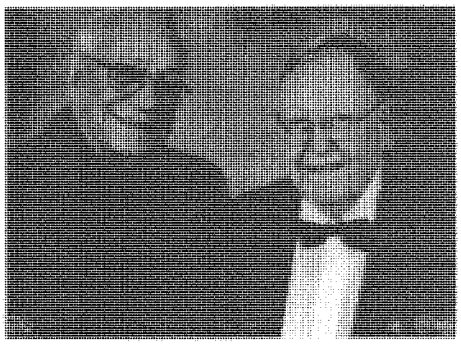
Respectfully, I ask this Committee, the Congress, and President Obama to remove this "stain" on our humanity once and for all from the law of the land, and toss it in the dustbin of history.

I ask this on behalf of Johnny, and in eternal loving memory of my dear Uncle Lyman, who are in the photograph below (Johnny is on the left, and Lyman is on the right).



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Statement of Senator Orrin G. Hatch
Before the Senate Judiciary Committee
Regarding the Defense of Marriage Act
July 20, 2011

Mr. Chairman, in 1996 I joined 84 other Senators in voting to pass the Defense of Marriage Act. It received similarly broad bipartisan support in the House. More than 30 current Senators, including you and the Majority Leader, voted for DOMA in the Senate or in the House. President Bill Clinton, a Democrat, signed it into law. I continue to support the Defense of Marriage act and, therefore, oppose the legislation before the committee today that would repeal it.

The Defense of Marriage act was enacted to further the sound public policy of protecting traditional marriage, and to do so in a manner that is consistent with two features of our system of government. First, in a republic, the people and their elected representatives, not the courts, should make decisions about policy issues such as marriage. Second, DOMA respects our system of federalism. As a statute, DOMA endorses the traditional definition of marriage for purposes of federal law and protects the states' ability to define marriage for purposes of state law. Each of these elements is as important today as it was when DOMA was enacted.

I understand the impulse to achieve a political objective by any means necessary. I understand the frustration of limitations such as appealing to the American people or to legislatures rather than to a few unelected judges. But this is a republic based on the rule of law, and the freedom our system of government provides comes with some limitations.

I chaired this committee's hearing on DOMA in July 1996. I believe today what I said at that hearing, namely, that this legislation is necessary, it is valuable, and it is constitutional. In fact, the 15 years since that hearing have only reinforced those conclusions and strengthened the case for DOMA. In all 31 states where the issue has been put to a vote of the people, they have protected traditional marriage by statute or constitutional amendment, while a

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few state legislatures have recently changed the traditional definition of marriage. The Defense of Marriage Act protects the right of states in both categories to make that decision for themselves.

In 1996, the Clinton Justice Department wrote this committee to state: "The Department of Justice believes that the Defense of Marriage Act would be sustained as constitutional if challenged in court." Fifteen years later, the Obama Justice Department first made arguments in certain courts that DOMA is constitutional, then refused to make those arguments in others courts, and then argued in a legal brief that it is unconstitutional. I submit that this change occurred because the Obama administration put politics ahead of the law.

There is no question that reasonable arguments can be made that DOMA is constitutional. At the hearing in 1996, such arguments were cogently presented by leading constitutional scholars such as Professor Michael McConnell. At that time, he was the William B. Graham Professor of Law at the University of Chicago, the Presidential Professor of Law at the University of Utah, and a judge on the U.S. Court of Appeals for the Tenth Circuit. He is today the Richard and Frances Mallory Professor of Law and Director of the Constitutional Law Center at Stanford University.

Perhaps the most telling evidence that DOMA's constitutionality can be reasonably defended is, as I mentioned, that the Obama Justice Department has already done so. I know that if President Obama had his druthers, DOMA would not exist. But the Justice Department's duty is, thankfully, not defined by the President's druthers. Its duty is to make reasonable arguments in defense of a statute. Having already made such arguments in some cases, all the Justice Department had to do was cite the same arguments in later cases. Instead, politics has again overwhelmed the Justice Department and political views are driving legal views.

The Defense of Marriage Act was sound policy in 1996, and it remains sound policy today. The Defense of Marriage Act was constitutional in 1996, and it remains constitutional today. As such, I oppose this legislation to repeal it.

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Statement of Jody M. Huckaby, Executive Director, PFLAG National
In Support of the Respect for Marriage Act of 2011 (S. 598)

July 20, 2011

Mr. Chairman and Members of the Committee:

My name is Jody M. Huckaby, and I am the Executive Director of PFLAG National (Parents, Families and Friends of Lesbians and Gays) - the nation's largest grassroots-based organization for families, friends and allies of lesbian, gay, bisexual and transgender (LGBT) people. Started by the simple act of a mother supporting her son more than 35 years ago, we are a chapter –based organization comprised of highly engaged local community members. Our 200,000 members and supporters and our 350 chapters located in all fifty states are committed to promoting the health and well-being of LGBT individuals, their families and friends by offering support, education and advocacy at the federal, state and local levels. On behalf of PFLAG, I am honored to submit this statement in support of S. 598, the Respect for Marriage Act of 2011, and I thank you for your leadership in hosting today's historic hearing that will assess the impact of the Defense of Marriage Act (DOMA) on American Families before the U.S. Senate's Committee on Judiciary.

Why is the Respect for Marriage Act (S. 598) of 2011 Necessary?

Social Implications of DOMA

The Defense of Marriage Act is a discriminatory law that must be repealed without delay because it overtly singles out legally married same-sex couples and treats them unfairly under federal law. The effects of this treatment have very substantial social implications that create challenging situations for same-sex couples. For example, without the legal recognition of marriage, many same-sex couples often experience situations where they are forced to explain the nature of their relationships and how they are equivalent to a different-sex couple's marriage. According to the New Jersey Civil Union Review Commission, conversations like these "include the indignities of having to explain the legal nature of their relationship, often in times of crisis, and the obstacles and frustrations encountered when using government employer, or health care forms that do not address or appropriately deal with the status of [their relationship]."[1]

Furthermore, discriminatory laws like DOMA inflict significant psychological harm on LGBT youth, as well as straight youth being raised in same-sex headed households. According to Marshall Forstein, M.D.,

[1] New Jersey Civil Union Review Commission. (2008) *The Legal, Medical, Economic & Social Consequences of New Jersey's Civil Union Law*. Retrieved on July 18, 2011, from www.state.nj.us/lps/dcr/downloads/CURC-Final-Report-.pdf

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an associate of psychiatry at Harvard University Medical School and a Distinguished Fellow of the American Psychiatric Association:

> For young people coming out, which is about 5 to 15 percent of the overall U.S. population, the presence of role models who have equal status via marriage in society has significant meaning both internally and socially and has potential for reducing their isolation [and] sense of stigma that [LGBT] teens face in their everyday lives. And I point out here the data on suicide among [LGBT] teens, which is about three times that of the general teenage population. Same-sex marriages provide stability for couples in terms of public acknowledgement of their commitment and provide legitimacy for the children being raised by [same-sex] parents.[2]
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> * * *
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> Nothing is more basic from a mental health perspective to happiness and liberty than the right to love another human being with the same privileges and responsibilities as everyone else.[3]

According to Dr. Judith Glassgold, Psy.D., President of the New Jersey Psychological Association and a licensed psychologist who has provided psychotherapy to children, adolescents and their families, including same-sex individuals and families, for 17 years:

> Children of same-sex relationships must cope with the stigma of being in a family without the social recognition that exists through marriage. Children of same-sex relationships are the secondary targets of the stigma directed at their parents because of their parents' sexual orientation. Such stigma may be indirect such as the strain due to lack of social support and acceptance. Also, some children may be targeted due to teasing in school or from peers. [4]
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> * * *
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> As a result of the lack of marriage equality, both [LGBT] adolescents and children of same-sex relationships face continued stigma. The stigma has negative mental health effects. Children of same-sex families and [LGBT] adolescents would benefit from their reduction of the stigma and having any future threat of discrimination and stigma removed from their lives.[5]

According to Meredith Fenton, national program director of Children of Lesbians and Gays Everywhere (COLAGE):

> Many youth we work with have reported that one of the common ways that they have been teased by other kids is that kids have questioned the validity of their families because their parents aren't able to get married. Young people often equate the notion of a real family with the idea of a family that has married parents. A recent study that COLAGE co-published with GLSEN (the Gay, Lesbian, and Straight Education Network) showed that around 43 percent of students with one or more LGBT

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[2] Ibid.
[3] Ibid.
[4] Ibid.
[5] Ibid.

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> parents experienced verbal harassment from their peers in their schools on a regular basis. And denying families marriage equality merely gives more fodder to those bullies who can say, "Your family is not a real family, your parents can't get married." We also find youth in COLAGE who report that hearing that their family can't have the same rights as other families leads them to feeling scared or confused when they hear that folks are against their families being married. They say that they think somebody is going to come and break up their family.

Clearly, for same-sex couples, their children and LGBT children and young adults, marriage equality is enormously significant from a psychosocial perspective. The distress and suffering imposed from anything less than marriage for same-sex couples and their families creates a stigma that imposes barriers beyond the traditional legal and economic challenges that are often described in the existing research body. The social implications can be overcome through marriage equality, as noted in M. V. Lee Badgett's most recent publication, *Social Inclusion and the Value of Marriage Equality in Massachusetts and the Netherlands*. The findings published in this report support the idea that legally recognizing same-sex marriage and repealing restrictive laws like DOMA positively impacts a same-sex couple and their family's feelings and experiences of social inclusion improving overall psychological well-being.[6]

Legal Exclusions

Research and personal narratives also substantiate the legal and economic inequalities that leave same-sex couples and their families vulnerable to health disparities, job insecurity and poverty. From a legal perspective, there are two key distinctions in how DOMA discriminates and unnecessarily targets same-sex married couples; 1) Section 2 of DOMA allows states to refuse to recognize valid civil marriages of same-sex couples, and 2) Section 3 of the law mandates the categorical exclusion of all same-sex couples, regardless of their marital status, from all federal statutes, regulations, and rulings applicable to all other married people, which effectively denies them from over 1,100 federal benefits and protections.[7]

This categorical exclusion prevents legally married same-sex couples from accessing federal benefits extended to legally married different sex couples such as:

- Parental rights
- Health Insurance
- Unpaid leave to care for a sick or injured spouse
- Social Security benefits
- Survivor benefits
- Property rights
- Important tax benefits

Fifteen years after the passage of DOMA, six states and the District of Columbia have extended equal marriage benefits to legally married same-sex couples along with 10 countries abroad. Since the first same-sex married couples were legally recognized by Massachusetts in 2004, an estimate of 50,000

[6] Badgett, M. V. Lee. (2011) *Social Inclusion and the Value of Marriage Equality in Massachusetts and the Netherlands.* The Journal of Social Issues, Vol. 67, No. 2, 2011, pp. 316-334.
[7] Badgett, M.V. Lee. (2010) *The Economic Value of Same-Sex Marriage.* Retrieved on July 18, 2011 from http://students.law.drake.edu/lawReview/docs/lrVol58-badgett.pdf.

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couples are now married in the United States along with another 30,000 living in the U.S. who are estimated to have married abroad.[8] In addition to these 80,000 couples, an additional 18,000 same-sex couples are recognized as legally married in California before the passage of Proposition 8, and approximately 85,000 same-sex couples have secured civil unions and domestic partnerships in the states that offer them[9]. Additionally, Maryland also recognizes and provides statewide benefits to same-sex couples but it does not provide civil marriage licenses to same-sex couples. Currently, DOMA prevents the federal government from honoring its equal obligations under state law in these states along with the District of Columbia.

Economic Inequality

Overall, we know that LGBT people on average experience disproportionate rates of unequal wages and employment discrimination, health disparities and poverty.[10] Given this reality, when denied the right to marry, same-sex couples are much more likely to endure direct and indirect economic inequalities given the absence of the rights and responsibilities accessed through civil marriage. Same-sex couples are far more vulnerable to those factors that threaten an individual and a family's economic well-being. The restrictions imposed by DOMA exacerbate these threats and unnecessarily create financial hardships for LGBT individuals and their families impacting nearly every aspect of their lives.

On the most basic level, marriage equality provides economic benefits for same-sex couples and their families.[11] Direct benefits include employer and state institutional benefits for a primary recipient's spouse, along with federal, state and local tax benefits and federal program benefits like Social Security, Medicare, Medicaid, TANF, SNAP, and other social safety net programs that promote marriage and family security. Obviously, when the marriages of a same-sex couple are not, or cannot be recognized due to laws like DOMA, substantial economic harm is endured.

When denied the right to marry, same-sex couples also cannot access the enhanced economic efficiency and security that often results from indirect benefits of marriage. Some of these benefits include building stronger families through economies of scale, or the phenomenon that occurs when the size of a household doubles, but the size of work necessary to operate the household does not.[12] Social insurance against a disability, death, or the loss of a job also improves greatly when a couple is legally recognized as married.[13] Additionally, publicly signaling a couple's commitment through marriage increases the chance that the relationship will endure over time, and should the relationship dissolve, a fair settlement to terminate the long-term relationship will protect both individuals from unnecessarily experiencing extreme financial hardships.

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[8] Williams Institute. (2011) Press Release Commenting on the Department of Justice DOMA Ruling. Retrieved on July 18, 2011 from http://www3.law.ucla.edu/williamsinstitute/pdf/Pressrelease2.24.pdf.
[9] Ibid.
[10] Albelda, R., Badgett, M.V. L., Gates, G., & Schneebaum, A. (2009) *Poverty in the lesbian, gay, and bisexual community.* Los Angeles, CA: Williams Institute. Retrieved on July 18, 2011 from http://www.law.ucla.edu/WilliamsInstitute/pdf/LGBPovertyReport.pdf.
[11] Badgett, M.V.L. (2010) The Economic Value of Marriage for Same-Sex Couples. Retrieved on July 18, 2011, from http://students.law.drake.edu/lawReview/docs/lrVol58-badgett.pdf.
[12] Ibid.
[13] Ibid.

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Therefore, when same-sex couples are denied the right to marry due to restrictions imposed by laws such as DOMA, important direct and indirect benefits are lost, leaving these couples more vulnerable to economic inequalities. Barriers to these benefits limit a same-sex couple's options when trying to inform important life decisions related to healthcare, employment, family creation, education, savings and retirement options, and it's because of these constraints that institutionalize unequal economic outcomes between same-sex couples and their married different-sex counterparts. [14]

PFLAG Experience: Personal Stories of Discrimination

PFLAG remains committed to promoting the health and well-being of LGBT individuals by influencing policy and legislation aimed at recognizing marriage equality for same-sex couples. That is why so many PFLAG parents, families and allies, continue to educate their communities about the importance of marriage equality and to advocate for state and local laws that legally recognize same-sex couples and extend equal rights to these couples and their families. Through our grassroots work, we have learned about inequalities suffered by far too many couples that have endured legal discrimination leading to the adverse economic and social impacts described above.

Below, we would like to share a few examples of the challenges some of our members have experienced due to the inequalities imposed by DOMA:

Dr. Elizabeth Hane lives in Canandaigua, NY with her same-sex spouse of 10 years. In 2002 the couple entered a civil union in Vermont, and now with the recent passage of marriage equality in New York, they plan to marry in August, 2011. While the couple will begin to receive state benefits from New York in the coming months, they will be denied federal benefits due to the restrictions DOMA imposes. Dr. Hane is a Fullbright Scholar this year, sponsored by the U.S. Department of State and administered by the Council for International Exchange of Scholars (CIES). This prestigious program requires that Dr. Hane undertake an educational exchange abroad where she will be teaching at a university in Dubrovnik, Croatia in the fall, representing the United State. Dr. Hane's partner will be traveling with her, but because the U.S. government does not recognize the relationship, her partner is not eligible to receive any of the benefits that the spouse of a married, different-sex couple receives. Such benefits include travel reimbursement, health insurance and living stipends. DOMA's restrictions create additional inequities when it comes to negotiating the visa process for the couple.

Rozanne Gates lives in Westport, Connecticut with her same-sex spouse, Suzanne Sheridan, of 15 years. Last year the couple legally married in Connecticut, and subsequently they entered a civil union in Connecticut in 2005. The couple filed their tax returns this year for the first time as a married couple and realized that they were lying on their forms since the federal government will not recognize their legal marriage. Despite their legally recognized marriage at the state level, the couple had no other choice but to each file as a single individual on the federal return, and in the State of Connecticut, they had to file as single to avoid confusing the IRS. Additionally, Rozanne is troubled to realize that her wife will not be able to access her Social Security benefits, similar to different-sex, married couples, should anything happen to her. Clearly these inequalities must be rectified.

[14] Ibid.

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Michelle J. McLeod, lives in Germantown, Maryland with her spouse, Sarah Bard, of 10 years. In 2009, the couple entered a legal marriage in Connecticut. While the state of Maryland does not grant marriage licenses to same-sex couples, it does recognize the marriage of same-sex couples from other states and the District of Columbia. Unfortunately, private employers in the state are not legally required to extend health insurance benefits to spouses of same-sex couples who were married elsewhere. Due to DOMA, Sarah was not able to add Michelle to her private employer's health insurance – a benefit that is extended to the spouses of different-sex married couples. Since Michelle is diabetic, not being able to access her spouse's health insurance created significant barriers to access coverage due to her graduate student status. The expenses associated with the necessary medication and visits required to manage her medical condition caused the couple to endure extreme financial hardships. For example, Michelle needed to see an endocrinologist, podiatrist, and primary care physician on a regular basis. While Michelle has used student and state insurance on-and-off over the past two years, she has still experienced coverage gaps resulting in uncovered medical bills. In order to manage these expenses, she is now on payment plans, and Sarah is looking for a new job to meet the bills. Had the couple been considered married by Sarah's previous employer, both Sarah and Michelle would have received the necessary health coverage they so desperately need.

Policy Solution: Support the Respect for Marriage Act of 2011 (S.598)

On March 16, 2011, Senator Diane Feinstein introduced the Respect for Marriage Act (RMA) in the U.S. Senate. This historic legislation would repeal Section 2 of DOMA and restore the rights of all lawfully married couples – including same-sex couples – to receive the federal benefits of marriage under the law for those individuals living in any state, territory, possession, or Indian tribe respecting a same-sex marriage. If passed, this law would allow the U.S. federal government to extend benefits to the same-sex couples entering marriages in the six states – Connecticut, Iowa, Massachusetts, New Hampshire, New York, Vermont – and the District of Columbia that honor these marriages. It would also provide certainty to these couples that federal benefits and protections would flow from a valid marriage celebrated in these states (and the District of Columbia), even if a couple moves or travels to another state.

The bill also amends the federal rules of construction concerning the definitions of "marriage" and "spouse" to provide that, for purposes of any federal law in which marital status is a factor, an individual shall be considered married if that individual's marriage is valid in the state where the marriage was entered, or in the case of a marriage entered into outside any state, if the marriage is valid in the place where entered into and the marriage could have been entered into in a state the marriage also qualifies.

Enacting RMA and repealing Section 2 of DOMA, would restore the Constitutional principles of comity and Full Faith and Credit.[15] The federal benefits denied to legally recognized same-sex couples would be restored, and at the same time, the federal government would still respect states rights. In other words, RMA does not require states that have not yet enacted legal protections for same-sex couples to recognize a marriage, nor would it mandate any person, state, locality, or religious organization to recognize or license a marriage between two individuals of the same sex. Simply put, RMA only requires the federal

[15] CRS Annotated Constitution; http://www.law.cornell.edu/anncon/html/art4toc_user.html.

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government to equally apply its policy and practice of deferring to the states in determining what legal relationships are eligible for federal benefits.

The system of federal benefits has always been based upon marriage, and because of this tradition, polling shows strong public support for extending federal benefits and protections to same-sex couples in states that recognize these unions. For example, according to a December 2008 Newsweek/Princeton Research survey, more than 7 in 10 Americans believe that same-sex couples should have inheritance rights, Social Security benefits, insurance benefits, and hospital visitation rights. As outlined earlier in this testimony, RMA would provide to same-sex couples these benefits along with full range of federal benefits and responsibilities already associated with long-term, committed relationships that different-sex married couples receive.

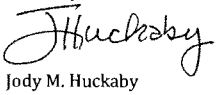
Move Equality Forward Now

The Respect for Marriage Act (S. 598) is life-saving legislation desperately needed for the more than 50,000 legally married same-sex couples who struggle daily with the economic and social challenges DOMA imposes. Passage of this legislation will help strengthen and support our families against the overt discrimination of DOMA. For too long Congress has ignored the inequalities our families continue to endure. RMA offers a solid legislative solution empowering the Congress to strike discrimination from the U.S. code and support marriage equality for all legally married couples today.

Support for this measure is strong and continues to grow in both the House and the Senate. The House version of this bill (H.R. 1116) already has 118 cosponsors, and 27 in the Senate. Additionally, the American public supports extending federal benefits and protections to same-sex couples in states that recognize these unions. Moreover, as more states like Maryland, Oregon and Washington consider granting marriage licenses to same-sex couples seeking the rights and responsibilities of marriage, additional legal headaches will occur for same-sex couples when trying to overcome the many legal hurdles DOMA imposes.

Mr Chairman, 15 years of DOMA is 15 years too long. The time to make a legislative fix and pass the Respect for Marriage Act is now. As evidenced by some of the troubling narratives shared above, the inequality in our current law weakens our families and leaves them vulnerable to economic and social hardships. I, along with the more than 200,000 members and supporters of PFLAG National, urge you to pass S. 598 and give loving, committed same-sex couples and their families the right to equal treatment under federal law. Thank you again for your extraordinary leadership on this legislation and for holding this historic hearing. PFLAG mothers and fathers all over the country look forward to the day when they can celebrate the marriages of their sons and daughters that are honored and recognized by the U.S. federal government. They, and we, look to your for your continued leadership to make this celebration a reality.

Sincerely,



Jody M. Huckaby
Executive Director

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STATEMENT OF

A. LANE IGOUDIN AND JONATHAN D. CLARK

BEFORE THE

COMMITTEE ON THE JUDICIARY OF

THE UNITED STATES SENATE

AT A HEARING ENTITLED

"RESPECT FOR MARRIAGE ACT"

PRESENTED

JULY 20, 2011

Chairman Patrick Leahy, Ranking Member Chuck Grassley, and members of the Committee, thank you for the opportunity to submit this testimony. We hope that it will help illustrate the discrimination that legally married same-sex couples experience under the current Defense of Marriage Act (DOMA).

We have been together in a committed relationship for 14 years and were legally married in a civil ceremony on July 3, 2008. Several years prior to our marriage, we adopted two infants from the California foster care system. It was a very conscious choice. We had known of the difficulties of going through the state foster/adoption process and could have adopted internationally or gone through surrogacy, but decided that with so many kids needing a home right here in California (around 120,000 at that time), we should help right where we were.

Raising our children has been the most wonderful, transformative experience we have ever had. We have been doing it by ourselves without anyone's help, while juggling challenging careers, like all working parents do. One of us is a corporate executive; the other a college professor. Difficulties aside, our kids have brought sunshine into our lives and completed our family. Our older daughter is now in the 2nd grade, and the younger one is starting kindergarten. We enjoy watching them grow now into creative, academically accomplished students at their schools, and share in their fun as they learn ballet and gymnastics after school.

Although we are pleased to see our union recognized appropriately by the State of California, our marriage, and, by extension, our family remains stuck in its second-class status due to the DOMA-imposed lack of recognition from the federal government. Let us share with you some of the

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examples.

First, the taxes. Our federal taxes are a mess. For years, the IRS taxed as single individuals, while the state taxed us as a married couple. Reconciling the differences between the two contradictory tax statuses cost us and our tax preparer (H&R Block) extra time and expenses. Last year things got worse as the IRS issued new regulations concerning the reporting of federal taxes for legally married same-sex couples like ours. In essence, even though our marriage is not recognized by the federal government, our income and property are considered joint ('community') and taxed as if we were married. This is grossly unfair. We do not have access to the federal benefits of married heterosexual couples, yet by and large, we are taxed in the same way.

Moreover, this year we got audited by the IRS, which may have been triggered by our strange tax returns sent in by H&R Block. Our tax preparer, her supervisors, and we spent at least 10 more hours on the 2010 tax preparation and the audit, coming in for extra meetings, communicating via email and mail. Our tax preparer had to create her own spreadsheets, hand-write our tax returns, and accompany them with a textual explanation. During the audit, the IRS asked for supporting legal information regarding the adoption of our children, which triggers various credits offered by the federal government. We, of course, provided this information. In the end, the IRS recalculated our tax returns and concluded that we overall followed correctly its tax procedures, the unfair tax procedures. The IRS even issued us a larger refund.

Secondly, without federal recognition, our legal marriage is null and void when we cross state lines into any state bordering California. There

we are again two single individuals, somehow legally considered to be parents of our own children. To make sure our legal rights and wishes are preserved no matter where we are, we had to come up with a complex system of a living trust, wills, powers of attorneys, healthcare directives, and guardianship instructions – and pay for all of it of our own expense.

Another related issue which concerns our ambiguous marriage status is estate planning after our death(s). As it stands, in the eyes of the federal law we are two single individuals. Upon the passing of one of us, the surviving partner will be taxed the federal estate tax, for which we have enough property/assets to qualify. In contrast, if our marriage were federally recognized, the estate would automatically go to the surviving spouse. Avoiding the estate tax and probate and protecting our children in case of our death(s) was the other reason we had to establish a living trust. Our estate planner immediately ran into serious difficulties interpreting our marriage status and had to consult other attorneys.

In 2009, we completed the living trust and the accompanying documents to ensure the passing of our properties and assets to the surviving partner and our children. We also described the mechanism that will allow for the guardianship of our children and the disposal of the assets should both of us pass before our kids reach the age of maturity. It ensures our children have a home and income until they become adults, as well as helps pay for their college education. However, because of DOMA, the legality of our marriage as it applies to federal estate laws remains uncertain, and as such, our trust and the related documents are open to legal challenges. This possibility may have devastating effects on our children's and our financial well-being – at the most vulnerable times.

Next, various federal agencies have discriminatory policies stemming from the assumption that marriage equals a husband and a wife, and thus a mother and a father. For example, after the finalization of our adoptions which named us the official legal parents of our children, Social Security Administration refused to allow both of us to be listed on the SSN application (Form SS-5) for our kids as two fathers or simply two parents. The managers of three local SSA offices explained to us that in order for our children to have a Social Security card issued, we had to choose between one of two lies: (1) stating that only one parent (father) exists, or (2) listing one of us as a father and the other as a mother (!). Thanks to DOMA, this policy continues to this day.

Overall, the lack of fairness, equality, security, and, above all, dignity are the ways in which the absence of legal recognition of our marriage by the federal government affects our family. The Respect for Marriage Act, proposed by Senator Dianne Feinstein who represents our state, will repeal the discriminatory Defense of Marriage Act and will finally provide our family, and other families like ours, with the same recognition that all American families deserve. Please support this important legislation.

Thank you again for the opportunity to testify.

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Statement of Jill Johnson-Young

Before the Committee on the Judiciary

United States Senate

Submitted for the Record of a Hearing Entitled

"S. 598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

July 20, 2011

Dear Chairman Leahy and Judiciary Committee Members:

My name is Jill Johnson-Young and my family, which includes my three daughters and I are from Riverside, California. I want to share with you what the Defense of Marriage Act or DOMA has done to my family and my marriage, and why it needs to be repealed.

I am the widow of Linda Diann Johnson-Young, LVN, RN, US Navy, Ret. We shared our lives for 23 years. We adopted our daughters Kerry Marie, now age 19 and Chloe, now age 16, from foster care when they were seven and five. I adopted Charity, who is now 17, this past September.

Linda and I first recited our vows to one another in 1987, even though there was no legal recognition of our relationship at that time. We had a ceremony because it mattered to us that our families, our community, and our church knew us as a committed couple and a family.

We got legally married in 2004 in San Francisco. We traveled to the city with four couples, seven children, and our minister. As we said our vows in San Francisco, our nephew Trevor burst into tears -- he was so relieved that we had made it before it was not an option - because he wanted his aunts and his parents to be married, just like his friends' families were. Not having that recognition *matters* to our children and it was important for all of us to legally wed.

After the next California Supreme Court decision, we were married again on September 6, 2008, at First Congregational Church of Riverside. That was one of the best days of our lives. We shared the day with our best friends, our children and a standing-room only crowd. It was a joyful moment when our minister announced that she could legally pronounce us married.

Linda and I knew that day that we would not be sharing a long marriage -- we had been told just four days before our wedding that she was terminally ill with pulmonary fibrosis and heart failure and that she had less than three years left to live. That night as we danced at our wedding reception, she needed emergency oxygen for the first time. On April 2nd, 2010, at noon, she took her last breath. She fought a valiant battle, trying to survive long enough to see our kids all graduate and to adopt our third child.

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She died in my arms with our children, our niece and nephew, and our dog and cat on her hospital bed, surrounded by those who loved her dearly. There were over 250 people at her memorial service, all wearing *California Angels* tee-shirts, at Linda's request.

Linda's illness was difficult beyond words—and it was constantly made more difficult by the fact that I was not recognized as her spouse despite our long-term relationship. In 1998, when Linda was first diagnosed with breast cancer, we lived in Florida, a state that does not recognize families like ours. I was denied Family Medical Leave to be off work for her mastectomy and was not eligible for any leave to care for her. Without Family Medical Leave, I was unable to take her to chemotherapy, stay with her, or go home when she was sick. My parents had to travel to Florida to live with us for three months to help with the responsibilities that I was unable as her partner to undertake without Family and Medical Leave, and it was not easy on them, especially because my Dad was confined to a wheelchair himself.

In addition, without recognition as a family, I could not cover Linda on my health insurance. That meant she had to work throughout her treatment or risk losing the insurance that paid for the chemotherapy.

The day she had her first of three mastectomies, we carried every possible legal document to the hospital that we might need to protect ourselves. Those documents were useless. I was not informed when she came out of surgery. I was not told she was on her way to her room. And then one of Linda's nurses pushed an empty bed in front of the door to block my access to her hospital room, while she pulled Linda's arms over her head to pray for her soul because she knew Linda was asking for me and that we were a couple. Linda was yelling in pain, vomiting, and crying. With a mastectomy, it is not appropriate to pull the affected arm up for weeks -- that can cause lymphodema; can pull the staples out; and can loosen the drains from the site. Can you imagine listening to your wife yelling in pain; coming out of anesthesia, with drains and dressings; and not being able to get through the door to protect her? Another nurse and I pushed our way into the room. The nurse who tormented Linda was not disciplined, and continued to work on the same floor the next day.

To maintain her health insurance, Linda returned to work just three days after her first mastectomy, with the drains still attached to her chest wall. There were days my parents had to drive her to work because she was so sick she could not drive. During the first three months of chemotherapy, there were many days where Linda collapsed trying to get ready for work. I would pick her

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up from the bathtub, carry her to bed, prop her up with pillows, provide her with water, a basin, and a phone, and then go to work, or risk losing my job. The irony of it is that we were both employed by a large hospital corporation, where she was an ER nurse and I was a social worker. I was unable to take time off to help her because legally, were were not considered a family.

We returned to California in 1999 after Linda finished chemotherapy because we needed to be able to provide health insurance for one another, as well as some form of legal protection as domestic partners. Florida simply did not provide any hope for those type of protections. We were thrilled when we got legally married in California but it was quickly clear that DOMA continued to block the protections we needed. Despite our marriage in California, DOMA gave the federal government the right to discriminate against gay and lesbian couples.

When I was struggling to work, care for our children, care for Linda, keep our household running, and pay the bills, Linda's disability paperwork was delayed intentionally for two weeks by the Nurse Practitioner at Linda's doctor's office. When I finally got them back, she had crossed off *Spouse* as my relationship in every instance, and filled in, in quotes "*significant other.*" I had kids to feed and a mortgage to pay, and Linda's retirement check was delayed because an employee felt empowered to discriminate against me. I had a legal California marriage license but DOMA gave her that power. I am asking you to take that power away and stop the discrimination

Even after Linda's death and despite our marriage certificate, the discrimination and "separate but unequal treatment" continued. The owner of the funeral home insisted on having our marriage license before he would enter "married" on the death certificate or allow me to sign for Linda's cremation. Then, although she was a veteran, I could not bury Linda in Riverside National Cemetery. My children would have had to sign for their mother's interment, which was unacceptable to me. Our fathers both served in WWII. Her brother did two tours in Viet Nam. Linda signed up as soon as she could, to make up for how our Viet Nam vets were being treated. And despite her service, our country made her unwelcome in our national cemetery.

She was also denied military honors at her funeral. We were told that our children would be allowed to receive her honors, but I would have to stand apart, because I was not considered married *by our nation*, only *our state*. I finally received a flag last month, and only from a local chamber of commerce who sympathized with our story.

The list goes on-- we were forced to pay extra taxes on our health insurance because of DOMA. I was denied access to Linda's tax returns by the IRS because of DOMA. And then I had to pay extra to have my taxes prepared because we had to file an entirely different federal return than state return because of DOMA.

I was also denied the Social Security $255 death benefit because of DOMA. When I retire, my years with Linda will not figure into my Social Security, even though she paid those taxes for forty years and died before she ever received a single check. This all impacts me financially, and impacts our child, who is disabled enough that she will always depend upon me for financial support.

Linda and I were born and raised to serve and respect our country. We paid our taxes. We paid off our mortgage. We attended church weekly.

Our children have gone to vote with us in every election; they are good kids who have been taught to respect their country. What are you teaching our children—that American only protects some families, and not others? Is that really the United States of America you want?

Mark W. Kalend
Alameda County, California

Addressing Inequalities as a result of Defense of Marriage Act (DOMA)

Testimony Submitted to the United States Senate Committee on the Judiciary

Hearing: "S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

July 20, 2011

Statement of Mark W. Kalend, surviving spouse of Philip A. Harley, deceased.

I am a 50 year old gay American, born in San Francisco, California. After graduating from high school, I enlisted in the US Air Force in 1980. I was honorably discharged at the end of my enlistment in 1984. I was trained and assigned as an Intelligence Operations Specialist responsible for preparing and providing weekly classified briefings to the Fighter Pilots of the 37th Tactical Fighter Wing based at George AFB, California. I was investigated and cleared for a US Secret Clearance to work on classified information in the US Armed Forces Intelligence Division. I love my country and have always been proud to have served in the Air Force. Back then, the Cold War with the USSR was at its peak, and I felt I was serving an important purpose.

In 1994, I met and fell in love with Philip Harley. We built a life together that lasted 15 years until his very sudden death from cancer in July of 2009. By any measure, Philip was an exceptional man of very high academic, professional and personal achievements. He was also a happy and fun person to be around. He had many friends from all walks of life. There were more than 400 people gathered at our church for his memorial. Judges, previously opposing defense lawyers, as well as friends and family were all as one that day.

There are too many poignant tributes and achievements to mention all here. However, I would like to point out a few. Philip was born in 1947 to a highly decorated US Army Colonel, who served in Europe during World War Two. From the age of eleven, Philip knew that he wanted to become a lawyer. He worked to pay his way through law school as a counselor in the Adolescent Treatment Program at the Menninger's International Clinic in Topeka, Kansas. He loved the children there and they loved him.

Philip lived his life to be of service to others. This was his motivation to later become a trial lawyer and actively participate in national politics. Philip also strongly believed in paying his fair share of taxes and never sought out loop holes. Yet, neither Philip nor I believe that we should pay more or less because we are a same gender couple.

After five years of being in a committed relationship, we decided we wanted to start a family. As a same sex couple, we were not taken very seriously by any adoption agencies we approached, but we eventually discovered a company that provides surrogacy services for same sex couples. It took five years of attempting in-vitro pregnancy with the help of our devoted surrogate before our prayers were answered. Our daughters, Sara and True, were born on May 1, 2005. They were created with pure love and complete intention. Philip and I felt the greatest joy and purpose

Mark W. Kalend
Alameda County, California

in life that is universal among loving and devoted parents. Our life together was meaningful, committed, and happy as any couple would hope for. Life felt complete. We were particularly grateful to live in a town that accepted us as a married couple and a loving family.

We were officially married in the state of California on October 13, 2008. By then, we had already purchased two homes together, traveled to many parts of the world and had our most beloved daughters starting play school. In May 2009, Philip developed a rare, aggressive form of skin cancer. He was at home surrounded by family and friends when he died eight weeks later. Our daughters are recovering from his loss as well as could be hoped for, as only small children can. They are happy and thriving with the continued support of many in our home town. As a single father, it is difficult to express the gratitude I feel for all those who reach out regularly to help anyway they can. It is true what they say: "it takes a village."

In the two years since my husband's death, some progress has been made to bring some civil equality to gay Americans. However, much more work remains to be done by our federal government to achieve total equality for all gay Americans and their families. In my view, the first step should be the end of DOMA. We pay our taxes and obey laws. We are productive and contribute to society on every level, yet we are still denied federal recognition of marriages which are valid under state law. I believe this inequality is immoral and that the right to marry the person we love is as fundamental as the right to vote or pray to God. I find it both ironic and hypocritical that those who most resist government regulation in areas of business, environment, health care and gun ownership are often the same individuals who most adamantly demand that the government regulate the most personal aspect of life, which is to choose whom we may marry. We are all created equal in the eyes of God, yet not by the US federal government.

Laws are needed now to protect gay couples and families, so that in the future, others will not have to endure the indignities and unfairness that I and many others are having with taxation and Social Security. For example, I have had to pay gift taxes for years of birthday and Christmas gifts given to me by my husband, even after his death! I have had to explain to the Social Security office that Sara and True are both equally and legally entitled to Philip's Social Security benefits. It took some time to explain and prove that in fact Philip and I had taken all legal steps to protect their full custody. In addition, my family attorney advised me to apply for spousal benefits. We did this expecting my claim to be denied, but wanted to protect any rights I might have in the future. After making an appointment at Social Security office, I explained my situation and requested to apply for spousal benefits. This was met with confusion and apprehension. I was told that I was not entitled to spousal benefits because the federal government did not recognize our marriage. I explained that I understood, but still wanted to file a claim nonetheless. Just getting Social Security to process my claim took a couple of phone calls to my lawyers' office and the Social Security supervisor. This is not what other gay widows or widowers should have to go through. This does not coincide with liberty and justice for all.

My life has been filled with many blessings, but I am also faced with many obstacles. I choose my battles very carefully and I try to avoid them in general. The issue of marriage equality for gay Americans is not going to go away easily. I am prepared to spend the rest of my life fighting

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Mark W. Kalend
Alameda County, California

for this right. Philip was my husband in the eyes of God and the State of California, and it is about time that the United States Government recognizes that truth.

I believe I am on the right side of history. Future generations will look back at this issue, much as we do now at the civil rights movement for African Americans, and wonder how this was ever a reality in our country.

Thank you for your time and consideration of this important civil rights issue.

Very Truly Yours,

Mark W. Kalend

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Elina Agnoli
Gloria C. Amell
Aaron Myers

Addressing Inequalities as a result of Defense of Marriage Act (DOMA)

Testimony Submitted to the United States Senate Committee on the Judiciary

Hearing: "S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

July 20, 2011

Statement of Steven Kazan, Executor and Trustee for Philip A. Harley, deceased, and founding and managing partner of Kazan, McClain, Lyons, Greenwood & Harley, PLC.

I appreciate Senator Leahy's leadership in holding this hearing on the Respect for Marriage Act and thank him and the other members of Congress who have co-sponsored this Bill for demonstrating genuine concern about the issues faced by gay and lesbian couples and their families. I urge Congress to act without delay to pass this legislation.

Lack of equal civil rights for gay and lesbian Americans is damaging to all Americans and to America's founding values. I address one particular area of inequality that is particularly harmful to families, denies rights and protections to families when one member passes, and creates financial damage and other uncertainties that are critical to families within our society.

In May 2009, my law partner and good friend, Philip A. Harley, was diagnosed with late stage aggressive cancer and passed away less than two months later. Nine months before, he had married his longtime partner in California. At that time, Philip and his spouse Mark were already fathers to two lovely four year old daughters, Sara and True Harley.

Four days before he died, Philip asked me to serve as Trustee of the family's Trust and Personal Representative of his Estate. I readily agreed and since then, in both my official capacity as Trustee and Personal Representative, and that of an employer and as a friend, I have witnessed how dramatically differently lesbian and gay families are treated under the law. Who would have expected that because Philip was married to Mark and not Marsha, for example, his family would not be afforded the equal rights and protections that this great country offers. Philip's relationship with his spouse and children is no different than my relationship with my wife and children, and there is no reason his family should be treated worse than mine would be if the situation were reversed.

After Philip passed, Mark, his legally wedded spouse, could not qualify under the Consolidated Omnibus Budget Reconciliation Act (COBRA), a federal program which gives

*Certified Appellate Specialist, The State Bar of California Board of Legal Specialization

workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan when the working spouse dies. As the managing partner of our law firm I was fortunately in a position to advocate to get coverage for Mark, a right and a privilege that had never been questioned before in all the years we have had the firm; I had to threaten to sue and take my firm's business away from our health insurance provider because they did not want to provide coverage for Mark even though California state law requires it. The immediate knowledge that Philip's surviving spouse no longer had any health care coverage was a stressful and expensive issue for us all.

Another quick realization was that most of Philip's retirement account was to be doubly taxed, with only the net proceeds left to provide for his surviving spouse and children. Philip was both fortunate and unfortunate in that he had amassed enough hard earned wealth to have a taxable estate. Philip knew that his estate would be subject to immediate estate tax and that his spouse had no access to the host of federal tax privileges afforded opposite gender married couples. As such, once Philip realized he was terminally ill, he requested immediate distribution of his 401(k) to Mark to minimize having to pay the estate taxes on the deferred income within the account. Philip died on July 2, 2009, just prior to the 4th of July weekend and before the distribution could be completed. In fact, we were left in a situation where we had to come up with funds to pay not only estate taxes on the whole value of the 401(k) – including estate taxes on the deferred income – but also enough liquid funds to pay the immediate income tax due on the required distribution. This left only a portion of what he had saved over his lifetime for his surviving spouse and children. Had his marriage been recognized by the federal government, he never would have asked for such a distribution, but instead, deferred the distribution of the 401(k) until a time that Mark chose to take distribution. In addition, there were other retirement accounts that Mark inherited, but he was not able to roll the accounts over to his own retirement account and was forced to take distributions as a result of DOMA. These tax efficiencies allowed to opposite gender married persons presumably helps ensure the stability and security of the remaining family members; it was denied to Mark, Sara, and True.

My next task as Trustee and Personal Representative was determining both the value of Philip's estate and the associated tax liability. In order to simply file an estate tax return, I was required to complete a forensic accounting of every paycheck Philip earned after marriage and every payment made with those earnings; this analysis cost time, money, and an expertise which most estate tax professionals and estate administration attorneys lack.

Moreover, federal tax law allows spouses to transfer unlimited assets to one another during life and at death.[1] This is known as the unlimited marital deduction. However, DOMA precludes the IRS from recognizing Mark and Philip as spouses for federal tax purposes and therefore they were denied the right to the unlimited marital deduction. As such, transfers made

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[1]See Internal Revenue Code Sections 2523 and 2056, respectively.

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between Mark and Philip prior to and during marriage constituted gifts, and transfers after death were subject to estate tax. As a direct result then, the estate paid approximately $300,000 in gift taxes and approximately $1,800,000 in estate taxes for transfers that would otherwise have qualified for the unlimited marital deduction. These tax payments would not have been required if Philip's spouse were female. Not only would Mark and Philip have married earlier had they been allowed to, their estate plan would also have been different and they could have avoided paying estate taxes on the first death, had DOMA not precluded marital tax rights from being conferred.

There were many other times during the administration of Philip's estate where the existence of DOMA was central to my decision making and governed my choices. DOMA precludes the federal government from recognizing their marriage, yet they had rights under state law. There was little or no legal precedent or guidance to follow and the conflict between state law and federal law permeated many of the issues that we encountered.

The law should protect all the citizens of this great country and no citizens should suffer discrimination. Philip's death was hard enough for his family to bear; they should not be forced to suffer more than other married couples because Philip and Mark were gay. Until DOMA is overturned, the uncertainty that gay and lesbian families face, the extra financial hardships that are inflicted on these families simply because of this discrimination, and the disparate treatment that results, will continue. I urge Senator Leahy, his colleagues on the Judiciary Committee, and the Congress to pass this legislation. It is past time to treat all citizens with the same dignity and respect that each of us deserves.

Thank you for your time and attention.

Very truly yours,

Steven Kazan

SK:troy

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July 18, 2011

To: United States Senate Committee on the Judiciary
ATTN: Halley Ross, Hearing Clerk
224 Dirksen Office Building
Washington, DC 20510

From: Mr. Jason Kirchick
39 Edson Hill Road
Stowe, VT 05672

Dear Ms. Ross:

My partner and I have been together since 2005. I an American born citizen and he is from Peru. My partner received his law degree in Peru and is staying in America on a H1-B Visa. We are both thirty years old and are trying to work through the long process and hoping one day he will receive a green card and then begin another long process to become an American citizen. I met my partner when I was working and living in New York City as an in-flight crewmember and instructor for JetBlue Airways Corp. We both now work running a lodge in Stowe, Vermont and are dedicated, law abiding citizens within our community.

In addition to being the Director of Sales & Marketing for our lodge, I am also an EMT, volunteer firefighter, and treasurer for the Stowe Conservation Commission. We are fortunate to have such a supportive network of family and friends, but the road is a long and every day the process is more and more stressful on my partner who has giving so much of himself to do things and work through this process the *right* way. We have a fabulous immigration attorney but hope that DOMA will be overturned or that the UAFA will come into fruition sooner rather than later. The visa process serves us no guarantee! I am fearful everyday that the day will come when my partner and I will be forced to stay separated. I beg your committee to please not allow this to happen.

When I left JetBlue Airways Corp. in 2009 to begin our lives in Vermont, I elected for COBRA benefits for both my partner and myself. Once I extended those benefits, they dropped my partner because the federal government does not accept or acknowledge Same Sex Marriage Couples. How absolutely sad is this? It is really unbelievable that so many people in Washington and across the United States have kept human beings from living their lives the way they choose without hurting or interfering with anyone. Why can I not have the same benefits as my fellow Americans?

Even though I can respect a persons religious or personal code, why can't we, as well as a million other couples across the United States not be extended this same courtesy? I am a spiritual person and consider myself a Christian, but do believe our forefathers in that all men were created equal and that we should be duly afforded the right to the separation of church and state. I also believe that the federal government needs to take over this issue and justly and swiftly come to a decision that is at the heart of so many families across our country. I hope this letter will be met with sincerity and respect and taking into consideration for the negative impact DOMA is having on my family.

Thank you for all the work you are doing on behalf of our families and the citizens of the United States of America.

Sincerely,

Jason Kirchick

TESTIMONY
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Senate Committee on the Judiciary
"S.598, *The Respect for Marriage Act: Assessing the Impact of DOMA on American Families*"

Wednesday, July 20, 2011 at 10:00 a.m.
Room 216 of the Hart Senate Office Building

COURAGE CAMPAIGN MEMBERS
ROBERT KOEHL and STYLIANOS MANOLAKAKIS

Bi-National Couple Together 15 Years

Fifteen years ago this Christmas, while on sabbatical from Hunter College where I am a professor of Classical Archaeology, I met and fell in love with a Greek fellow. I had never met anyone like Stylianos. We have been together ever since, but it's not been easy.

After spending a small fortune traveling back and forth between Greece and the U.S. for several years, Stylianos applied for a 0-1 visa – an artist's visa – to stay in the States longer. He is an accomplished playwright, director and actor here in New York City. He got the visa, but years later, when it came time to renew it, his request was denied. This was shortly after 9/11. The following months, years, were all very emotionally draining and destabilizing. It was a horrible situation, and not to mention all the legal fees we incurred! We spent thousands and thousands of dollars on attorney services – something many same-sex couples end up doing.

Two years from August of this year, Stylianos' visa is up again.

There is no guarantee he will be given another one. If he's denied, he'll have to return to Greece and we begin again the exhausting and costly process of visiting each other when possible.

Our lawyer advised us not to marry because she said it might raise red flags. So, we're waiting. As long as DOMA is in the books, there is no way our marriage would be recognized. But if DOMA got repealed, we would get married the following day.

I am nearly 60 years old. How much longer will I have to wait to enjoy the stability of a marriage with my long-term partner, without the fear that at any time, we will have to separate?

CONTACTS:
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Ana Beatriz Cholo, Courage Campaign Communications Manager, anabeatriz@couragecampaign.org, 312-927-4845 (cell)

Courage Campaign is a multi-issue online organizing network that empowers more than 700,000 grassroots and netroots supporters to work for progressive change and full equality in California and across the country. Through a one-of-a-kind online tool called Testimony: Take A Stand, the Courage Campaign is chronicling the sights, sounds and stories of LGBT families and all who wage a daily struggle against discrimination across America. For more information about Testimony, please visit, http://www.couragecampaign.org/Testimony.

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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "S.598, The Respect For Marriage Act:
Assessing The Impact Of DOMA On American Families"
July 20, 2011

I welcome everyone to the first-ever congressional hearing examining a bill to repeal the Defense of Marriage Act (DOMA). I called this hearing to assess the impact of DOMA on American families. I have heard from many Vermont families concerned about this important civil rights issue. Earlier this year, I was proud to join Senator Feinstein and others to introduce S. 598, The Respect for Marriage Act, a bill that would repeal DOMA, and restore the rights of all lawfully married couples. These American families deserve the same clarity, fairness, and security that other families in this great Nation enjoy.

As Chairman of this committee, I have made civil rights a focal point of our agenda. But outside of the hearing room, I often speak with those who think the issue of civil rights is merely one for the history books. This is not true. There is still work to be done. The march toward equality must continue until all individuals and all families are both protected and respected, equally, under our laws.

In the 15 years since DOMA was enacted, five states, including my home State of Vermont, plus the District of Columbia, have provided the protections of marriage to committed same-sex couples. In just a few days, the State of New York will become the sixth state to recognize and protect same-sex marriage. Unfortunately, the protections that these States provide to their married couples are overridden by the operation of DOMA. I am concerned that DOMA has served to create a tier of second-class families in states like Vermont. This runs counter to the values upon which America was founded and to the proud tradition we have in this country of moving toward a more inclusive society.

Next month, Marcelle and I will celebrate our 49th wedding anniversary. Our marriage is so fundamental to our lives that it is difficult for me to imagine how it would feel to have the Government refuse to acknowledge it. Sadly, the effect of DOMA goes well beyond the harm to a family's dignity. The commitment of marriage leads all of us to want to protect and provide for our families. As we will hear today, DOMA has caused significant economic harm to some American families. This law has made it more difficult for some families to stay together. It has made it more difficult for some family members to take care of one another during bad health. And DOMA has even made it more difficult for some Americans to protect their families after they die.

I believe it is important that we encourage and sanction committed relationships. I also believe that we need to keep our Nation moving toward equality in our continuing efforts to form a more perfect union. I am proud to say that Vermont has led the Nation in this regard. In 2000, Vermont took a crucial step when it became the first state in the Nation to allow civil unions for same-sex couples. Nine years later, Vermont went further to help sustain the relationships that fulfill our lives by becoming the first state to adopt same-sex marriage through the legislative process. I have been inspired by the inclusive example set by Vermont.

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I have been moved by the words of Representative John Lewis. Like others, my position has evolved as states have acted to recognize same-sex marriage. I applaud the President's decision to endorse the Respect for Marriage Act. The President understands that this civil rights issue affects thousands of American families.

I decided to support the repeal of DOMA because I do not want Vermont spouses, like Raquel Ardin and Lynda DeForge to experience the continuing hardship that results from DOMA's operation. Raquel and Lynda live in North Hartland, Vermont, and have been together in a committed relationship for over three decades. They both served the country they love in the Navy, and both worked for the Postal Service. They moved to Lynda's parents' home in Montpelier to care for her mother who was living with Alzheimer's disease. Sadly, Raquel's degenerative arthritis forced her into retirement and now she needs regular and painful treatment. Lynda was denied family medical leave to care for Raquel, her spouse, because DOMA does not recognize her lawful Vermont marriage. This is just one example of an American family's unfair treatment because of DOMA.

Many other Vermont families have reached out to share their experiences. They include small business owners paying more in Federal taxes because they are not allowed to file as other married couples do. They are young couples that are taxed when their employer provides health insurance to their spouse. They are working parents with teenage children navigating student loan forms. They are retirees planning for end of life care. These are powerful stories about how commitment leads us to be responsible for our spouses in good times and in bad. And their stories will all be a part of this hearing record.

The Respect for Marriage Act would allow all couples who are married under state law to be eligible for the same Federal protections afforded to every other lawfully married couple. Nothing in this bill would obligate any person, religious organization, state, or locality to perform a marriage between two persons of the same sex. Those prerogatives would remain. What would change, and what must change, is the Federal Government's treatment of state-sanctioned marriage. The time has come for the Federal Government to recognize that these married couples deserve the same legal protections afforded to opposite-sex married couples.

I thank the witnesses with us today and all of those who are participating in this hearing by submitting written testimony to tell their own experience. I know that those who were able to travel to the hearing room represent a small fraction of all the American families impacted by DOMA, but I also welcome those watching the Committee's webcast of these proceedings.

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Statement of Rabbi Devon A. Lerner, D.D., M.S.W.
Former Executive Director for the Religious Coalition for the Freedom to Marry in Massachusetts
Submitted to the Senate Judiciary Committee

Regarding S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families
July 20, 2011

You have heard many arguments for and against the Defense of Marriage Act (DOMA). I do not want repeat what you already know. I am writing to you as someone who has a unique perspective on this debate.

I am a rabbi, a lesbian and former Executive Director of the Religious Coalition for the Freedom to Marry in Massachusetts. In our struggle here for marriage equality we heard many of the same arguments you are hearing in support of DOMA. We heard the same warnings: "If marriage equality succeeds, we will see the further deterioration of marriage and ultimately of society. Children will suffer because they are not being raised in the ideal home with one mother and one father." We heard fundamentalist Christians and fundamentalist people from other faiths call marriage equality immoral and homosexuality a sin. We heard these same opponents tell us that marriage equality would force them to accept the union of two women or two men when it is against their religious beliefs. None of their fears have come to pass.

We now have more than seven years experience with marriage equality in Massachusetts and no faith community has been forced to accept marriage equality in their congregations or in their personal lives. Legalizing gay and lesbian marriages has not harmed their own marriages or their children. Not one clergy person has been forced to perform a gay or lesbian wedding. Nothing has changed in their lives except the fact that they live in a state that legally affords everyone the right to marry the person they love.

I can understand why opponents might be unhappy. Massachusetts is not living up to what they honestly believe is right. But I would venture to say that each of us disagrees or disapproves of at least one law in our state and country. Part of our responsibility as American citizens is to tolerate others who are not like us. Our laws are meant to protect our right to life, liberty and the pursuit of happiness as long as we do not harm others in the process.

Only good things have come from marriage equality in Massachusetts. Gay and lesbian individuals, couples and their children are experiencing greater acceptance and fewer acts of hatred and discrimination in all parts of our lives. We feel accepted. We are now free to live our lives openly and in dignity. We feel we belong.

Discrimination, however, continues to take its toll. Although gay and lesbian couples can legally marry here, they are denied the more than 1000 Federal rights, responsibilities and privileges that are automatically given to heterosexual couples. Because of DOMA, they do not have marital inheritance rights. When one partner dies, the other cannot simply inherent their wife or

70639.144

husband's assets without having to pay taxes. Social security benefits cannot be passed on. Employers can legally deny partner medical benefits to gay and lesbian spouses. Couples cannot file joint tax returns and much more. The bottom line...it literally costs more financially to be gay. You have heard some tragic stories from gay and lesbian individuals who struggle to keep their homes and support their children because of DOMA.

There is a huge emotional toll as well. Couples worry about how they will take care of each other and provide for their children if one of them dies. And for many, the greatest pain comes from knowing that DOMA continues to make them second-class citizens in their own country. Every other couple's marriage is recognized as valid in every state and in most countries around the world. Why not theirs?

There is no reason to deny gay and lesbian couples the rights and responsibilities of Federal marriage laws. There is no reason other than personal preferences and/or religious differences, and these are not good enough reasons to pass or uphold laws that discriminate against one group of citizens.

Faith traditions differ on their definition of marriage. Many of us, including the Episcopal Church, United Church of Christ, Unitarian Universalists, Quakers, Reform and Reconstructionist Jews, and more celebrate marriage as the union of two people who love each other and have vowed to spend the rest of their lives together, regardless of their gender. To impose some peoples' religious belief that marriage is the union between one man and one woman on the rest of us violates our laws governing the separation of church and state. There is a difference between civil and religious marriage. Repealing DOMA will affirm and protect the civil rights and religious freedoms of all. This is the kind of equality that our country was founded upon.

Thank you for considering my testimony.

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Testimony of Congressman John Lewis
Senate Judiciary Committee
Hearing on S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families
July 20, 2011

Chairman Leahy and Ranking Member Grassley, Members of the Committee, I thank you for inviting me to testify before the Senate Judiciary Committee today. It is an honor to be here.

I am very happy to see the Judiciary Committee holding hearings to address the issue of marriage equality. But at the same time, Mr. Chairman, I must admit I find it unbelievable that in the year 2011 there is still a need to hold hearings and debate whether or not a human being should be able to marry the one they love.

I grew up in southern Alabama, outside of a little city called Troy. Throughout my entire childhood, I saw those signs that said "white restroom," "colored restroom," "white water fountain," "colored water fountain." I tasted the bitter fruits of racism and discrimination, and I did not like it. And in 1996 when Congress passed the Defense of Marriage Act, the taste of that old bitter fruit filled my mouth once again.

The Defense of Marriage Act is a stain on our democracy. We must do away with this unjust, discriminatory law once and for all. It reminds me of another dark time in our nation's history, the many years when states passed laws banning blacks and whites from marrying. We look back at that time now with disbelief, and one day we will look back on this period with that same sense of disbelief.

When people used to ask Dr. Martin Luther King, Jr. about interracial marriage, he would say, "Races do not fall in love and get married. Individuals fall in love and get married." Marriage is a basic human right. No government, federal or state, should tell people they cannot be married. We should encourage people to love and not hate.

Human rights, civil rights, these are issues of dignity. Every human being walking this Earth, man or woman, gay or straight, is entitled to the same rights. It is in keeping with the American promise of life, liberty, and the pursuit of happiness. These words mean as much now as they did at the signing of the Declaration of Independence.

That is why Congress must not only repeal the Defense of Marriage Act, but work to ensure full marriage equality for all citizens, together with the privileges and benefits marriage provides. All across this nation, same-sex couples are denied the very rights you and I enjoy. They are denied hospital visitation rights, and they are denied equal rights and benefits in health insurance and pensions, simply because the person they love happens to be of the same sex. Even in states where they have achieved marriage equality, these unjust barriers remain, all because of the Defense of Marriage Act.

Unfortunately, too many of us are comfortable sitting on the sidelines while the federal government and state governments trample on the rights of our gay brothers and sisters. As elected officials, we are called to lead. We are called to be a headlight, and not a taillight. So I applaud the work of Congressman Nadler and Senator Feinstein, and I applaud the Senate Judiciary Committee for holding this hearing.

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I urge this Committee, the Senate as a body, and the United States Congress as a whole to pass the Respect for Marriage Act as soon as possible. Justice delayed is justice denied, and passing this bill is simply the right thing to do.

More than just our constituents, these are our brothers and sisters. We cannot turn our backs on them. We must join hands and work together to create a more perfect union. We are one people, one family, the American family, and we all live together in this one house, the American House.

Mr. Chairman, I thank you again for inviting me to testify.

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Statement of Jane A. Leyland

Before the Committee on the Judiciary

United States Senate

Submitted for the Record of a Hearing Entitled

"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

July 20, 2011

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My wife Terry and I met over 27 years ago and fell deeply in love shortly afterwards. We had this very strong need and desire to commit to sharing our lives and building a future together. This is indeed the essential element of marriage! Although this occurred before the enactment of the Defense of Marriage Act (DOMA), the Federal Government and no state recognised same-sex marriage at the time. So accordingly, we exchanged vows and rings on our own and have been living as a married couple ever since, even though this marriage was not able to be sanctioned by the State of California until 2008. Notwithstanding DOMA, we succeeded in becoming legally married according to California law on 3 July 2008, the day we celebrated our 24th year anniversary, with the same rings we exchanged 24 years previously. That day is certainly the most memorable day in our lives. We were fortunate to have Molly McKay of Marriage Equality USA perform the Ceremony in the San Francisco City Hall Rotunda adjacent to the Harvey Milk Bust. It can't get any better than that! Everyone was so nice and supportive. We have many wonderfully strong and different emotions from this ceremony.

Initially, Terry and I exchanged Vows and Rings on our own without the benefit of official governmental sanction because it was not available to us at that time. Being pro-active, we knew that the absence of governmental sanction did not in any way diminish our love for each other and our commitment to build a future together where we would share our lives and be supportive of each other. We have shared a strong spiritual and mental bond ever since we first exchanged vows and rings. Accordingly, we have no doubt that our relationship is indeed a real "marriage' notwithstanding governmental policy.

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Our legal marriage had totally surprising effects. The ceremony and legal recognition gave us a feeling of acceptance and belonging to the community that we had not experienced previously. Upon hearing of our marriage, we received recognition as a couple, congratulations and best wishes from family and friends as well as from strangers. We both remain greatly elated and are still on Cloud Nine as a result. We have come to feel much better about ourselves, be more openly "out" than before, and I believe better members of the community in general. It is difficult to describe the many wonderful emotions that we feel, but as stated above, they are wonderfully strong and different. This is clearly a win-win situation for the general community and for same-sex couples! Our marriage cannot possibly adversely affect anyone else's marriage.

It is important to recognise that by marriage, one becomes a member of their spouse's family. Accordingly, love of one's new in-laws, the parents, siblings, grand parents, nieces and nephews can greatly extend and broaden the spectrum of the type and kinds of love one can have. This in turn can spill over to the general community and contribute greatly to becoming a better member of the community. This has been my experience. As stated previously, this is clearly a win-win situation!

This truly wonderful experience of being able to marry the person of one's choice is certainly a fundamental basic human right which all people should have and which is certainly on par with the "unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness" as stated in the *Declaration of Independence* and for which governments are instituted

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to secure. The Federal Government by enactment of the Defence of Marriage Act (DOMA) has denied this basic human right to same-sex couples. DOMA is based solely on unwarranted prejudice and fear and is grossly un-American. DOMA, which defines marriage to be union between a man and a woman, is a federal law enacted by congress and is not an amendment to the U.S. Constitution.

The effect of DOMA is to essentially negate all federal level spousal benefits to same-sex married people such as Terry and myself. Specifically, some of the most important federal benefits that are currently denied because of DOMA, or will be if Federal policy changes do not occur, to Terry and myself (currently a federal employee who previously served honourably in the U.S. Military) are:

1. **Spousal pension benefits provided by Social Security.** Denial of the spousal part of these benefits will occur unless there is a change in the federal policy on same-sex marriage. Specifically, if our marriage were recognised by the U.S. Government, Terry as my legal spouse would receive approximately $1400 per month in the event of my death. The unavailability of the spousal part of these benefits greatly skews my financial activities and forces me continue to work whilst in my seventies, and to take investment risks I wouldn't take otherwise, in order to maximise the build-up of assets to partially off-set the lack of spousal benefits that Terry would receive in the event that I die first.

2. **Spousal pension benefits provided by the Civil Service Retirement Plan.** Denial of the spousal part of these benefits will

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occur unless there is a change in the federal policy on same-sex marriage. Specifically, if our marriage were recognised by the U.S. Government, Terry as my legal spouse would receive approximately $3300 per month in the event of my death. The unavailability of the spousal part of these benefits greatly skews my financial activities and forces me continue to work whilst in my seventies, and to take investment risks I wouldn't take otherwise, in order to maximise the build-up of assets to partially off-set the lack of spousal benefits that Terry would receive in the event that I die first. These limitations on both of these retirement plans pose a very great problem for us at this time.

3. **Federal Employees' Family Health Benefits.** I applied for the family health insurance plan to cover Terry and submitted a copy of our Marriage Certificate with a hard copy application. It is noted that the electronic application process that is frequently used for this would not accept same sex spouses even though the form used terms such as "married", "spouses", et cetera. This application was denied because of the Federal Government's definition of marriage via DOMA. The net difference between the cost of securing individual comparable private health coverage for Terry and the cost of the government subsidised group family coverage is approximately $525 per month. We have not been able to purchase health insurance for my wife because we can't afford it.

The lack of health benefits has placed my wife's health maintenance in jeopardy. Just recently, my wife had an emergency medical condition

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that necessitated taking her to the emergency room of a local hospital. The bills are still coming in and will amount to several thousand dollars. We don't know how we are going to pay all these, but expect that it will take several years to do so, plus running the risk that it will be taken to collections.

4. **Federal Employees' Family Coverage Life Insurance.** I applied for supplemental spousal life insurance at the same time that I applied for the family health insurance plan. Supplemental spousal life insurance is offered to married couples whose marriages are recognised by the U.S. Government at a group rate significantly less than that obtained from private non-group sources. The result was the same; it was denied to us because of DOMA.

5. **Federal Income Tax Reporting Status.** Because of DOMA, we are faced with the problem that the U.S. Government will not allow us to file our Federal tax returns jointly, even though California will allow us to file California tax returns jointly. Accordingly, our tax filing preparations are much more complicated and we are denied the reduction in tax liability on the Federal return that federally recognised married couples enjoy. In our case, we have to pay about $12,000 per annum more than if we were a federally recognised married couple because of DOMA.

One of the most aggravating issues resulting from the Federal definition of marriage in the Defence of Marriage Act (DOMA) is that federally non-recognised married people are forced to subsidise many of

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the benefits enjoyed by federally recognised married people. This is true for all of the five above listed benefits. For example, the amounts withheld from our pay for both Social Security and the Federal Retirement Plans are not dependent on family status. Consequently, individuals will have paid the same amount into either or both plans regardless of their marital status, but the benefits paid out to married couples recognized by the federal government will be substantially greater than for me and Terry, and for other same-sex couples. Essentially, I am helping subsidize benefits I can't collect.

As we learned years ago, "Separate is not equal." In fact, there are at least some 1,100 federal rights and privileges that federally recognised married couples have, but which are denied to same-sex couples because of DOMA.

I urge Congress to repeal this discriminatory and hurtful law.

Thank you.

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AAUW

Testimony of Lisa M. Maatz
Director, Public Policy and Government Relations
American Association of University Women

to the

Senate Committee on the Judiciary

Hearing on

"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

July 20, 2011

Chairman Leahy, Ranking Member Grassley, and members of the committee, thank you for the opportunity to submit testimony on the Respect for Marriage Act and the Defense of Marriage Act's impact on American families.

I am the Director of Public Policy and Government Relations at the American Association of University Women. Founded in 1881, AAUW has approximately 100,000 members and 1,000 branches nationwide. AAUW has a proud 130-year history of breaking through barriers for women and girls. Today, AAUW continues its mission through education, research, and advocacy.

AAUW's member-adopted 2011-13 Public Policy Program affirms our commitment to "vigorous protection of and full access to civil and constitutional rights" as well as "freedom in definition of family and guarantee of civil rights in all family structures."[i] AAUW believes that discrimination against any class of persons has no place in our country, and that human and civil rights should not be subject to popularity contests.

The Defense of Marriage Act Should be Repealed

AAUW believes that the Defense of Marriage Act should be repealed. AAUW opposes any attempts to use the Constitution or federal law as vehicles for enshrining discrimination against LGBTQ persons. In particular, using the Constitution to deny rather than confer rights upon an identifiable group of people runs contrary to both the history and spirit of this great document, and should be strongly opposed by all members of Congress. DOMA represents a stark illustration of congressional intrusion into fundamentally private and personal areas of individuals' lives.

Federal law should no longer discriminate against same-sex couples who are lawfully married. The Respect for Marriage Act[ii] would repeal DOMA, and simply return the federal government to its traditional role of respecting and recognizing lawfully-valid marriages. The bill would also ensure that individual states—as is their customary role—would continue to have the power to set rules regarding marriage within their respective jurisdictions.

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In 1996, President Bill Clinton signed the Defense of Marriage Act (DOMA) into law. Under the terms of the legislation, marriage was defined (for the federal government's purposes) as "only a legal union between one man and one woman as husband and wife."[iii] The law went on to specify that the word spouse "refers only to a person of the opposite sex who is a husband or a wife."[iv] In addition to the creation of these definitions, each U.S. state or territory was exempt from having to recognize any same-sex marriage that may have been legalized or officially recognized by another state or territory.

When DOMA was first enacted, its impact was not yet fully realized because same-sex couples were unable to marry in any state. Since then, thousands of same-sex couples have married in the six states and the District of Columbia that allow same-sex marriage,[v] and thousands more have entered into civil unions or domestic partnerships in the many other states[vi] that recognize their relationships. However, because of DOMA, the federal government does not recognize these couples' legal commitment to each other and their families, denying them significant federal benefits and rights. For example, same-sex spouses cannot:

- File their taxes jointly;
- Receive spousal or surviving spouse benefits under Social Security, even though they pay into Social Security throughout their careers;
- Take unpaid leave to care for an injured or sick spouse;
- Receive employer-provided family health benefits without paying an additional tax that heterosexual couples do not pay;
- Receive the same family health, retirement, and pension benefits as different-sex employees; or
- Be protected by the safe harbor provisions in bankruptcy law, Medicaid rules, and other federal statutes that protect spouses.

By passing the Respect for Marriage Act, Congress would be following the lead of several states that have pioneered the legalization and/or recognition of same-sex marriage, civil unions, and domestic partnerships. The Respect for Marriage Act would ensure that all valid marriages are respected under federal law, providing same-sex couples with certainty that their rights will be protected.

More than a decade into the 21st century, LGBTQ Americans continue to be denied fundamental rights and liberties simply on the basis of sexual orientation or gender identity. Such denials of freedom are an affront to liberty and have no place in our nation. AAUW urges the Senate to respect the rights of all Americans and support the Respect for Marriage Act.

Thank you for this opportunity to submit testimony to the committee on this important issue.

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[i] American Association of University Women. (June 2011). *2011-13 AAUW Public Policy Program.* Retrieved July 18, 2011, from www.aauw.org/advocacy/issue_advocacy/principles_priorities.cfm.

[ii] U.S. Government Printing Office. (2011). *112th Congress – First Session – S. 598.* Retrieved July 18, 2011, from www.gpo.gov/fdsys/pkg/BILLS-112s598is/pdf/BILLS-112s598is.pdf

[iii] U.S. Government Printing Office. (1996). *104th Congress – Public Law 104-199.* Retrieved February 4, 2011, from frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=104_cong_public_laws&docid=f:publ199.104

[iv] Ibid.

[v] California, Connecticut, Iowa, Massachusetts, New Hampshire, and Vermont, along with the District of Columbia,

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issue or have issued marriage licenses to same-sex couples, and New York will soon issue same-sex marriage licenses.

[vi] New Jersey allows civil unions that provide state-level spousal rights to same-sex couples. Four states (California, Nevada, Oregon, and Washington) provide nearly all state-level spousal rights to same-sex domestic partners. Three states (Hawaii, Maine, and Wisconsin), along with the District of Columbia, provide some state-level spousal rights to same-sex domestic partners. Five states (Delaware, Hawaii, Illinois, New Jersey, and Rhode Island) allow civil unions that provide state-level spousal rights to same-sex couples.

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Christopher Marrero
42 Mansion Street
Winooski, VT 05404

July 18, 2011

Dear United States Senate Committee on the Judiciary,

My partner and I are in a loving relationship for over 25 years. As a bi-national couple (my partner is from Germany), settling down here in the US has been and continues to be the biggest challenge of our life. Twice during the past 20 years, we had to quit our jobs, sell most of our belongings, and leave the country because my partner's visas expired. Our life here in the US resembles a constant state of war – never being able to plan for the future, leave alone to predict what will happen next, never having peace of mind, and always fearing separation.

Next year, my partner's visa options are running out and he will have to leave for good. Again, we are forced to disrupt our life and start from scratch in a different country. Being in our 50s now, it is becoming more and more difficult for us. To be honest, we are pretty scared about having to leave.

Nobody in our community, straight or gay, understands why we have to go through all this. Everybody I talk to, straight or gay, thinks that the Defense of Marriage Act is discriminatory and wrong. Why can't I, as a US citizen, sponsor my foreign-born spouse for a green card just like every heterosexual US citizen can? I think the majority of Americans do not support this kind of discrimination anymore.

The Defense of Marriage Act is un-american because it discriminates against its own people. It is against family values because it disrupts families. It is unjust because it denies us the same rights that everybody else enjoys in this country. However, we are still hopeful that, one day, American "goodheartedness" and justice will prevail and our relationship will be recognized and respected.

Sincerely,

Christopher Marrero

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Testimony before the Senate Committee on the Judiciary, S.598

July 20, 2011

Tom Minnery

Senior Vice President

Focus on the Family

Mr. Chairman, and members of the committee, thank you for inviting my testimony before you this morning. Please allow me to introduce my organization.

Focus on the Family is a global Christian ministry dedicated to helping families thrive in a difficult and complex society. We provide help and resources for couples to build healthy marriages that reflect God's design, and for parents to raise their children according to morals and values grounded in biblical principles.

We accomplish this through radio broadcasts, websites, simulcasts, conferences, interactive forums, magazines, books, counseling and public policy activities. We have 13 international offices, and our radio programs are broadcast in 26 languages to more than 230 million people around the world each day.

I: This bill undermines state laws and the expressed will of the people.

In recent years, the states have seen an abundance of popular votes and legislative activity in defense of one man, one woman marriage. Since 1998, voters in thirty-one states have unapologetically endorsed the traditional definition of marriage in state ballot initiatives or referenda. Typically, these votes pass with an overwhelming majority – with an average of 67% of the vote supporting marriage representing the affirmation of more than 39 million Americans. Forty four states now have either constitutional amendments or statutes defining marriage as the union of one man and one woman.

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One of this bill's most serious impacts has been largely ignored in the run-up to today's hearing; that is the repeal of Section 2[1] of DOMA, entitled "Powers reserved to the states." That is the section of DOMA that protects states from being forced to recognize an out-of-state same-sex marriage, or any right or claim arising from such relationship. In all the public pronouncements about the lack of "federal" rights and benefits for same-sex couples and the supposed need to repeal Section 3[2] of DOMA - which defines marriage as one man and one woman for purposes of all federal laws and programs such as the tax code and Social Security - no one has explained to the American people why a repeal of Section 2 is even necessary.

Please don't misunderstand me here. The repeal of the entirety of DOMA is a serious policy mistake and contrary to the will of the vast majority of the American people. But there are no public policy reasons given for the repeal of Section 2. It does not affect "federal" rights or benefits. How does removing language that protects 44 states in their public policy efforts to define and protect marriage as the union of one man and one woman affect the federal benefits going to couples in other states that have gay marriage?

The simple answer is that it has no connection. This bill's revocation of Section 2 of DOMA is an attempt to undermine the public policies, laws and constitutions of the vast majority of the states for whom traditional marriage is a settled issue, and the only possible reason for doing so is to place the issue of marriage once again into the hands of judges. What's worse is that the bill's proponents won't often talk about this particular aspect of the repeal bill.

II: The High Cost of Defending Marriage: Parental Rights

Parental rights are of immense concern because parents – not the state – are the primary educators of their children, especially in matters that involve sexuality. Should DOMA be repealed, parents in those states which have registered their approval of traditional marriage at the ballot box, will be faced with the problems of coping with marriages of which they overwhelmingly disapprove. To understand what this means, we need look no further than Massachusetts—the first state to legalize same-sex marriage.

Not long after it was legalized, teachers in that state began discussing homosexuality in detail with children in the classroom, regardless of parental concerns. For instance, National Public

[1] DOMA Section 2. POWERS RESERVED TO THE STATES.(a) In General. –Chapter 115 of title 28, United States Code, is amended by adding after section 1738B the following: "Section 1738C. Certain acts, records, and proceedings and the effect thereof. No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship."

[2] DOMA Section 3. DEFINITION OF MARRIAGE. (a) In General. –Chapter 1, United States Code, is amended by adding at the end the following: "Section 7. Definition of 'marriage' and 'spouse'. In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

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Radio (NPR) featured an interview with an eighth-grade teacher, Ms. Deb Allen, who was exuberant about her new-found freedom to explicitly discuss homosexual behavior with kids.

"In my mind, I know that, 'OK, this is legal now.' If somebody wants to challenge me, I'll say, 'Give me a break. It's legal now,' " she told NPR.

The NPR reporter went on to explain that the teacher now discusses "gay sex" with students "thoroughly and explicitly with a chart."

Ms. Allen herself offered more details about exactly how she explains this chart to kids: "All right. So can a woman and a woman kiss and hug? Yes. Can a woman and a woman have vaginal intercourse?, and they will all say no. And I'll say, 'Hold it. Of course, they can. They can use a sex toy. They could use'—and we talk—and we discuss that. So the answer there is yes."[3]

Even parents of *elementary age* children in Massachusetts have discovered that any control they once had over when, how and if their kids are exposed to controversial sexual topics disappeared after same-sex marriage became the law of the land.

Robb and Robin Wirthlin, for instance, never dreamed the issue would affect them so quickly and in such a personal way: In 2006, their seven-year-old son Joey came home and told them about a book his teacher had read to his first grade class. In the book, *King and King,* a prince searches for a princess to marry, but instead chooses to marry another prince. The book concludes with a picture of the two princes kissing.

The Wirthlins thought that perhaps their son had confused the details; they didn't believe this subject would arise before sex education classes several years later. But after investigating the matter, they learned that the teacher had indeed read a book to the whole first grade class promoting same-sex relationships. The Wirthlins requested that the school inform them of future class discussions on this topic, but they were turned down.

Likewise, David and Tonia Parker discovered that their 6-year-old son, Jacob, had been given a book featuring same-sex relationships. Called *Who's in a Family?,* the book features images of same-sex couples interspersed with pictures of animals, including an all-male elephant herd depicted as another type of family. Jacob's father went to the school to request that educators notify him in the future before homosexuality topics were discussed with his kindergarten-age son —and that he be given the ability to opt his son out of such teaching.

But he never got those assurances; instead he got thrown in jail.

[3] Tovia Smith, "Massachusetts Schools Weigh Gay Topics."National Public Radio. All Things Considered. Sept. 13, 2004. Audio version of interview accessible at: http://www.npr.org/templates/story/story.php?storyId=3915906

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David Parker "met with school officials to gain those assurances and then refused to leave until he got them. Parker stayed at the Eastabrook School for more than two hours … Finally, they arrested him for trespassing," reported *The Boston Globe*.[4]

"I'm just trying to be a good dad," Parker said after his arraignment. The family acknowledged that they were Christians attempting to follow their faith: "We're not intolerant," said his wife, Tonia. "We love all people. That is part of our faith."[5]

But sadly, they discovered that, along with parental rights, respect for families' deeply held religious convictions, had also disappeared with the state's same-sex marriage law.

The fact is, that many states education codes only specifically make allowances for parents to be notified or opt their children out of homosexuality lessons when it is categorized as health or sex education instruction. So when same-sex marriage becomes the law of the land, public school officials can argue that it is now part of the general culture and civil society, and therefore can be brought up at any time in any subject or grade level—without any parental notification or consent.

Take for instance, the school officials' response to the Massachusetts parents' concerns, as reported by *The Associated Press*: "Officials there say that since same-sex marriage is a part of life in Massachusetts, it comes up naturally and it's impossible to notify parents every time the issue is discussed."

"It certainly strengthens the argument that we need to teach about gay marriage because it's more of a reality for our kids," Lexington Schools Superintendent Paul Ash said. [6]

Even worse--the federal court system also backed the school officials' lack of respect for parental rights. In *Parker vs. Hurley*, [7] Judge Mark Wolf ruled against the Wirthlins and the Parkers. He concluded that since same-sex marriage is now part of Massachusetts society and culture, it can be taught to public school students without parental permission. So now, homosexuality lessons can be brought up in any Massachusetts classroom under any number of topics—such as "diversity" and "citizenship"—whether parents like it or not.

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[4] Cramer, Maria and Ralph Ranalli. "Arrested Father Had Point to Make. Disputed School's Lesson on Diversity." *The Boston Globe*. April 29, 2005. Accessible for a fee at: http://www.boston.com/news/local/articles/2005/04/29/arrested_father_had_point_to_make/

[5] *Parker v. Hurley*. 474 F. Supp. 2nd 261 (D. Mass. 2007). Decision accessible at: http://pacer.mad.uscourts.gov/dc/cgi-bin/recentops.pl?filename=wolf/pdf/parker%20opinion%20mlw.pdf

[6] Jay Lindsay, "Gay Marriage Foes Face Issue in Schools." *Associated Press*. May 5, 2006. Copy of story accessible: http://www.freerepublic.com/focus/f-news/1627818/posts.

[7] *Parker v. Hurley*. 474 F. Supp. 2nd 261 (D. Mass. 2007). Decision accessible at: http://pacer.mad.uscourts.gov/dc/cgi-bin/recentops.pl?filename=wolf/pdf/parker%20opinion%20mlw.pdf

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Here's how the judge's reasoning went: "Students today must be prepared for citizenship in a diverse society. … As increasingly recognized, one dimension of our nation's diversity is differences in sexual orientation. In Massachusetts, at least, those differences may result in same-sex marriages."

The judge even went on to conclude that the younger children are exposed to those topics the better—"As it is difficult to change attitudes and stereotypes after they have developed, it is reasonable for public schools to attempt to teach understanding and respect for gays and lesbians to young students …"

As we've said many times before, we believe that all human beings should be respected as sacred creations of the loving God and equally protected from harm—and children should be taught that basic tenet.

But teaching "respect" should never translate to mandatory same-sex marriage and homosexuality lessons against parents' will. Unfortunately though, as Massachusetts illustrates, once same-sex marriage becomes the law of the land, parents can lose control over those decisions.

Meanwhile in California, the fate of parents in that state also demonstrates how—once state-sanctioning of homosexual relationships is moved out of the category of sex education and into general civil and social law--parents lose their rights and religious freedoms.

In May 2009, the Alameda school board mandated lessons about homosexuality and same-sex relationships for elementary-age children—whether their parents liked it or not.

First-graders would be introduced to the same storybook that was at issue in the Massachusetts case--*Who's in a Family?* --featuring images of same-sex couples interspersed with pictures of animals, including an all-male elephant herd. In the second grade, kids would listen to *And Tango Makes Three*, a story about two male penguins who supposedly fall in love and hatch a chick together.

Parents who objected discovered they could not opt their kids out of this teaching—even if it conflicted with their family's most deeply held religious convictions or they just didn't think their children were psychologically prepared to handle the topics.

The parents tried to protect their rights by filing a lawsuit asking for the right to opt out their kids. To make their case, the parents cited a provision in the California education code granting parents the right to opt kids out of school health instruction if it conflicted with families' religious beliefs.

But a judge determined the lessons didn't qualify as health instruction—and therefore the opt-out provision didn't apply. The judge also specified that "any opt out right" is "outweighed by the

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policies against discrimination and harassment of students from LGBT [lesbian, gay, bisexual, transgender] families." [8]

Thus, the precedent has already been set in California and elsewhere that statewide laws which elevate homosexual relations to a government-sanctioned level can and will be used to undermine parental rights and family's religious freedoms. To date, laws promoting homosexuality automatically trump parental rights and religious freedoms. In light of these facts and public news accounts, there is little question about how legalizing gay marriage will tangibly and concretely affect our public schools and parental rights. \

III: The High Cost of Defending Marriage: Voter Beware

In addition, I cannot let the opportunity pass to highlight for this committee the tremendous harassment and intimidation of voters in this country who have publicly supported efforts to define marriage as between one man and one woman. Churches, adoption agencies, business owners and parents aren't the only ones whose rights are threatened by the advancement of same-sex marriage. I'm referring to voters – everyday folks like the people who live in your home states – not political operatives or ideological activists-- who have been ridiculed and threatened for exercising their rights as Americans.

While proponents of this bill attempt to portray this as a "civil rights" struggle for gays and lesbians, the facts are that the civil rights of traditional Americans, including people of faith, are being trampled for taking an opposing point of view in this cultural conflict.

In the public debate leading up to the passage of California's 2008 ballot initiative known as Prop 8 (defining marriage in California as between one man and one woman), the attitudes and actions of those seeking Prop 8's defeat turned ugly. Some of the examples of the ugliness perpetrated by supporters of Prop 8 are well-documented in the Heritage Foundation paper entitled "The Price of Prop 8. [9] The examples collected from public sources included instances of harassment, intimidation, vandalism, racial scapegoating, blacklisting, loss of employment, angry protests, violence, and at least one death threat. Catholic, Protestant and Mormon churches were all vandalized. And why? Simply because they had shown support for a definition of marriage that has served society well for thousands of years.

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[8] *Balde v. Alameda Unified School District* (2009). Superior Court of California, County of Alameda, Order No. RG 09-468037. Accessible at: http://apps.alameda.courts.ca.gov/domainweb/service?ServiceName=DomainWebService&PageName=itree&Action=23772358; News release. "Parents Can't 'Opt Out' of Lessons About Family Diversity." Dec. 3, 2009. Groundspark. Accessible at: http://groundspark.org/3457

[9] Thomas M. Messner, "The Price of Prop 8 | The Heritage Foundation." *Conservative Policy Research and Analysis | The Heritage Foundation*. 22 Oct. 2009. Web. 18 July 2011. http://www.heritage.org/research/reports/2009/10/the-price-of-prop-8

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In Washington State, there was a public referendum to repeal a 2009 civil union law, and gay activist organizations sought the identities of anyone who had signed a petition in favor of initiating the public vote, as well as the identities of anyone who gave campaign contributions for the repeal effort. The organizations that supported the repeal had learned the lessons of California's ugly backlash over Prop 8, and sought legal protection for those petition signers and campaign donors. In court documents [10] filed in that case, the instances of intimidation and threats against known traditional marriage supporters filled several pages. Many were too vile to be recounted here, but here is a representative sampling:

"I will kill you and your family."

"I'm going to kill the pastor."

"If I had a gun I would have gunned you down along with each and every other supporter."

"We're going to kill you"

"You're dead. Maybe not today, maybe not tomorrow, but soon…you're dead."

In addition to the verbal threats, churches had graffiti scrawled across their walls and artwork, swastikas were left on lawns and walls, bricks were thrown through their windows and glass doors, adhesive was poured in their locks, and suspicious packages filled with white powder were mailed to their sanctuaries.

IV: Social Sciences and Benefit of Married Mother/Father Family

One of the more compelling reasons for preserving marriage as one man and one woman is its impact on children. The last forty years have seen a great deal of change in family formation in the United States, Canada and most of Europe. There has been an a wealth of research published in leading scientific journals across the spectrum on how these changes – dramatic increases in divorce, cohabitation, fatherlessness/unmarried child-bearing and step-families – have impacted both child and adult well-being.

One would be very hard-pressed to find evidence in the vast social science, psychological and medical literature on ways that any of these new family forms have improved any important measure of well-being for children, adults and the society at large. Each of them has largely served to seriously diminish the well-being of children, women, men and society at large.

It is a strong and dramatically consistent finding in the social science, psychological and medical literature that children do best when living with their own married mother and father.[11]

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[10] Plaintiff's Motion for Summary Judgment and Brief in Support of Motion for Summary Judgment, Doe v. Reed, United States District Court, Western District of Washington, filed 06/29/11, Case No. 3:09-cv-05456-BHS. http://www.jamesmadisoncenter.org/cases/files/2011/06/209-Plaintiffs-Motion-Brief-for-Summary-Judgment.pdf

[11] Susan Brown, "Marriage and Child Well-Being: Research and Policy Perspectives," *Journal of Marriage and Family*, 72 (2010) 1059-1077; Paul Amato, "The Impact of Family Formation Change on the Cognitive, Social and

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In fact, the U.S. Department of Health and Human Services explains in its new and exhaustive report, *Family Structure and Children's Health in the United States: Findings from the National Health Interview Survey, 2001-2007*, that children living with their own married biological or adoptive mothers and fathers were generally healthier and happier, had better access to health care, less likely to suffer mild or severe emotional problems, did better in school, were protected from physical, emotional and sexual abuse and almost never live in poverty, compared with children in any other family form.[12]

Emotional Well-Being of the Next Generation," in *The Future of Children*, "Marriage and Child Wellbeing," Volume 15, Number 2, Fall 2005, (Woodrow Wilson School of Public and International Affairs at Princeton and The Brookings Institution), 75-96; Cynthia Harper and Sara McLanahan, "Father Absence and Youth Incarceration," *Journal of Research on Adolescence* 14 (2004) 369-397; Wendy Sigle-Rushton and Sara McLanahan, "Father Absence and Child Well-Being: A Critical Review," in Daniel P. Moynihan, Timothy M. Smeeding and Lee Rainwater, eds., *The Future of the Family*, (New York, New York: Russell Sage Foundation, 2004), 116-155; Kristin Anderson Moore, et al., "Marriage From a Child's Perspective: How Does Family Structure Affect Children, and What Can We Do about It?" *Child Trends Research Brief*, June 2002; Mary Parke, "Are Married Parents Really Better for Children?" *Center for Law and Social Policy Policy Brief*, May 2003; Linda J. Waite and Maggie Gallagher, *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially*, (New York Doubleday, 2000); David Popenoe, *Life Without Father: Compelling Evidence that Fatherhood and Marriage Are Indispensible for the Good of Children*, (New York, The Free Press, 1997); Glenn T. Stanton *Why Marriage Matters: Reasons to Believe in Marriage in Postmodern Society*, (Colorado Springs, Pinon Press, 1997); Ronald P. Rohner and Robert A. Veneziano, "The Importance of Father Love: History and Contemporary Evidence," *Review of General Psychology* 5.4 (2001): 382-405; Kyle D. Pruett, *Fatherneed: Why Father Care is as Essential as Mother Care for Your Child*, (New York: The Free Press, 2000); David Blankenhorn, *Fatherless America: Confronting Our Most Urgent Social Problem*, (New York: Basic Books, 1994); Sara McLanahan and Gary Sandefur, *Growing Up with a Single Parent: What Hurts, What Helps*, (Cambridge: Harvard University Press, 1994); Deborah Dawson, "Family Structure and Children's Health and Well-Being: Data from the 1988 National Health Interview Survey on Child Health," *Journal of Marriage and the Family* 53 (1991): 573-584; Scott Coltrane, "Father-Child Relationships and the Status of Women: A Cross-Cultural Study," *American Journal of Sociology*, 93 (1988) 1060-1095; Michael Gordon, "The Family Environment of Sexual Abuse: A Comparison of Natal and Stepfather Abuse," *Child Abuse and Neglect*, 13 (1985): 121-130; Michael Stiffman, *et al.*, "Household Composition and Risk of Fatal Child Maltreatment," *Pediatrics*, 109 (2002), 615-621; Frank Putnam, "Ten Year Research Update Review: Child Sexual Abuse," *Journal of the American Academy of Child and Adolescent Psychiatry* 42 (2003) 269-279; Richard Koestner, *et al.*, "The Family Origins of Empathic Concern: A Twenty-Six Year Longitudinal Study," *Journal of Personality and Social Psychology* 58 (1990): 709-717; E. Mavis Hetherington, "Effects of Father Absence on Personality Development in Adolescent Daughters," *Developmental Psychology* 7 (1972): 313 –326; Irwin Garfinkel and Sara McLanahan, *Single Mothers and Their Children: A New American Dilemma* (Washington D.C.: The Urban Institute Press, 1986), pp. 30-31; Sara L. McLanahan, "Life Without Father: What Happens to Children?" Center for Research on Child Wellbeing Working Paper #01-21. Princeton University, August 15, 2001; Paul R. Amato and Fernando Rivera, "Paternal Involvement and Children's Behavior Problems," *Journal of Marriage and the Family* 61 (1999): 375-384; David Ellwood, *Poor Support: Poverty in the American Family* (New York: Basic Books, 1988); Ronald J. Angel and Jacqueline Worobey, "Single Motherhood and Children's Health," *Journal of Health and Social Behavior* 29 (1988): 38-52; L. Remez, "Children Who Don't Live with Both Parents Face Behavioral Problems," *Family Planning Perspectives*, January/February 1992; Judith Wallerstein, et al., *The Unexpected Legacy of Divorce: A 25 Year Landmark Study*, (New York: Hyperion, 2000); Nicholas Zill, Donna Morrison, and Mary Jo Coiro, "Long-Term Effects of Parental Divorce on Parent-Child Relationships, Adjustment, and Achievement in Young Adulthood," *Journal of Family Psychology*, 7 (1993):91-103; Wendy D. Manning and Kathleen A. Lamb, "Adolescent Well-Being in Cohabiting, Married and Single-Parent Families," *Journal of Marriage and Family*, 65 (2003) 876-893.

[12] D.L. Blackwell, *Family Structure and Children's Health in the United States: Findings from the National Health Interview Survey, 2001-2007, National Center for Health Statistics*, U.S Department of Health and Human Services, Vital Health Statistics, 10 (246), 2010.

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In fact, in all the ways we know how to measure child well-being, having a married mother and father is consistently shown to be the ideal family form across all important measures. And as I will point out next, no reliable data indicates that same-sex parenting comes anywhere close to rivaling married mothers and fathers for optimum child well-being outcomes.

If we are concerned for the well-being of children in all important measures, the published science compels us to elevate the cross-culturally tested form of natural marriage over the experimentation of same-sex parenting in our nation's policies and cultural values.

Weaknesses of Same-Sex Parenting (SSP) Studies

Social scientists need two things to reach strong, reliable conclusions: 1) large, diverse and representative samples, and 2) decades to collect and observe data on these diverse populations.

We have had each of these in research on the various family forms we have seen in our nation: divorce, cohabitation, fatherlessness and unmarried child-bearing. We have not had either of these in research on same-sex parenting. Yet, this has not kept some from publishing studies claiming that same-sex parenting is of no concern, but in fact can boost child well-being.

The only reliable conclusion that can be drawn from the current body of studies on same-sex parenting is that we don't have any good data to make real conclusions yet. Our organization is very familiar with the politics of the current body of research on same-sex parenting. First, nearly every study published to date on same-sex parenting is conducted by scholars with track records closely connected to GLBT causes and outcomes. This does not mean they cannot do fair work, but it is important to note these connections. There are three primary problems with the current body of same-sex parenting research that must be observed and appreciated.

a) Ambiguous Conclusions

The first major statement in support for same-sex parenting came in 2002 from the well-respected American Academy of Pediatrics (AAP). Here is the first line of the abstract from the AAP's initial statement on same-sex parenting.

> "a growing body of scientific literature demonstrates that children who grow up with 1 or 2 gay and/or lesbian parents fare as well in emotional, cognitive, social, and sexual functioning as do children whose parents are heterosexual."[13]

First, the issue is not about the sexual orientation of the parents per se, but the formation of the family itself. Is the child being raised by his or her own mother and father? Second, the question is what kind of heterosexual homes did the AAP compare the children raised by same-sex parents: single, unmarried, fatherless, cohabiting, step, divorced or married intact? This is *the* vital question for each of these forms of heterosexual homes have dramatically different well-being outcomes for adults and children. But the AAP, nor any of the studies they cite, address or clarify this fundamentally important question. Therefore, it is a practically meaningless statement in terms of telling us anything about same-sex parenting.

[13] Ellen C. Perrin, MD, "Technical Report: Coparent and Second-Parent Adoption by Same-Sex Parents," *Pediatrics*, Vol. 109 No. 2, (2002) p. 341. http://aappolicy.aappublications.org/cgi/reprint/pediatrics;109/2/339.pdf

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b) Notoriously weak methodologically

The studies to date looking at same-sex parenting relying nearly exclusively on very poor, narrow samples which effectively deem the findings practically useless.

William Meezan and Jonathan Rauch, two strong supporters of same-sex marriage, have provided perhaps the most recent and thorough review of the research on how same-sex parenting could impact children (published in late 2005). In their fair and careful article — published jointly by Princeton University and the Brookings Institute — they could only recommend four studies out of the total body of current research examining same-sex parenting as "methodologically rigorous." Elsewhere in their article, they conclude, "In other words, virtually no empirical evidence exists on how same-sex parents' marriage might affect their children."[14]

The research published since their review of the literature has not improved the situation. Nearly all the research published to date on same-sex child-rearing is conducted on lesbian homes of largely white, middle-class moms in larger urban areas, using mothers who have volunteered to participate in such studies or were gained through their use of sperm banks.[15]

The two leading studies on same-sex parenting published in respectable research journals in 2010 merit close examination. This first study, published in the *Journal of Marriage and Family* compares the literature on children raised in same-sex homes with a dramatically small fraction of the literature of those raised in heterosexual two-parent homes. They admit that the studies on the heterosexual homes are methodologically "relatively stronger" national representative samples, while those on lesbian parenting are "somewhat weaker" samples.[16]

The methodological problems in the second study, published by the American Academy of Pediatrics are also clear to even the casual reader.[17] The data examined was collected on only 78 children through the mothers' self-reporting on their child's welfare. The study explains it used snowball samples also - mothers recruited by volunteering for the study (rather than randomly selected) via announcements at "lesbian events, women's bookstores, and in lesbian newspapers throughout metropolitan areas of Boston, Washington DC and San Francisco."[18]

So these were mothers from more urban and suburban areas, participants in ideological lesbian-thought culture and therefore, likely highly motivated study participants. They knew they were participating in something called the National Longitudinal Lesbian Family Study (NLLFS), evidenced by a remarkable and very uncommon 93% retention rate over the life of the study.

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[14] William Meezan and Jonathan Rauch, "Gay Marriage, Same-Sex Parenting, and America's Children," in *The Future of Children* 15 (2005): 104, 105, 107.

[15] Timothy J. Biblarz and Judith Stacey, "How Does The Gender of Parents Matter?" *Journal of Marriage and Family* 72 (2010): 3-22, p. 6, 10; Nanette Gartrell and Henny Bos, "US National Longitudinal Lesbian Family Study: Psychological Adjustment of 17-Year-Old Adolescents," *Pediatrics*, 126 (2010) 1-9.

[16] Timothy J. Biblarz and Judith Stacey, "How Does The Gender of Parents Matter?" *Journal of Marriage and Family* 72 (2010): 3-22, p. 6.

[17] Nanette Gartrell and Henny Bos, "US National Longitudinal Lesbian Family Study: Psychological Adjustment of 17-Year-Old Adolescents," *Pediatrics*, 126 (2010) 1-9.

[18] Gartrell and Bos, 2010, p. 3.

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Professor Mark Regnerus, a research sociologist at the University of Texas at Austin, one of the leading research centers on sociology of the family in the world, explains the qualitative difference between these two methods:

> The bottom line is that snowball samples are nice for undergrads to learn about data collection, but hardly high-quality when you're a professional sociologist working on a complex research question with significant public ramifications. It's not fair - not even close - to compare parenting and child outcomes from a national probability sample of hetero parents and a snowball sample of lesbian parents[19]

c) Dramatically Overstate Their Case

These articles overplay their hands by not merely saying that same-sex parented can do as well as mom and dad homes, but by saying two moms do better:

> In fact, based strictly on the published science, one could argue that two women parent better on average than a woman and a man... Lesbian coparents seem to outperform comparable married heterosexual, biological parents on several measures even while being denied the substantial privileges of marriage.[20]

The second study explains,

> "According to their mothers' reports, the 17-year-old daughters and sons of lesbian mothers were rated *significantly higher* in social, school/academic, and total competence and *significantly lower* in social problems, rule-breaking, aggressive and externalizing problem behavior than their age-matched counterparts in [a] normative sample of American Youth."[21] (emphasis added)

And that when their moms broke up, it had no effect on the children whatsoever:

> "Within the lesbian family sample, no…differences were found among adolescent offspring…whose mothers were still together and offspring whose mothers had separated."[22]

If this data is to be believed, this means that lesbian homes are now the new super-homes for kids!

First, apparently children raised by two lesbian moms do better than kids in heterosexual parents at receiving the good and avoiding the bad in life.

Second, even if a child's two moms split, these kids seem to be completely unaffected, Teflon-like, by this dramatic family change! This is in dramatic contrast to what mountains of research has consistently found when children's mothers and fathers end

[19] Correspondence between Dr. Regnerus and Glenn T. Stanton, Director of Family Formation Studies, Focus on the Family, August 12, 2010.
[20] Biblarz and Stacey, 2010, p. 17.
[21] Gartrell and Bos, 2010, p. 1.
[22] Gartrell and Bos, 2010, p. 1.

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their relationships; the negative impact upon children is significant both in degree and duration.[23]

Are we really to believe that we disadvantage children by giving them fathers as active participants in their lives, rather than minimally as sperm-donors?

This first study also points to another very serious problem with same-sex marriage and relationships. They are notoriously short-lived.

Weaknesses of Same-Sex Marriage Relationships

Both research and the writings of same-sex advocates tell the story that same-sex marriage and relationships are indeed qualitatively different than natural man/woman marriage. Three key components are outlined here.

a) Greater Likelihood of Divorce/Break-up

Same-sex relationships, even those that enjoy the benefit of legal protection, are less durable and long-lived than heterosexual marriages.

Research from Scandinavia, where same-sex relationships enjoy signifieantly strong legal and social support, shows that "divorce-risk levels are considerably higher in same-sex marriages"[24] compared to natural male/female marriages. What is more, "the divorce risk for female partnerships is double that for male partnerships."[25] The male/male relationships divorce rates are 50 percent higher than opposite sex marriages.[26]

The first Biblarz and Stacey study (2010) cited in the previous section explained that the "double-dose" of mother care which is supposedly so good for children can be, the authors admit, toxic to the relationship causing these homes to break-up at disturbingly high rates.

> "...a double-dose of maternal investment sometimes fostered jealousy and competition between comothers which the asymmetry of the women's genetic, reproductive, and breast-feeding ties to their infant could exacerbate."[27]

They cite one major comparative study between heterosexual and lesbian homes where, in the 5-year period of the study, 6 of the 14 lesbian-mother-headed homes had broken up compared to only 5 of the 38 mom and dad-headed homes. This is supposedly explained because the

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[23] E. Mavis Hetherington, *For Better or For Worse: Divorce Reconsidered*, (W.W. Norton, 2002); Judith Wallerstein, *et al.*, *The Unexpected Legacy of Divorce: A 25 Year Landmark Study*, (Hyperion, 2000); Judith Wallerstein, "The Long-Term Effects of Divorce on Children: A Review," *Journal of the American Academy of Child and Adolescent Psychiatry* 30 (1991) 349-360; Cynthia Osborne and Sara McLanahan, "Partnership Instability and Child Well-Being," *Journal of Marriage and Family* 69 (2007) 1065-1083; Andrew J. Cherlin, *The Marrriage-Go-Round: The State of Marriage and Family in America Today* (New York: Alfred A. Knopf, 2009) p. 10-12.

[24] The Scandinavian countries of Denmark, Norway and Sweden did not have legalized marriage per se at the time this study was published, but the gay-friendly author referred to them as marriage in his study because they legally approximate marriage in both their legal form and function. See p. 84 in citation following.

[25] Gunnar Andersson, *et al.*, "The Demographics of Same-Sex Marriage in Norway and Sweden," *Demography*, 43 (2006) 79-98, p. 79.

[26] Andersson, 2006, p. 93.

[27] Biblarz and Stacey, 2010, p. 11.

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"comparatively high standards lesbians bring to their intimate unions correlate with higher dissolution rates."[28] But these scholars fail to make any mention of how the break-up of a parental relationship profoundly impacts children in negative ways.[29]

b) Differing Definition of Monogamy

Influential leaders in the gay community – and supporters of same-sex marriage – hold a different view of what marital fidelity means in mainstream culture. Dan Savage – the founder of the "It Gets Better Project," that President Barack Obama has supported and participated in[30] - proposes that we replace our social expectation for marital fidelity and monogamy with what the *New York Times* explained as the "American Gay Male, after that community's tolerance for pornography, fetishes and a variety of partnered arrangements, from strict monogamy to wide openness."[31] He says that good, healthy marriages have to be "game" for additional outside sexual encounters. This is more natural to same-sex relationships than it is for male and female marriages.

How Mothers and Fathers are Essential to Healthy Child Development

The overwhelming majority of same-sex parenting homes are headed by women. This means the growth of same-sex homes are also the growth of more intentionally fatherless homes.

Presidents Clinton, Bush and Obama have all initiated strong and vibrant fatherhood promotion programs in their administrations to increase the number of children growing up being raised by their mother and father.

A great wealth of research has consistently shown that when both boys and girls are raised apart from their father, they face serious set-backs in all the important measures of child development and well-being.[32]

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[28] Biblarz and Stacey, 2010, p. 12.

[29] E. Mavis Hetherington, *For Better or For Worse: Divorce Reconsidered*, (W.W. Norton, 2002); Judith Wallerstein, *et al.*, *The Unexpected Legacy of Divorce: A 25 Year Landmark Study*, (Hyperion, 2000); Judith Wallerstein, "The Long-Term Effects of Divorce on Children: A Review," *Journal of the American Academy of Child and Adolescent Psychiatry* 30 (1991) 349-360; Cynthia Osborne and Sara McLanahan, "Partnership Instability and Child Well-Being," *Journal of Marriage and Family* 69 (2007) 1065-1083; Andrew J. Cherlin, *The Marrriage-Go-Round: The State of Marriage and Family in America Today* (New York: Alfred A. Knopf, 2009) p. 10-12.

[30] See http://www.whitehouse.gov/blog/2010/10/21/president-obama-it-gets-better

[31] Mark Oppenheimer, "Married, With Infidelities," *New York Times Magazine*, June 30. 2011.

[32] Paul R. Amato and Fernando Rivera, "Paternal Involvement and Children's Behavior Problems," *Journal of Marriage and the Family* 61 (1999): 375-384; Ronald P. Rohner and Robert A. Veneziano, "The Importance of Father Love: History and Contemporary Evidence," *Review of General Psychology* 5.4 (2001): 382-405; Cynthia Harper and Sara McLanahan, "Father Absence and Youth Incarceration," *Journal of Research on Adolescence* 14 (2004) 369-397; Wendy Sigle-Rushton and Sara McLanahan, "Father Absence and Child Well-Being: A Critical Review," in Daniel P. Moynihan, Timothy M. Smeeding and Lee Rainwater, eds., *The Future of the Family*, (New York, New York: Russell Sage Foundation, 2004), 116-155; David Popenoe, *Life Without Father: Compelling Evidence that Fatherhood and Marriage Are Indispensible for the Good of Children*, (New York, The Free Press, 1997); Kyle D. Pruett, *Fatherneed: Why Father Care is as Essential as Mother Care for Your Child*, (New York: The Free Press, 2000); David Blankenhorn, *Fatherless America: Confronting Our Most Urgent Social Problem*, (New York: Basic Books, 1994); K. Alison Clarke-Stewart, "And Daddy Makes Three: The Father's Impact on Mother and Young Child, *Child Development*, 49 (1978): 466-478; Richard Koestner, Carol Franz and Joel Weinberger, "The Family Origins of Empathic Concern: A 26-Year Longitudinal Study," *Journal of Personality*

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There are many scholars who explain how the differences in mothers and father's way of parenting benefits and enhances child development in important ways. One source worth noting is Professor Emeritus of Psychology at Stanford University, Eleanor Maccoby.[33] In her work, she outlines a number of important ways that mothers and fathers are wired, how this impacts their parenting styles and how these are important for healthy child development.

Play

Mothers' way of play tends to stimulate fine-motor skill development while fathers stimulates large motor development.[34] Fathers are also more likely to roughhouse with their children, both boys and girls, and in doing so, teach their children about how to be mindful of not playing too rough, thus teaching children to regulate their physical energy and actions.

Protect and Prepare

Mothers are more likely to protect their children from the dangers of the world. Fathers are more likely to work to prepare their children for to be able to meet the dangers of the world.[35]

Take Proper Chances

Fathers are more likely to help their children take the right kind of chances in life, thus helping them learn the important life lessons of calculating and managing risk. This starts with helping both boys and girls jump off the next highest step of the porch or climb to the next highest limb in the tree. This builds confidence in both boys and girls.

Language Development

Mothers and fathers stimulate different kinds of language development in children. Mothers speak more on the level of the child. Fathers are not as likely to moderate their vocabulary for the sake of the child. This often ends in an impromptu vocabulary lesson for the child. Male parents also make more use of non-verbal cues – verbal noises like grunts as well as eye and head movement. Both boys and girls with fathers have more opportunity to learn how men communicate non-verbally and what such cues really mean.[36]

Empathy

Children get more of their empathic development from their fathers. Research also shows that children with involved fathers have greater levels of self-regulation and control as well as lower

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and Social Psychology, 58 (1990): 709-717; Cheri A. Vogel, *et al.*, "Relation Between Father Connectedness and Child Outcomes," *Parenting: Science and Practice*, 6 (2006): 189-209;

[33]Eleanor E. Maccoby, *The Two Sexes: Growing Up Apart; Coming Together*, (Cambridge, MA: Harvard University Press, 1998).

[34] Maccoby, 1998, p. 267-268.

[35] Popenoe, 1997, p. 140.

[36] Maccoby, 1998, p. 269.

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levels of demonstrated aggression. A number of studies show that "fathers may be particularly important for helping very young children gain control over intense emotions."[37]

Probably the most sophisticated study on the subject – a longitudinal examination - initiated in the mid-1950s and the conclusions published in 1990 - found the strong influence fathers have on children developing a sense of concern and compassion was "quite astonishing." The research found that the strongest factor in impacting whether or not children demonstrated greater levels of empathic concern in their 30s and beyond was father's participation in child-care. The study's authors explain that this factor of paternal child-care was in fact stronger than the three strongest maternal factors combined. The 26-year-long study concludes with the recognition, "These results appear to fit with previous findings indicating that pro-social behaviors such as altruism and generosity in children were related to active involvement in child care by fathers."[38]

In a nutshell - an analysis of more than 100 studies on parent-child relationships found that having a loving and nurturing father was *as important* for a child's happiness, well-being, and social and academic success *as having a loving and nurturing mother*. Some studies indicated father-love was a *stronger* contributor than mother-love to some important positive child well-being outcomes. The study concludes:

> *"Overall, father love appears to be as heavily implicated as mother love in offsprings' psychological well-being and health."*[39]

For all of these reason, I ask that the members of the Senate Judiciary Committee uphold, rather than undermine, the manifold protections embodied in the state constitutional amendments and statutes which are in place to protect the traditional definition of marriage.

Thank you.

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[37] Cheri A. Vogel, *et al.*, "Relation Between Father Connectedness and Child Outcomes," *Parenting: Science and Practice*, 6 (2006): 189-209, P. 204.

[38] Richard Koestner, Carol Franz and Joel Weinberger, "The Family Origins of Empathic Concern: A 26-Year Longitudinal Study," *Journal of Personality and Social Psychology*, 58 (1990): 709-717, p. 713.

[39] Ronald P. Rohner and Robert A. Veneziano, "The Importance of Father Love: History and Contemporary Evidence," *Review of General Psychology* 5.4 (2001): 382-405.

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Letter from Mrs. Colleen Montgomery, CPA
Burlington Vermont
To Senator Patrick J. Leahy

I am a CPA in Burlington. Our small firm prepares numerous tax returns for same sex couples-some married/civil unioned and some not. There is no question that these returns present additional challenges and they surely serve to remind these families that they are not considered equal outside of Vermont. I look forward to the day that we don't need to distinguish between "Married in VT" and "Married". I believe that quite a few of our couples will actually end up paying more tax once DOMA is gone---and they will be happy to do so. I know that our bills for tax preparation will be reduced---and we will be happy to take that cut in pay.

If there is anything we can do to help with the committee hearings, just let us know!

Mrs. Colleen Montgomery
Burlington, VT

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

Hearing on **S.598**,

"The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

Wednesday, July 20, 2011
Dirksen Senate office Building, Room 226
10:00 am

STATEMENT OF SUSAN M. MURRAY
of
Ferrisburgh, Vermont

Chairman Leahy, Ranking Member Grassley, and all the members of the Committee: On behalf of all the same-sex couples in Vermont who are legally married under our state's laws, and on behalf of their families, I want to thank you for holding this hearing today. And thank you, also, for allowing me to testify about the real harms which same-sex couples suffer because Section 3 of DOMA, the "Defense of Marriage Act," distinguishes between different types of married couples, and treats married gay and lesbian couples differently from all other married couples with respect to all federal laws and programs in which marital status is a factor.

I'd like to tell you some stories to illustrate the harm DOMA imposes – beginning with my own story.

* * * * * * *

I'm the oldest of seven children; I grew up in a good Catholic family. I was blessed with a happy childhood: my four sisters and two brothers and I had everything we needed in terms of material things, but we were also lucky to have had two wonderful parents, Paul and Barbara Murray. My parents taught us right from wrong; they taught us to treat others with kindness; and they taught us to be fair, and to speak up for what's right. My parents were devoted to their kids, and to helping us become successful, well-adjusted adults. They were married for 51 years before my dad died, six years ago.

That was *my* model for a successful marriage, and growing up, that was the kind of marriage I aspired to have in my own life. So when I realized, as a young adult, that I was gay, I despaired of ever having a life, and a love, like that of my parents.

But then I met a woman named Karen Hibbard – and I count myself blessed to have found love in my life. She's a Physician Assistant who works in emergency walk-in care at our local hospital, stitching people up and fixing their broken bones and generally helping them get the

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care they need. She loves to swim; I prefer to hike. She loves to paint watercolors; I like to garden. She can talk endlessly about biology; my passions are politics, and the Red Sox. Given our different interests, our friends didn't think we would last, but we've been together for over 25 years now. We've worked hard to care for and preserve our old farmhouse. Karen has spent time caring for animals, and has also served as our town's health officer. I've served on various community boards over the years, and, as an attorney, I've volunteered to represent folks who can't afford to pay lawyers but who need legal help in the civil and family courts. I've also worked over the years to help secure equal marriage rights for same-sex couples in Vermont.

Karen and I have built a life together, and are as committed to one another as my parents were to each another. And thanks to the legislature of the State of Vermont, we're now officially, legally married. Unfortunately, because of DOMA, the federal government doesn't recognize our legal marriage, so Karen and I don't have access to the same federal protections that my parents had.

Taxes

Karen and I can't file a joint federal income tax return as the married couple we are; instead, we have to file two separate returns as "single" persons. For our Vermont state tax, we file jointly, because Vermont recognizes our marriage. But since Vermont's state income tax is essentially a percentage of the federal income tax, we have to prepare a "ghost" or "recomputated" joint federal return, showing what our taxes *would have been* if the federal government recognized our union. We then have to attach that ghost return to our state return.

This makes calculating our taxes more complicated than for a similarly situated husband-and-wife couple in Vermont – which means we pay about $200 more a year to our accountant to prepare a joint federal return which we never file with the IRS, and two single federal returns we *do* file. Moreover, having to file two single returns forces us to disentangle and allocate assets and expenses that are essentially joint; a joint federal tax return would capture that economic partnership, but DOMA forces us to divide what is joint.

In preparing this Statement for the Committee, I asked our accountant to calculate the difference between the amount of federal taxes Karen and I paid in 2010, and the amount we would have paid if the federal government recognized our marriage. Our accountant determined that we paid $792 more in taxes last year, because of DOMA.

Ironically, as I was talking with my accountant, he told me that he has represented multiple same-sex couples who have paid significantly *less* in federal taxes because of DOMA. One of these couples had household income that was significantly more than Karen's and mine, but because most of that income was earned by one of the spouses and the other spouse earned very little, and because they had minor children, the lower-earning spouse was entitled to the Earned Income Tax Credit; the result was that this couple ended up paying about $2000 a year *less* in taxes, in each of the last two years, just because the federal government doesn't recognize their marriage. While taxes have to be assessed based on the circumstances of each couple, by ignoring this couple's marriage, the federal government has left money on the table, so to speak.

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Health Insurance

One of the reasons Karen and I pay more in taxes under DOMA is because of our health insurance. We are lucky that Karen's employer, Fletcher Allen Health Care, offers health insurance coverage for spouses of employees, including same-sex spouses, and I am covered under Karen's plan through her work.

When an employee whose marriage is recognized by the federal government receives employer-provided health insurance, the value of that health insurance (for the employee as well as for his or her spouse) is not considered income, so no tax is owed on the value of that benefit.

However, because of DOMA, I am not considered Karen's spouse, so the value of that health insurance coverage for me ($6,200 a year) is considered taxable income to Karen. She therefore has to pay income tax, as well as FICA and Medicare tax, on that "phantom" income – unlike her other married colleagues.

Health Care Expenses

Pursuant to federal law, Karen's employer allows employees to contribute pre-tax wages to a "flexible spending account," which they can then use to pay certain health care expenses. The federal government allows spouses of employees to use the money in these accounts – but because Karen's and my marriage isn't recognized under DOMA, I cannot use the account to help pay my health bills. That means that I have to pay my co-payments and deductibles and uncovered health expenses with after-tax dollars; it therefore costs us more for my health care than for the spouse of a couple whose marriage is recognized by the government.

Social Security Survivor and Death Benefits

Karen and I met when she was 30 and I was 28 years old; now she's 55 and I'm 53. We're starting to feel our aches and pains, and we've begun to look toward a future -- some day -- when we can slow down a bit at work, and eventually retire. But because of DOMA, we won't have the same financial security as other couples.

Karen and I have both contributed steadily into the social security system over the years, and according to the last Social Security Statements we've each received, she can expect to receive about $2000 a month when she reaches full retirement age, and I can expect about $2500 a month.

If I were married to a man and I died before my husband, my widower would be entitled to receive my higher social security benefits after my death. But because of DOMA, if I die first Karen will not be entitled to receive my higher social security benefit. That's a loss of $500 a month, or $6,000 a year. That's not a huge amount of money, but for Karen, it may be the difference between being able to stay in our home and having to sell it, since that's about the amount of our property taxes.

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There's another social security-related benefit we're not eligible for. A surviving spouse is entitled to a one-time lump sum death benefit upon the death of a spouse – but because of DOMA, neither Karen nor I will receive this benefit upon the death of the first of us.

Retirement Accounts

We are not counting on social security alone for our retirement years. Karen and I both have IRAs, and we both have employer-sponsored retirement accounts to which we've each been contributing for almost two decades. We've named each other as the beneficiary of these accounts. If Karen predeceases me, I will have to start withdrawing money from her retirement accounts immediately, and paying taxes on the withdrawals, even if I haven't reached age 70½. If our marriage were recognized like other marriages, I would be able to hold off on beginning those withdrawals until age 70½ -- when I will presumably be retired and in a lower tax bracket, so the tax on the withdrawals will be less.

None of the financial hardships Karen and I face are overwhelming; they're nothing like the devastating financial hardships my fellow witnesses Andrew Sorbo and Rob Wallen have endured. But these extra taxes and payments add up, and will become more of a burden when we're on fixed incomes. These examples illustrate the ways in which Karen and I -- and other married couples who are of the same-sex -- pay extra amounts, large and small, every day, because of DOMA. It adds up over time – and that affects our overall economic security.

* * * * * * *

Beyond my own story, as a practicing attorney I've seen myriad other examples of the unfairness that results when the government does not recognize same-sex unions.

Social Security spousal benefits

For instance, my clients June and Libby (not their real names; I have changed my clients' names in this Statement, for confidentiality reasons) are legally married in Vermont. Libby makes significantly more money than June, which doesn't matter so much while they are alive, because what is one belongs to the other and they support each other in every way they can; they are financially interdependent in every way. But because of DOMA, the Social Security Administration will ignore their many years together and will treat them as individuals. I worry that once they reach retirement age, June's social security benefits are likely to be less than half of Libby's, and if it weren't for DOMA, June would be able to increase her social security benefits to up to half of Libby's benefit – just like my mother did, when my father retired (my father was the main breadwinner in our family; my mother worked part-time and never paid much into the social security system). DOMA prevents June from receiving the same benefit that other married spouses receive – those that have been married a mere year, those who have been divorced, but not married couples like June and Libby who have been together for many years.

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Estate planning

My clients Jessica and Eileen recently came to see me about estate planning issues because they are concerned about being able to care for and support one another through the inevitable ups and downs over what they hope will be a long life together. While Eileen had virtually no assets in her name, her wife Jessica had just inherited a very large amount of money. As any other married couple, the two women feel responsible for one another, both financially and in every other way. The women came to me because they wanted me to set up an estate plan which would provide financial security for Eileen, in the event Jessica died first. They also wanted to try to protect as much of Jessica's inherited wealth as possible from federal estate taxation. If this were an opposite-sex married couple, this would have been straightforward and they could transfer unlimited assets from Jessica's name to Eileen's name, and taken maximum advantage of the unified credit amount that can be passed to third parties upon one's death without tax consequences. Not knowing what their older years will bring, they want me to protect their assets the way I can for any other married couple. But I can't, and they can't, because DOMA prevents such unlimited transfers for married same-sex couples. Instead, Jessica can transfer just $13,000 a year to Eileen; anything above that amount would have gift tax implications. The result is that these two women, who love one another and are legally married to one another, cannot provide for one another financially as easily as other married couples can.

Moreover, married couples can postpone the federal estate tax until after the second spouse dies – but this deferment is not available to same-sex married couples.

Family Medical Leave Act

There is one Vermont couple who are not my clients, but I know about the hardships they've faced because the federal government does not recognize their valid Vermont marriage. Their names are Raquel and Lynda, and they have been together for more than 30 years. Raquel suffers from degenerative arthritis in her neck, which requires her to get painful injections in her neck every three months. She can't drive after the injections, so Lynda needs to drive her the more than 2½ hours it takes to go to and from the hospital. Raquel has also had two surgeries in the past year, and has needed Lynda to help her as she recuperated. Lynda works for the U.S. Postal Service, and if her marriage were respected like that of her co-workers, she would be entitled to get time off under the Family Medical Leave Act (FMLA) so she could care for Raquel. But FMLA's protections don't apply to her, because of DOMA. So, during the past year Lynda has had to use 64 hours of vacation time to care for her spouse, rather than use sick time or unpaid leave time, as FMLA permits other married spouses to do.

* * * * * * *

All of the above stories concern couples who are legally married under Vermont law. But same-sex couples in Vermont have only been allowed to marry for fewer than two years now – before that, we had civil unions. While civil union couples were denied federal benefits because they were not married (and not because of DOMA), I know that the same issues these couples faced will arise as these couples get married. So, I'd like to share some of their stories with you:

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ERISA and Health Insurance

I represented one couple, Carey and Erin. Erin had two children from a prior marriage, and she and Carey were raising the children together. Carey worked at a big box store, and had health insurance through her employment there. Erin did not have health insurance at her job. Carey tried to add Erin and the children to her health insurance plan at work. However, her employer, a large "self-insured" company, rejected Carey's request; a company representative told Carey that the federal government did not *require* it to provide health insurance coverage to same-sex partners, so it had decided not to do so – even though it provided such coverage to the spouses of other employees. So, while Carey had health insurance, her partner and children did not – and this family's financial situation was much more precarious than it otherwise might have been.

Social Security Surviving Parent Benefits:

If a couple has a minor child and one parent dies during his or her working years, the surviving spouse/parent may be entitled to certain social security benefits. A few years ago I represented a woman named Cheryl, who was raising her infant son with her partner Jane. They didn't have a lot of money, but they wanted Cheryl to be a stay-at-home parent and have Jane be working full time to support the family. One morning, Jane got up as usual, spent some time playing with the baby, and hugged her partner Cheryl, before heading out to work. On the way there, she was tragically killed in a car accident, leaving Cheryl both grief-stricken and financially destitute. If she were a heterosexual, married spouse in the same situation, Cheryl would have been entitled to "parents" benefits under social security – a federal safety net designed to help families cope with the loss of their primary wage earner. DOMA, however, prevents payment of such "parents" benefits to surviving same-sex spouses, even though the wage earner pays taxes so he or she can have this safety net for his or her family. The absence of this kind of safety net, this lack of financial security, is exactly what married same-sex couples worry about for themselves as a couple and for their children. Unable to support herself and her young son, Cheryl was forced to sell the house she and Jane had purchased, and she had to move in with her parents to survive.

Pensions

My client Lani and her partner Jan have been together for many years; they live in rural Vermont, in a bungalow Lani designed and helped to build. Lani recently retired from her nursing job after many years. She's collecting her pension; but if she dies, her pension will stop, and her partner, Jan, will not receive any survivor benefits from the pension. If the federal government recognized their marriage, Lani would have been able to elect survivor benefits when she retired, so her wife Jan would have continued to receive income from the pension after Lani's death. (This election of survivor pension benefits is even available to ex-spouses, so long as they are heterosexual.) Lani's pension is an important part of these women's income, and Jan isn't sure how she will be able to cope financially if Lani does before her.

Real Estate

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My client Meg wanted to put her partner Molly's name on the deed to her house – owning the home together was, for them, a symbol of their union. Unfortunately, if Meg did this her bank could require her to pay off the entire mortgage all at once, under its "due on sale" clause in her mortgage. Federal law prevents banks from exercising such "due on sale" clauses when a person adds his or her spouse to the deed -- but this protection isn't available to same-sex married couples. Even if her bank did not exercise the due on sale clause, Meg would have had to file a gift tax return if the value being transferred was more than the annual gift tax amount – something that is not required of legally-recognized married spouses. So even the simple act of owning a house together is made difficult for same-sex couples; their desire to commit to one another emotionally and financially is a universal emotion, but the law makes it harder for them to do so.

Divorce

I do a lot of family law, including divorce. I'm happy to report that I have not had any same-sex divorces yet. But it would be unrealistic to think that I never will. Because of DOMA, same-sex divorcing spouses face significant financial problems that other divorcing couples don't face.

For example, in order to achieve an equitable division of property, in many divorce cases the court has to order the transfer of some or all of one spouse's property to the other spouse. Under federal law, property transfers between spouses pursuant to a divorce are not taxable, which is essential in preserving the couple's economic resources and achieving a fair resolution. But because of DOMA, in most cases this exemption doesn't apply to same-sex divorces. As a consequence it can be much harder for family courts to divide assets in such a way as to protect the more financially vulnerable spouse from economic hardship.

This inequity is most acute when money from one party's retirement account is being transferred to the other spouse. Such a transfer between divorcing spouses is not subject to tax or early withdrawal penalties under federal law. But DOMA prevents such tax-free transfers of retirement money between same-sex divorcing couples – which means that both the income tax *and* an early distribution penalty (if the account holder is under the minimum age for withdrawals) must be paid on the transfer.

Another DOMA-related problem in the divorce context relates to spousal support or alimony. Alimony is ordinarily deductible by the person paying it and income to the person receiving it, and ordinarily an obligation that is not dischargeable in bankruptcy. But because of DOMA, these provisions don't apply to same-sex divorcing spouses, thereby limiting the ability of the family court to protect the financially vulnerable spouse.

COBRA

Federal law requires certain private employers to offer continued health insurance coverage for a defined period of time to the spouses of employees who die or whose job is terminated; this law even applies to spouses who are divorcing the employee. However, because of DOMA, employers aren't required to provide such continued coverage for same-sex spouses.

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I've seen and experienced the myriad ways in which DOMA's discriminatory provisions have denied legally married same-sex couples and our families the same benefits and protections that the federal government provides to other families. I thank you for holding this hearing on S.598, The Respect for Marriage Act. I hope Congress will take action to alleviate these real harms suffered by hard-working American families, and to recognize and treat our marriages just like it does all other valid marriages in this country.

Thank you.

Sincerely,

Susan M. Murray

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CONGRESSMAN
JERROLD NADLER
8th Congressional District of New York

Statement of Representative Jerrold Nadler
Ranking Member, House Judiciary Subcommittee on the Constitution
Hearing before the Senate Committee on the Judiciary
S.598, *The Respect for Marriage Act*:
Assessing the Impact of DOMA on American Families

FOR IMMEDIATE RELEASE: Wednesday, July 20, 2011
CONTACT: Ilan Kayatsky, 212-367-7350

Thank you, Mr. Chairman, for holding this hearing and for your leadership on this issue. I also thank our colleague, the Senior Senator from California, Senator Feinstein, for her leadership in introducing the *Respect for Marriage Act* in the Senate earlier this year along with the Chairman and with our outstanding Junior Senator from New York, Senator Kirsten Gillibrand.

I am thrilled to be here today as the author and lead sponsor of the *Respect for Marriage Act*, which now enjoys the support of 119 co-sponsors in the House. Just yesterday, President Obama announced his support for the bill, and I applaud his leadership on this issue as well.

When Congress passed DOMA in 1996, it was not yet possible for a gay or lesbian couple to marry anywhere in the world. Fifteen years later, much has changed. Six states and the District of Columbia now include gay and lesbian couples in their state marriage laws, and there are an estimated 80,000 gay and lesbian couples married in this country.

As a result, and as former stereotypes about lesbians, gay men, and their relationships have fallen away, public understanding and opinion on this issue has shifted dramatically. While 75% of the public opposed allowing gay and lesbian couples to marry when Congress enacted DOMA, a majority of Americans now support marriage equality. Once viewed as a fiercely partisan issue, most individuals under age 45 who identify as Republican now support equal responsibilities and rights for gay and lesbian couples. Recently, in my home state, Republican and Democratic lawmakers joined forces and voted to include gay and lesbian New Yorkers in our state marriage laws.

This shift in understanding and opinion now makes clear what should have been apparent in 1996: the refusal to recognize the legal marriages of a category of our citizens based on their sexual orientation is unjustifiable. Time and experience have eroded the legal and factual foundations used to support DOMA's passage, and meaningful Congressional examination of this law is long overdue.

Some of Congress's reasons for DOMA have now been disavowed, most notably the claim that Congress can or should use the force of law to express moral disapproval of gay and lesbian Americans. It is no longer credible to claim that most Americans hold this view; and, of course, while once believed a legitimate reason for the law, it is now reason enough to declare it invalid.

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DOMA's supporters still claim that the law should survive, and argue primarily that DOMA serves a legitimate interest in protecting the welfare of children by promoting an "optimal" family structure – one that consists of a married opposite-sex couple raising their biological children. There is no credible support for the notion that children are better off with opposite-sex parents or that married gay and lesbian parents do not provide an equally loving, supportive, and wholesome environment. Any legitimate interest in children demands that the children of married lesbian and gay couples also receive the advantages that would flow from equal federal recognition of their parents' state marriages. No legitimate Congressional interest in the welfare of children is ever advanced by withholding protection from some children based on a desire to express moral disapproval of their parents. And it defies common sense to claim that it is necessary to harm or exclude the children of married same-sex couples in order to protect the children of opposite-sex couples.

Nor is it accurate to claim that Congress's only interest in marriage is in its children. Congress routinely allocates federal obligations and benefits based on marital status, and often does so to promote the welfare and security of these adults. These interests are not possibly served by DOMA.

While no legitimate federal interest is served by this law, DOMA unquestionably causes harm, as we will hear from the married gay and lesbian couples who have joined us today. These couples pay taxes, serve their communities, struggle to balance work and family, raise children, and care for aging parents. They have undertaken the serious public and legal pledge to care for and support each other and their families that civil marriage entails. They deserve equal treatment from the federal government; in fact, the Constitution demands it and the *Respect for Marriage Act* would provide it.

The *Respect for Marriage Act* honors the greatest traditions of this Nation. The bill does not define marriage but, instead, restores our practice of respecting all state-sanctioned marriages for purposes of federal law while allowing each state to determine its own marriage laws.

Unlike DOMA, the *Respect for Marriage Act* protects states' rights. Though each state now sets its own marriage law, DOMA currently prevents the federal government from treating all states' marriages equally. The *Respect for Marriage Act* would restore equal respect for the marriages of every state.

The *Respect for Marriage Act* also honors America's highest traditions of religious freedom. Religious views on marriage unquestionably differ, with some religions opposing and others solemnizing marriages for lesbian and gay couples. The *Respect for Marriage Act* allows this diversity to flourish, leaving every religion free to marry the couples it chooses without government interference.

In authoring this bill, I worked closely with family law experts to ensure that the federal government once again works cooperatively with the states to support and stabilize American families. I am confident that this bill strikes the right balance, and I look forward to working with all of you to ensure its passage.

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Jerrold Nadler has served in Congress since 1992. He represents New York's 8th Congressional District, which includes parts of Manhattan and Brooklyn.

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Addressing Inequality in the Law for Permanent Partners

Written Testimony Submitted to U.S. Senate Committee on the Judiciary

Hearing: "S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

Wednesday, July 20, 2011

Statement of Victoria F. Neilson, Esq., Legal Director, Immigration Equality

Introduction

Immigration Equality is a national organization that works to end discrimination in U.S. immigration law, to reduce the negative impact of that law on the lives of lesbian, gay, bisexual, transgender (LGBT) and HIV-positive people, and to help obtain asylum for those persecuted in their home country based on their sexual orientation, transgender identity or HIV-status. Immigration Equality was founded in 1994 as the Lesbian and Gay Immigration Rights Task Force. Since then we have grown to be a fully staffed organization with offices in New York and Washington, D.C. We are the only national organization dedicated exclusively to immigration issues for the LGBT and HIV-positive communities. Over 15,000 people subscribe to our monthly e-newsletter, and nearly 20,000 unique visitors consult our informational website each month. Our legal staff answers more than 2,000 queries annually from individuals throughout the entire U.S. and abroad via telephone, email and in-person consultations. In 2006, we collaborated with Human Rights Watch to publish a ground-breaking report on the plight of gay and lesbian binational couples, entitled *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law.*

We applaud Senator Leahy for convening this hearing today and for his leadership over many years in the fight for full equality under U.S. law for lesbian and gay Americans and their families. We also thank Senator Feinstein for introducing this important legislation and for her leadership on behalf of LGBT families.

Although Immigration Equality works on many issues affecting the LGBT immigrant community, no issue is more central to our mission than ending the discrimination that gay and lesbian binational couples face. Because there is no recognition of the central relationship in the lives of LGBT Americans, they are faced with a heart-rending choice that no one should have to make: separation from the person they love or exile from their own country.

The recent change in New York law to celebrate marriages for all New Yorkers, without regard to sexual orientation, is bittersweet for the couples we serve. Since all immigration benefits are federal, until the so-called Defense of Marriage Act ("DOMA") is repealed or overturned by the Supreme Court, loving, married couples often have no way to remain together lawfully in the United States.

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Family Unification

Family unification is central to American immigration policy because Congress has recognized that the fundamental fabric of our society is family. Family-based immigration accounts for roughly 65% of all legal immigration to the United States.[1] Family ties transcend borders, and in recognition of this core value, the American immigration system gives special preference for the spouses of American citizens to obtain lawful permanent resident status without any limit on the number of visas available annually. Lesbian and gay citizens are completely excluded from this benefit.

The Scope of the Problem

An analysis of data from the 2000 Decennial Census estimated that approximately 36,000 same-sex binational couples live in the United States.[2] This number is miniscule compared to overall immigration levels: in 2010, a total of 1,042,625 individuals obtained lawful permanent resident status in the United States.[3] Thus, if every lesbian and gay partner of an American, currently in the U.S. were granted lawful permanent residence in the U.S., these applications would account for .03% of all grants of lawful permanent residence.

The couples reported in the census are, on average, in their late 30s, with around one-third of the individuals holding college degrees.[4] The average income level is $40,359 for male couples and just over $28,000 for females.[5] Despite policy disincentives for openly gay and lesbian individuals to join the military, 7% of citizen partners and 3% of non-citizen partners are military veterans.[6] Significantly, almost half, 46%, of all lesbian and gay binational couples are raising children in the home.[7] Each of these statistics represents a real family, with real fears and real dreams, the most fundamental of which is to remain together.

The Human Toll

Every day Immigration Equality hears from individuals in lesbian and gay binational couples who tell us painful tales of trying to maintain their families despite almost impossible odds. To understand the real human impact of the current law, I will recount just some of the real-life stories that illustrate the scope of this injustice.

> *Frances Herbert and Takako Ueda have been in a committed, loving relationship for over a decade. The couple first met in 1980 when they were both attending Aquinas College in Grand Rapids, Michigan. Takako returned to Japan after college. Frances and Takako reunited in 2000 when Takako returned to the United States as a student and the couple began to share their lives together. On April 26 of this year, they affirmed their love to one another by marrying in their home state of Vermont. Finally, in July of this year, Takako's authorized stay in the United States expired. Frances has lived in Vermont for much of her life. If Frances and Takako were different sexes, Frances could sponsor her spouse for permanent residence through a routine application with USCIS. Instead, they live in daily fear of separation.*

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It is estimated that married couples enjoy more than 1,100 federal rights and benefits that flow directly from the government's recognition of their marriage. Of these myriad rights, what could be more crucial than the most fundamental right that most spouses take for granted – the right to be together?

Bradford Wells, 55, and his Australian husband, Anthony Makk, 48, have been together for 18 years. The couple lives in the San Francisco Bay Area, and legally wed in 2004, in Massachusetts, where Bradford is from originally. Anthony has tried to remain lawfully in the U.S. by making a substantial investment in a U.S. property and seeking an investor's visa. Unfortunately, his financial investment was not considered high enough to qualify him for a long-term visa. The last time Anthony entered the U.S., as a visitor, he was told by airport officials that he likely would not be allowed back into the U.S. again as a tourist because he had been spending too much time here. In recent years, Anthony has become the primary caretaker for Bradford, who is battling significant health issues, including AIDS, advanced heart disease and osteoarthritis. Anthony provides critical support to Bradford, including administering his medications and ensuring his day-to-day care. Bradford has no family in California to offer support, so he is completely dependent on Anthony for such care. With Anthony's authorized stay set to expire, he was faced with the impossible choice of leaving his ailing husband, knowing they might never see each other again, or remaining in the U.S. with an uncertain legal status. No family should have to go through this. If the Respect for Marriage Act is passed, Bradford could sponsor his husband for lawful permanent residence.

The Brain Drain

For many couples there is simply no option for the foreign national to remain in the U.S. lawfully and, rather than separate, the couple chooses to move abroad. In addition to the personal loss that families suffer the community as a whole loses out when talented foreign nationals and their American spouses have to choice but to leave the U.S. Every time that an American and his partner make the gut-wrenching decision to leave the U.S., our country loses a contributing member of our society.

Jason Vassy, age 32, met his future partner, Scott Hadland, age 29, in medical school at Washington University in St. Louis in 2004. Within a year, Jason and Scott were dating. Following medical school they moved to Baltimore, where each earned a Masters in Public Health. The couple married in Canada in September 2010 and has now settled in Boston, Massachusetts. Jason and Scott are primary care physicians serving largely low income patients in Boston. Scott is a resident in pediatrics at Boston Children's Hospital. Jason is a fellow in general medicine and serves patients at Massachusetts General Hospital. Scott, a Canadian, is in the U.S. on a non-immigrant H1B visa. Because Jason, a U.S. citizen, is unable to sponsor his spouse for legal permanent residence, Scott and Jason's future in the U.S. remains uncertain. Without a permanent status based upon his marriage to Jason, Scott must apply to renew his non-immigrant visa and must rely on his employer to one day sponsor him for legal permanent residency. Massachusetts stands to lose two very well-educated physicians if Scott were

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unable to stay here permanently. If Scott cannot renew his visa or if his employer does not one-day sponsor him, the couple would have no choice but to go into exile in Canada and the United States will lose two talented young physicians who are specializing in an under-served area of medicine.

Passing the Respect for Marriage Act, would mean that the couples described above would be afforded the same opportunity to prove the bona fides of their relationships and eligibility for lawful permanent residence to USCIS that different sex couples do every day.

Family Unity is the backbone of the U.S. immigration system. There are currently at least 19 countries that allow their citizens to sponsor long-term, same-sex partners for immigration benefits. These countries include Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden Switzerland, and the United Kingdom. At least seven of these countries grant full marriage equality to lesbian and gay families.[8]

Conclusion

The family unit is at the heart of American society and as such, the fundamental tenet of our immigration system is to keep families together. For too long, gay and lesbian American citizens, their children, their parents, and their spouses, have been unable to live the American dream because the U.S. immigration system does not value their families. Despite growing equality at the state level, the federal DOMA prevents Americans from providing any avenue for their lesbian or gay spouses to obtain lawful status in the United States. The result has been a "brain drain" of talented workers and taxpayers; it has meant lives of instability and fear for children who don't know whether their parents can stay together; and it has meant that Americans have been forced to make terrible choices between the loves of their lives and the country they love. It is time for our government to end this inequality and pass the Respect for Marriage Act so that lesbian and gay Americans can live without fear of separation from their spouses.

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[1]In 2010, family-based immigration accounted for 691,003 grants of lawful permanent resident status, Department of Homeland Security, Annual Flow Report, March 2010, Table 2, at 3available at http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2010.pdf
[2] *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples Under U.S. Law,* joint report by Human Rights Watch and Immigration Equality, 2006, at 17,3 available at http://www.hrw.org/en/reports/2006/05/01/family-unvalued .
[3] Department of Homeland Security, Annual Flow Report, March 2011, available at http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2010.pdf
[4] *Family, Unvalued*, at 176.
[5] *Id.* at 177.
[6] *Id.*
[7] *Id.* at 176.
[8] *See http://ilga.org/.*

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ALLIANCE DEFENSE FUND
Defending Our First Liberty

United States Senate

Committee on the Judiciary

Hearing on S.568

July 20, 2011

Statement of Austin R. Nimocks
Senior Legal Counsel, Alliance Defense Fund

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ALLIANCE DEFENSE FUND
Defending Our First Liberty

As debates rage these days regarding budget deficits, debt ceilings, and jobs, I am pleased that this body is taking time to discuss the jobs of mother and father—arguably the two most important jobs in our society. This particular legislation gives us the opportunity to examine the roles of mothers and fathers in our society, and also examine a question oftentimes overlooked in these debates—why is government in the marriage business?

As you are aware, Congress enacted Federal DOMA in 1996 by an 84% margin, stating that "[a]t bottom, civil society has an interest in maintaining and protecting the institution of heterosexual marriage because it has a deep and abiding interest in encouraging responsible procreation and child-rearing. Simply put, government has an interest in marriage because it has an interest in children."[1] This truth remains today, and as evidenced by likely the most extensive national research survey on American's attitudes about marriage, completed on May 19, 2011, we know that 62% of Americans agree that "marriage should be defined only as a union between one man and one woman."[2]

It is noteworthy that the topic at hand is not just a mere law or creature of statute, but a social institution that has universally crossed all political, religious, sociological, geographical, and historical lines. As put by the famous philosopher, Bertrand Russell, a self described atheist: "But for children, there would be no need of any institution concerned with sex."[3] "[I]t is through children alone that sexual relations become of importance to society, and worthy to be taken cognizance of by a legal institution."[4] In the words of highly respected anthropologist Claude Levi-Strauss, "the family—based on a union, more or less durable, but socially approved, of two individuals of opposite sexes who establish a household and bear and raise

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[1] H.R. Rep. No. 104-664, at 13 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2905, 2917.

[2] *See* Press Release, Alliance Defense Fund, Married to marriage: 62% of Americans say it's one man, one woman, nothing else (June 16, 2011), http://www.adfmedia.org/News/PRDetail/?CID=27539 (last visited July 18, 2011). This result unsurprisingly correlates to the collective votes of Americans from across the country regarding marriage. *See* Alliance Defense Fund, State Marriage Amendment Voter Percentages As of July 2011, http://oldsite.alliancedefensefund.org/userdocs/MarriageAmendmentVotePercentages.pdf (last visited July 18, 2011).

[3] Bertrand Russell, *Marriage & Morals* 48 (Routledge Classics, 2009). *See also The View From Afar* 40-41 (1985) ("the family—based on a union, more or less durable, but socially approved, of two individuals of opposite sexes who establish a household and bear and raise children—appears to be a practically universal phenomenon, present in every type of society."); G. Robina Quale, *A History Of Marriage Systems* 2 (1988) ("Marriage, as the socially recognized linking of a specific man to a specific woman and her offspring, can be found in all societies."); *cf.* Anthropological Institute of Great Britain, *Notes And Queries on Anthropology* 71 (6th ed. 1951) (defining marriage "as a union between a man and a woman such that children borne by the woman are recognized as the legitimate offspring of both partners").

[4] *Id.* at 96.

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children—appears to be a practically universal phenomenon, present in every type of society."[5]

Accordingly, from the lexicographers who have defined marriage,[6] to the eminent scholars in every relevant academic discipline who have explained marriage, to the legislatures and courts that have given legal recognition and effect to marriage, they all demonstrate that an animating purpose of marriage in every society is to increase the likelihood that procreative relationships benefit society.[7] Marriage between a man and a woman is a long-standing, world-wide idea that is a building block of society.

Marriage doesn't proscribe conduct or prevent individuals from living how they want to live. It doesn't prohibit intimate relationships or curtail one's constitutional rights. Individuals marry, as they always have, for a wide variety of

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[5] *The View from Afar* 40-41 (1985); *see also* G. Robina Quale, *A History of Marriage Systems* 2 (1988) ("Marriage, as the socially recognized linking of a specific man to a specific woman and her offspring, can be found in all societies."); *cf.* Anthropological Institute of Great Britain, *Notes And Queries on Anthropology* 71 (6th ed. 1951) (defining marriage "as a union between a man and a woman such that children borne by the woman are recognized as the legitimate offspring of both partners").

[6] Samuel Johnson, for example, defined marriage as the "act of uniting a man and woman for life." *A Dictionary Of The English Language* (1755). Subsequent dictionaries have consistently defined marriage in the same way, including the first edition of Noah Webster's, *An American Dictionary of the English Language* (1828), and prominent dictionaries from the time of the framing and ratification of the Fourteenth Amendment, *see, e.g.*, Noah Webster, Etymological Dictionary 130 (1st ed. 1869); Joseph E. Worcester, *A Primary Dictionary of the English Language* (1871). A leading legal dictionary from the time of the framing and ratification of the Fourteenth Amendment, for example, defined marriage as "[a] contract, made in due form of law, by which a man and woman reciprocally engage to live with each other during their joint lives, and to discharge towards each other the duties imposed by law on the relation of husband and wife." John Bouvier, *A Law Dictionary Adapted to the Constitution and Laws of the United States* 105 (1868); *see also* Joel Prentiss Bishop, *Commentaries on the Law of Marriage & Divorce* § 225 (1st ed. 1852) ("It has always, therefore, been deemed requisite to the entire validity of every marriage . . . that the parties should be of different sex"). Modern dictionaries continue to reflect the same understanding. *The New Oxford American Dictionary* (2010), for example, defines marriage as "the formal union of a man and a woman, typically recognized by law, by which they become husband and wife."

[7] At present, 41% of births in the United States are out-of-wedlock. *See U.S. birthrate falls below replacement level; 41% of births to single mothers,* CatholicCulture.org, Apr. 4, 2011, http://www.catholicculture.org/news/headlines/index.cfm?storyid=9843 (last visited July 18, 2011). In his 1995 State of the Union address, President Clinton stated that out-of-wedlock childbearing was "our most serious social problem." http://www.let.rug.nl/usa/P/bc42/speeches/sud95wjc.htm (last visited July 18, 2011). Out-of-wedlock births are economic strains upon a state's budget. *See, e.g., Study, Divorce, Out-of-Wedlock Childbearing U.S. Taxpayers More Than $112 Billion a Year,* Associated Press, April 15, 2011, available at http://www.foxnews.com/story/0,2933,351300,00.html (last visited July 18, 2011) and Jarvis, Dan, *Out-of-Wedlock Births in Michigan: Everyone Pays a High* Price, Michigan Family Forum Policy Brief, available at http://www.michiganfamily.org/main-resources/publications/Out-of-Wedlock%20Brief.pdf (last visited July 18, 2011).

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personal reasons. However, this legislation seeks to replace the essential public purposes of marriage with various private purposes. But today's discussion should not be about the *private* reasons why individuals marry, why the institution of marriage benefits any particular couple, or why any two people should or should not marry. Today, we're talking about social policy for our country as a whole and the government's interest in the institution.

Because the government's interest in marriage is unique and specific, entrance therein has never been conditioned on a couple's actual ability and desire to find happiness together, their level of financial entanglement, or their actual personal dedication to each other.[8] Because the scope of fundamental due process rights is determined by this Nation's history, traditions, and legal practices, and not the individual circumstances of anyone, marriage laws stem from the fact that children are the product of the sexual relationships between men and women,[9] and that both fathers and mothers are viewed to be necessary and important for children. Thus, throughout history, diverse cultures and faiths have recognized marriage between one man and one woman as the best way to promote healthy families and societies.

Moreover, the studies and science over a long period of time demonstrate that the ideal family structure for a child is a family headed by two opposite-sex biological parents in a low-conflict marriage.[10] The life outcomes measured by these

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[8] Nor is marriage premised upon any person's sexual orientation, even in jurisdictions where same-sex marriage is now law. *See, e.g.*, copies of the marriage license applications from the states of Iowa (http://www.nytimes.com/packages/pdf/national/20090427_iowa_marriage_application.pdf - last visited July 18, 2011), Vermont (http://www.ci.burlington.vt.us/ct/forms/docs/marriageapplication.pdf - last visited July 18, 2011), and even in foreign jurisdictions like Canada (http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetAttachDocs/007-11018E~1/$File/11018E.pdf).

[9] As reported by the Centers for Disease Control (CDC), across the United States, 99% of the babies born in this country are the product of natural sexual intercourse between men and women. *See* http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_24.pdf (last visited July 18, 2011) and http://www.cdc.gov/art/ART2007/section5.htm (last visited July 18, 2011).

[10] *See, e.g.*, Sara McLanahan and Gary Sandefur, Growing Up With a Single Parent: What Hurts, What Helps 1-78, 134-55 (1994); Shelly Lundberg & Robert A. Pollack, The American Family and Family Economics, February 2007 at 5, 19; Christopher Carpenter, Revisiting the Income Penalty for Behaviorally Gay Men: Evidence from NHANESII (2007); Pierre van den Berghe, Human Family Systems 33-60 (1979); Paul R. Amato, The Impact of Family Formation Change on the Cognitive, Social and Emotional Well-being of the Next Generation, 15 Future Child. 75, 89 (2005); Wendy D. Manning and Kathleen A. Lamb, Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families, 65 J. Marriage and Fam. 876, 890 (2003); Femmie Juffer & Marinus H. van Ijzendoorn, Adoptees Do Not Lack Self-Esteem: A Meta-Analysis of Studies on Self-Esteem of Transracial, International, and Domestic Adoptees, 133 Psychological Bulletin 1067-68 (2007) ("Many studies and several meta-analyses have shown that adopted children lag behind in physical growth, school performance, and language abilities; show more attachment and behavior problems; and are

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studies, encompass a variety of behavioral, cognitive, psychological and financial results, further highlighting the depth of the scientific support for giving preference to married biological parenting in relation to other possible parenting models and family structures.[11] Even President Obama supports fatherhood for all children, as he knows all too well the pain that not having a father caused him as a child, even though he was raised by a loving mother.[12] As he stated:

> We know the statistics—that children who grow up without a father are five times more likely to live in poverty and commit crime; nine times more likely to drop out of schools and twenty times more likely to end up in prison. They are more likely to have behavioral problems, or run away from home, or become teenage parents themselves. And the foundations of our community are weaker because of it.[13]

Even a child psychologist, who testified in support of a lawsuit to judicially impose same-sex marriage upon the citizens of California, wrote that "[b]oth mothers and fathers play crucial and qualitatively different roles in the socialization of the child."[14]

But advocates for redefining marriage are asking you to cast aside the natural attachment of parents to their own children, and the natural desires of children to know who they are and where they came from.[15] These advocates are asking the whole of society to ignore the unique and demonstrable differences between men and women in parenthood: no mothers, no fathers, just generic

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substantially overrepresented in mental health referrals and services for learning programs.); Michael J. Rosenfeld, Nontraditional Families and Childhood Progress through School, 47 Demography 755 (2010) (noting that "[s]tudies of family structure and children's outcomes nearly universally find at least a modest advantage for children raised by their married biological parents").

[11] *See, e.g.*, Lorraine Blackman et al., The Consequences of Marriage for African-Americans: A Comprehensive Literature Review 24, Inst. for Amer. Values (2005) (delinquency, self-esteem and school performance); W. Bradford Wilcox et al., Inst. For American Values, Why Marriage Matters: 26 Conclusions from the Social Sciences 32-33 (2d ed. 2005) (school performance, delinquency, smoking, and risk of suicide); Paul R. Amato, Parental Absence During Childhood and Depression In Later Life, 32 Soc. Q. 543, 547 (1991) (risk of adult depression).

[12] *See, e.g.*, http://www.parade.com/news/2009/06/barack-obama-we-need-fatbers-to-step-up.html (last visited July 19, 2011).

[13] President Obama, Statement at the Apostolic Church of God (June 15, 2008), availahle at http://www.realclearpolitics.com/articles/2008/06/obamas_speech_on_fatherhood.html (last visited July 18, 2011).

[14] Michael Lamb, Fathers: Forgotten Contributors to Child Development, 18 Hum. Dev. 245, 246 (1975).

[15] *See, e.g.*, Elizabeth Marquardt & Norval Glenn, *My Daddy's Name is Donor: A New Study of Young Adults Conceived Through Sperm Donation*, Institute for American Values, available at http://www.familyscholars.org/assets/Donor_FINAL.pdf (last visited July 18, 2011).

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parents. But there are no generic people. We are composed of two complementary, but different, halves of humanity. As stated by one scholar,

> We should disavow the notion that 'mommies can make good daddies,' just as we should disavow the popular notion . . . that 'daddies can make good mommies.' . . . The two sexes are different to the core, and each is necessary – culturally and biologically – for the optimal development of a human being.[16]

This body should also disavow any notion that, in light of the Obama Administration's refusal to defend Federal DOMA, its repeal is somehow a constitutional mandate. In 1967, the Supreme Court decided the case of *Loving v. Virginia*.[17] In the *Loving* case, the Supreme Court struck down as unconstitutional a race-based marriage law that prohibited whites from marrying anyone of color. In so ruling, the Supreme Court called marriage "fundamental to our very existence and survival,"[18] discussing the timeless and procreative aspects of the institution. It was exactly because of the procreative nature of marriage that miscegenation laws were ever enacted. But in making its ruling, the Supreme Court returned marriage in the United States to its original status at common law—no racial prejudice, but concretely the union of one man and one woman.[19]

Yet, those who hold a different view of marriage oftentimes cite *Loving* as somehow supportive of their arguments, overlooking the link between marriage and procreation discussed by the Supreme Court. But not even the Department of Justice, in its new refusal to defend Federal DOMA, cites the *Loving* case as somehow supportive of its new anti-marriage position.[20]

Advocates of same-sex marriage also routinely overlook the fact that, just five years after the *Loving* decision, in 1972, the Supreme Court dismissed an appeal from the Minnesota Supreme Court claiming that an alternate definition of marriage was somehow a fundamental right. In *Baker v. Nelson*,[21] the Minnesota

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[16] David Popenoe, *Life Without Father: Compelling New Evidence That Fatherhood and Marriage are Indispensable of the Good of Children and Society*, (New York: The Free Press, 1996), p. 197.
[17] *Loving v. Virginia*, 388 U.S. 1 (1967).
[18] *Loving*, 388 U.S. at 12.
[19] Francis J. Beckwith, *Interracial Marriage and Same-Sex Marriage: Why the Analogy Fails* (May 21, 2010), *available at* http://www.thepublicdiscourse.com/2010/05/1324 (last visited July 18, 2011).
[20] *See* Letter from Attorney General Eric Holder to Speaker John Boehner (February 23, 2011), *available at* http://www.justice.gov/opa/pr/2011/February/11-ag-223.html (last visited July 18, 2011) and Defendants' Brief in Opposition to Motion to Dismiss, *Golinski v. OPM*, No. C 3:10-00257-JSW (N.D. Cal. July 01, 2011), *available at* http://metroweekly.com/poliglot/DOJ-OppToBLAGMtD.pdf (last visited July 18, 2011).
[21] *Baker v. Nelson*, 219 Minn. 310, 191 N.W.2d 185 (1971).

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Supreme Court rejected claims for same-sex marriage and significantly held that "in commonsense and in constitutional sense, there is a clear distinction between marital restriction based merely upon race and one based upon the fundamental difference in sex."[22] The United States Supreme Court upheld this decision by the Minnesota Supreme Court which also emphasized the defining link between marriage and "the procreation and rearing of children," and rejected a claim for same-sex marriage.[23] Not a single Justice of the United States Supreme Court found the constitutional claims for an alternate definition of marriage substantial enough even to warrant a review.

Since the *Baker* case, every appellate court in this country, both state and federal, that has addressed the validity of marriage as the union of one man and one woman under the United States Constitution, has upheld the institution as rationally related to the state's interest in responsible procreation and child-rearing. And while some may argue that times have changed, they cannot credibly argue that humanity, as a gendered species, has changed. Men and women still compose the two great halves of humanity, men and women are still wonderfully and uniquely different, and men and women still play important and irreplaceable roles in the family. As stated by the Supreme Court, "[t]he truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle interplay of influence one on the other is among the imponderables."[24] "'Inherent differences' between men and women, we have come to appreciate, remain cause for celebration . . . ."[25]

Without question, the overwhelming majority of people *on both sides* of this debate are good and decent Americans, coming from all walks of life, all political parties, all races and creeds. But humanity remains unchanged—a collection of men and women. And because of the fundamental truth that children are the product of sexual relationships between men and women, and that men and women each bring something important and unique to the table of parenting, this government maintains a compelling interest in protecting and preserving the institution of marriage as the union of one man and one woman. Marriage between a man and a woman naturally builds families – mom, dad, and children – and gives hope that the next generations will carry that family into the future.

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[22] *Baker*, 219 Minn. at 315, 191 N.W.2d at 314.
[23] *See Baker v. Nelson*, 409 U.S. 810 (1972).
[24] *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 133-34 (1994) (quoting *Ballard v. U.S.*, 329 U.S. 187, 193-194 (1946)).
[25] *United States v. Virginia*, 518 U.S. 515, 533 (1996).

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United States Senate

COMMITTEE ON THE JUDICIARY

Supplemental Written Testimony of

Austin R. Nimocks,

Produced as Part of His Testimony for the Hearing Entitled

"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

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INTRODUCTION

When Congress codified the virtually universal opposite-sex definition of marriage for purposes of federal law in the Defense of Marriage Act ("DOMA"), it clearly stated the overriding societal interest it sought to advance: "At bottom, civil society has an interest in maintaining and protecting the institution of heterosexual marriage because it has a deep and abiding interest in encouraging responsible procreation and child-rearing. Simply put, government has an interest in marriage because it has an interest in children." H.R. Rep. No. 104-664, at 13 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2905, at 2917. In identifying this interest, Congress stood on firm, well-trodden ground. As eminent authorities throughout the ages have uniformly recognized, it is precisely because marriage serves this vital, universal interest that it has existed in virtually every society throughout history. And, as demonstrated below, Congress's decision to provide federal recognition and benefits to committed opposite-sex relationships plainly furthers the vital interests that marriage has always served. Accordingly, every federal and state appellate court to consider the opposite-sex definition of marriage under the federal constitution have found it constitutional, and done so on grounds that repudiate the few contrary federal district court decisions. Thus, not only is DOMA good public policy, it is constitutionally-sound law.

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A. RESPONSIBLE PROCREATION AND CHILDREARING HAVE ALWAYS BEEN AN ANIMATING PURPOSE OF MARRIAGE IN VIRTUALLY EVERY SOCIETY.

The federal definition of marriage as "a legal union between one man and one woman as husband and wife," 1 U.S.C. § 7 (2011), is neither surprising nor invidious. To the contrary, with only a handful of very recent exceptions, marriage is, and always has been, limited to opposite-sex unions in virtually every society. Indeed, until lately, "it was an accepted truth for almost everyone who ever lived, in any society in which marriage existed, that there could be marriages only between participants of different sex." *Hernandez v. Robles*, 7 N.Y.3d 338, 361, 855 N.E.2d 1, 5 (N.Y. 2006). In the words of highly respected anthropologist Claude Levi-Strauss, "the family—based on a union, more or less durable, but socially approved, of two individuals of opposite sexes who establish a household and bear and raise children—appears to be a practically universal phenomenon, present in every type of society." *The View From Afar* 40-41 (1985); *see also* G. Robina Quale, *A History of Marriage Systems* 2 (1988) ("Marriage, as the socially recognized linking of a specific man to a specific woman and her offspring, can be found in all societies.").

This essentially unanimous and universal definition reflects the undeniable biological reality that opposite-sex unions—and only such unions—can produce children. Marriage, thus, is "a social institution with a

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biological foundation." Claude Levi-Strauss, *Introduction* to 1 A History of the Family: Distant Worlds, Ancient Worlds 1, 5 (Andre Burguiere, et al. eds., Belknap Press of Harvard Univ. Press 1996) (1996). Indeed, an overriding purpose of marriage in virtually every society is, and has always been, to regulate sexual relationships between men and women so that the unique procreative capacity of such relationships benefits rather than harms society. In particular, through the institution of marriage, societies seek to increase the likelihood that children will be born and raised in stable and enduring family units by both the mothers and the fathers who brought them into this world.

This animating purpose of marriage was well explained by William Blackstone, who, speaking of the "great relations in private life," describes the relationship of "husband and wife" as "founded in nature, but modified by civil society: the one directing man to continue and multiply his species, the other prescribing the manner in which that natural impulse must be confined and regulated." William Blackstone, 1 Commentaries *422. Blackstone then immediately turns to the relationship of "parent and child," which he describes as "consequential to that of marriage, being its principal end and design: and it is by virtue of this relation that infants are protected, maintained, and educated." *Id.*; *see also id.* *435 ("the establishment of marriage in all civilized states is built on this natural obligation of the father

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to provide for his children; for that ascertains and makes known the person who is bound to fulfill this obligation; whereas, in promiscuous and illicit conjunctions, the father is unknown"). John Locke likewise writes that marriage "is made by a voluntary compact between man and woman," Second Treatise of Civil Government § 78 (1690), and then provides essentially the same explanation of its purposes:

> For the end of conjunction between male and female, being not barely procreation, but the continuation of the species; this conjunction betwixt male and female ought to last, even after procreation, so long as is necessary to the nourishment and support of the young ones, who are to be sustained by those that got them, till they are able to shift and provide for themselves.

Second Treatise of Civil Government § 79 (1690).

Throughout history, other leading linguists, lawyers, and social scientists have likewise consistently recognized the essential connection between marriage and responsible procreation and childrearing. *See, e.g.*, Noah Webster, 2 An American Dictionary of the English Language (1st ed. 1828) (defining marriage as the "act of uniting a man and woman for life" and explaining that marriage "was instituted ... for the purpose of preventing the promiscuous intercourse of the sexes, for promoting domestic felicity, and for securing the maintenance and education of children"); Joel Prentiss Bishop, Commentaries on the Law of Marriage & Divorce § 225-26 (1st ed. 1852) ("It has always . . . been deemed requisite to the entire validity of marriage . .

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.that the parties should be of different sex...[T]he first cause and reason of matrimony . . . ought to be the design of having an offspring . . . the law recognizes [this] as the principle end[] of matrimony"); Bronislaw Malinowski, *Sex, Culture, and Myth* 11 (1962) ("the institution of marriage is primarily determined by the needs of the offspring, by the dependence of the children upon their parents"); Quale, *supra*, at 2 ("Through marriage, children can be assured of being born to both a man and a woman who will care for them as they mature."); James Q. Wilson, *The Marriage Problem* 41 (2002) ("Marriage is a socially arranged solution for the problem of getting people to stay together and care for children that the mere desire for children, and the sex that makes children possible, does not solve."); W. Bradford Wilcox, et al., eds., Why Marriage Matters: Twenty-Six Conclusions from the Social Sciences 15 (2d ed. 2005) ("As a virtually universal human idea, marriage is about regulating the reproduction of children, families, and society."). In the words of the sociologist Kingsley Davis:

> The family is the part of the institutional system through which the creation, nurture, and socialization of the next generation is mainly accomplished. ... The genius of the family system is that, through it, the society normally holds the biological parents responsible for each other and for their offspring. By identifying children with their parents ... the social system powerfully motivates individuals to settle into a sexual union and take care of the ensuing offspring.

The Meaning & Significance of Marriage in Contemporary Society 7-8, *in*

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Contemporary Marriage: Comparative Perspectives on a Changing Institution (Kingsley Davis, ed. 1985).

As these and many similar authorities illustrate, the understanding of marriage as a union of man and woman, uniquely involving the rearing of children born of their union, is age-old, universal, and enduring. Indeed, prior to the recent movement to redefine marriage to include same-sex relationships, it was commonly understood, without a hint of controversy, that the institution of marriage owed its very existence to society's vital interest in responsible procreation and childrearing. That is why, no doubt, the Supreme Court has repeatedly recognized marriage as "fundamental to our very existence and survival." *E.g., Loving v. Virginia*, 388 U.S. 1, 12 (1967). And certainly no other purpose can plausibly explain the ubiquity of the institution. As Bertrand Russell put it, "it is through children alone that sexual relations become of importance to society." Bertrand Russell, *Marriage & Morals* 96 (Routledge Classics, 2009). Thus, "[b]ut for children, there would be no need of any institution concerned with sex." *Id.* at 48. Indeed, if "human beings reproduced asexually and ... human offspring were self-sufficient[,] ... would *any* culture have developed an institution anything like what we know as marriage? It seems clear that the answer is no." Robert P. George, *et al.*, *What is Marriage?* 34 Harv. J. L. & Pub. Pol'y 245, 286-87 (Winter 2010).

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In short, as Congress aptly explained:

> Were it not for the possibility of begetting children inherent in heterosexual unions, society would have no particular interest in encouraging citizens to come together in a committed relationship. But because America, like nearly every known human society, is concerned about its children, our government has a special obligation to ensure that we preserve and protect the institution of marriage.

H.R. Rep. No. 104-664 at 14, *reprinted in* 1996 U.S.C.C.A.N. at 2918.

B. DOMA PLAINLY FURTHERS SOCIETY'S VITAL INTEREST IN RESPONSIBLE PROCREATION AND CHILDREARING.

The traditional opposite-sex definition of marriage codified by DOMA supports society's interest in increasing the likelihood that children will be born to and raised by the couples who brought them into the world in stable and enduring family units. Because only sexual relationships between men and women can produce children, such relationships have the potential to further—or harm—this interest in a way and to an extent that other types of relationships do not. By retaining the traditional definition of marriage as a matter of federal law, Congress preserves an abiding link between that institution and this traditional purpose, a purpose that still serves vital interests that are uniquely implicated by male-female relationships. And by providing federal recognition and benefits to committed opposite-sex relationships, DOMA provides an incentive for individuals to channel potentially procreative conduct into relationships where that conduct is likely

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to further, rather than harm, society's interest in responsible procreation and childrearing.

"[I]t seems beyond dispute that the state has a compelling interest in encouraging and fostering procreation of the race and providing status and stability to the environment in which children are raised." *Adams v. Howerton*, 486 F. Supp. 1119, 1124 (C.D. Cal. 1980). Indeed, "[i]t is hard to conceive an interest more legitimate and more paramount for the state than promoting an optimal social structure for educating, socializing, and preparing its future citizens to become productive participants in civil society." *Lofton v. Secretary of the Dep't of Children & Family Servs.*, 358 F.3d 804, 819 (11th Cir. 2004). As noted above, the Supreme Court has repeatedly confirmed this vital societal interest, holding that marriage is "fundamental to our very existence and survival." *E.g.*, *Loving*, 388 U.S. at 12.

Underscoring society's interest in marriage is the undisputed truth that when procreation and childrearing take place outside stable family units, children suffer. As a leading survey of social science research explains:

> Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes than do children in intact families headed by two biological parents. ... There is thus value for children in promoting strong, stable marriages between biological parents.

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Kristen Anderson Moore, et al., *Marriage from a Child's Perspective*, Child Trends Research Brief at 6 (June 2002).

In addition, when parents, and particularly fathers, do not take responsibility for their children, society is forced to step in to assist, through social welfare programs and by other means. Indeed, according to a Brookings Institute study, $229 billion in welfare expenditures between 1970 and 1996 can be attributed to the breakdown of the marriage culture. Isabel V. Sawhill, *Families at Risk*, *in* Setting National Priorities: the 2000 Election and Beyond 108 (Henry J. Aaron & Robert Danton Reischauer eds., 1999).

More than simply draining public resources, the adverse outcomes for children so often associated with single parenthood and father absence, in particular, harm society in other ways, as well. As President Obama has emphasized:

> We know the statistics—that children who grow up without a father are five times more likely to live in poverty and commit crime; nine times more likely to drop out of schools and twenty times more likely to end up in prison. They are more likely to have behavioral problems, or run away from home, or become teenage parents themselves. And the foundations of our community are weaker because of it.

President Obama, Statement at the Apostolic Church of God (June 15,

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2008).[1]

Conversely, children benefit when they are raised by the couple who brought them into this world in a stable family unit. "[R]esearch clearly demonstrates that family structure matters for children, and the family structure that helps children the most is a family headed by two biological parents in a low-conflict marriage." Moore et al., *supra,* at 6. These benefits appear to flow in substantial part from the biological connection shared by a child with both mother and father. *See, e.g., id.* at 1-2 ("[I]t is not simply the presence of two parents, ... but the presence of *two biological parents* that seems to support children's development."); Wendy D. Manning & Kathleen A. Lamb, *Adolescent Well-Being in Cohabiting, Married, & Single-Parent Families*, 65 J. Marriage & Fam. 876, 890 (2003) ("The advantage of marriage appears to exist primarily when the child is the biological offspring of both parents.").

In addition, there is little doubt that children benefit from having a parent of each gender. As Professor Norval Glenn explains, "there are strong theoretical reasons for believing that both fathers and mothers are important, and the huge amount of evidence of relatively poor average outcomes among fatherless children makes it seem unlikely that these

[1] *Available at* http://www.realclearpolitics.com/articles/2008/06/obamas_speech_on_fatherhood.html; last visited July 18, 2011.

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outcomes are solely the result of the correlates of fatherlessness and not of fatherlessness itself." Norval D. Glenn, *The Struggle for Same-Sex Marriage*, 41 Soc'y 27 (2004). Many others agree. *See, e.g.*, David Popenoe, *Life Without Father: Compelling New Evidence that Fatherhood & Marriage are Indispensable for the Good of Children & Society* 146 (1996) ("The burden of social science evidence supports the idea that gender-differentiated parenting is important for human development and that the contribution of fathers to childrearing is unique and irreplaceable."); Michael Lamb, Fathers: Forgotten Contributors to Child Development,18 Hum. Dev. 245, 246 (1975) ("Both mothers and fathers play crucial and qualitatively different roles in the socialization of the child."); James Q. Wilson, *supra*, at 169 ("The weight of scientific evidence seems clearly to support the view that fathers matter."); David Blankenhorn, *Fatherless America* 25 (HarperPerennial 1996) ("In virtually all human societies, children's well-being depends decisively upon a relatively high level of paternal investment.").

C. DOMA IS CONSTITUTIONALLY SOUND.

Some have argued in recent years that DOMA's protection of marriage as only being between a man and a woman irrationally discriminates against same-sex couples by treating them differently. But as a simple and undeniable matter of biological fact, same-sex relationships, which cannot naturally produce offspring, do not implicate society's interest in responsible

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procreation in the same way that opposite-sex relationships do. *See Nguyen v. INS*, 533 U.S. 53, 73 (2001) ("To fail to acknowledge even our most basic biological differences ... risks making the guarantee of equal protection superficial, and so disserving it."). And given this biological reality, as well as marriage's central concern with responsible procreation and childrearing, the "commonsense distinction," *Heller v. Doe*, 509 U.S. 312, 326 (1993), that our law has traditionally drawn between same-sex couples, which are categorically incapable of natural procreation, and opposite-sex couples, which are in general capable of procreation, "is neither surprising nor troublesome from a constitutional perspective." *Nguyen*, 533 U.S. at 63. For as the Supreme Court has made clear, "where a group possesses distinguishing characteristics relevant to interests the State has the authority to implement, a State's decision to act on the basis of those differences does not give rise to a constitutional violation." *Board of Trustees v. Garrett*, 531 U.S. 356, 366-67 (2001) (internal quotation marks and citations omitted); *accord City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 441-42 (1985). Simply put, "[t]he Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." *Vacco v. Quill*, 521 U.S. 793, 799 (1997) (internal quotation marks and citations omitted).

Even though some same-sex couples do raise children, they cannot

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create them in the same way opposite-sex couples do—as the often unintended result of even casual sexual behavior. As a result, same-sex relationships simply do not pose the same risk of irresponsible procreation that opposite-sex relationships do. And as courts have repeatedly explained, it is the unique procreative capacity of heterosexual relationships—and the very real threat it can pose to the interests of society and to the welfare of children conceived unintentionally—that the institution of marriage has always sought to address. *See, e.g., Citizens for Equal Protection v. Bruning*, 455 F.3d 859, 867 (8th Cir. 2006); *Hernandez*, 855 N.E.2d at 7; *Morrison v. Sadler*, 821 N.E.2d 15, 24-25 (Ind. Ct. App. 2005).

Because sexual relationships between individuals of the same sex neither advance nor threaten society's interest in responsible procreation in the same manner, or to the same degree, that sexual relationships between men and women do, the line drawn by DOMA between opposite-sex couples and other types of relationships, including same-sex couples, cannot be said to "rest[] on grounds wholly irrelevant to the achievement of the [government's] objective." *Heller*, 509 U.S. at 324 (citation omitted). Accordingly, it readily satisfies the relevant constitutional scrutiny, which only requires that DOMA be rationally related to a legitimate government interest. *See id.* Indeed, it is well settled both that a classification will be upheld when "the inclusion of one group promotes a legitimate governmental

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purpose, and the addition of other groups would not," *Johnson v. Robison*, 415 U.S. 361, 383 (1974), and, conversely, that the government may make special provision for a group if its activities "threaten legitimate interests ... in a way that other [group's activities] would not," *Cleburne*, 473 U.S. at 448.

Not surprisingly, then, "a host of judicial decisions" have relied on the unique procreative capacity of opposite-sex relationships in concluding that "the many laws defining marriage as the union of one man and one woman ... are rationally related to the government interest in 'steering procreation into marriage.'" *Bruning*, 455 F.3d at 867; *see also Wilson v. Ake*, 354 F. Supp. 2d 1298, 1308-09 (M.D. Fla. 2005); *In re Kandu*, 315 B.R. 123, 145-47 (Bankr. W.D. Wash. 2004); *Adams*, 486 F. Supp. at 1124-25; *Baker v. Nelson*, 191 N.W.2d 185, 186-87 (Minn. 1971); *In re Marriage of J.B. and H.B.*, 326 S.W.3d 654, 680 (Tex. App. 2010); *Standhardt v. Superior Court of Arizona*, 77 P.3d 451, 461-64 (Ariz. Ct. App. 2003); *Singer v. Hara*, 522 P.2d 1187, 1197 (Wash. Ct. App. 1974). This is true not only of *every* appellate court to consider this issue under the Federal Constitution, but the majority of state courts interpreting their own constitutions as well. *See Conaway v. Deane*, 401 Md. 219, 317-23, 932 A.2d 571, 630-34 (Md. 2007); *Hernandez*, 855 N.E.2d at 7-8; *Andersen v. King County*, 138 P.3d 963, 982-85 (Wash. 2006)

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(plurality); *Morrison*, 821 N.E.2d at 23-31; *Standhardt*, 77 P.3d at 461-64.[2]

D. RECENT CONTRARY ARGUMENTS FROM FEDERAL DISTRICT COURTS LACK MERIT.

In recently rejecting any rational relationship between the traditional opposite-sex definition of marriage embraced by DOMA and society's interest in responsible procreation, a few federal district courts failed meaningfully to engage the arguments embraced by so many other courts. Perhaps the best case in point is *Gill v. Office of Personnel Management,* 699 F. Supp. 2d 374, 388 (D. Mass 2010), which found DOMA unconstitutional on the flimsy grounds rebutted below.

First, the *Gill* district court first claimed that "[s]ince the enactment of DOMA, a consensus has developed among the medical, psychological, and social welfare communities that children raised by gay and lesbian parents are just as likely to be well-adjusted as those raised by heterosexual parents." *Gill,* 699 F. Supp. 2d at 388. Not only does this claim rest on a hotly disputed premise, it is also simply beside the point. Indeed, it fails even to come to

[2] A number of foreign nations have reached the same conclusion. *See* French National Assembly, *Report Submitted on Behalf of the Mission of Inquiry on the Family and the Rights of Children*, No. 2832 at 77, January 25, 2006 (English translation at http://www.preservemarriage.ca/docs/France_Report_on_the_Family_Edited.pdf, original at http://www.assemblee-nationale.fr/12/pdf/rap-info/i2832.pdf) ("Above all else then, it is the interests of the child that lead a majority of the Mission to refuse to change the parameters of marriage."); Australian Senate Legal and Constitutional Affairs Legislation Committee, *Marriage Equality Amendment Bill 2009* at 37, http://www.aph.gov.au/senate/committee/legcon_ctte/marriage_equality/report/report.pdf.

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grips with the critical fact underlying society's interest in responsible procreation—the unique potential for relationships between men and women to produce children inevitably. *E.g., Bruning*, 455 F.3d at 867.

"Despite legal contraception, numerous studies have shown that unintended pregnancy is the common, not rare, consequence of sexual relationships between men and women." Maggie Gallagher, *(How) Will Gay Marriage Weaken Marriage as a Social Institution*, 2 U. St. Thomas L.J. 33, 47 (2004). And the question in nearly every case of unintended pregnancy is *not* whether the child will be raised by two opposite-sex parents or by two same-sex parents, but rather whether it will be raised, on the one hand, by both its mother and father, or, on the other hand, by its mother alone, often with public assistance. *See, e.g.*, William J. Doherty et al., *Responsible Fathering*, 60 J. Marriage & Fam. 277, 280 (1998) ("In nearly all cases, children born outside of marriage reside with their mothers."). And there simply can be no dispute that children raised in the former circumstances do better, on average, than children raised in the latter, or that society has a direct and compelling interest in avoiding the financial burdens and social costs too often associated with single parenthood. *See, e.g.*, Sara McLanahan & Gary Sandefur, *Growing Up with a Single Parent: What Hurts, What Helps* 1 (1994) ("Children who grow up in a household with only one biological parent are worse off, on average, than children who grow up in a

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household with both of their biological parents, regardless of the parents' race or educational background, regardless of whether the parents are married when the child is born, and regardless of whether the resident parent remarries."). Thus, even if the *Gill* district court were right that it matters not whether a child is raised by the child's own parents or by any two males or any two females, it would still be perfectly rational for society to make special provision through the institution of marriage for the unique procreative risks posed by sexual relationships between men and women.

At any rate, the *Gill* district court's startling suggestion that children receive no special benefit, whatsoever, from being raised by their own mothers and fathers—and indeed that it is *irrational* to believe otherwise[3]—simply cannot be squared with a wealth of contrary scholarship and empirical studies, as discussed above, nor with the most basic instincts embedded in the DNA of the human species. The law "historically ... has recognized that natural bonds of affection lead parents to act in the best interests of their children." *Parham v. J.R.*, 442 U.S. 584, 602 (1979); *see also, e.g.*, *Gonzales v. Carhart*, 550 U.S. 124, 159 (2007) ("Respect for human life finds an ultimate

[3] "[T]hose challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." *Vance v. Bradley*, 440 U.S. 93, 111 (1979). Accordingly, so long as the "assumptions underlying [a law's] rationales" are at least "arguable," that is "sufficient, on rational basis review, to immunize the [legislative] choice from constitutional challenge." *Heller*, 509 U.S. at 333 (internal quotation marks and citation omitted).

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expression in the bond of love the mother has for her child."); *cf.* Convention on the Rights of the Child, G.A. Res. 44/25, Art. 7, U.N. Doc. A/RES/44/25 (Nov. 20, 1989) ("as far as possible, [a child has] the right to know and be cared for by his or her parents"). And "[a]lthough social theorists ... have proposed alternative child-rearing arrangements, none has proven as enduring as the marital family structure, nor has the accumulated wisdom of several millennia of human experience discovered a superior model." *Lofton*, 358 F.3d at 820. Courts have thus repeatedly upheld as rational the "commonsense" notion that "children will do best with a mother and father in the home." *Hernandez*, 855 N.E.2d at 7-8; *see also, e.g.*, *Bruning*, 455 F.3d at 867-68; *Lofton*, 358 F.3d at 825-26.

Furthermore, the position statements cited by the *Gill* district court and the studies on which they rely do not come close to establishing that the widely shared, deeply instinctive belief that children do best when raised by both their biological mother and their biological father is *irrational*. To the contrary, there are "significant flaws in the[se] studies' methodologies and conclusions, such as the use of small, self-selected samples; reliance on self-report instruments; politically driven hypotheses; and the use of unrepresentative study populations consisting of disproportionately affluent, educated parents." *Lofton*, 358 F.3d at 825 (also noting "the absence of longitudinal studies following child subjects into adulthood").

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In light of the limitations of these studies, it is not surprising that a diverse group of 70 prominent scholars from all relevant academic fields recently concluded:

> [N]o one can definitively say at this point how children are affected by being reared by same-sex couples. The current research on children reared by them is inconclusive and underdeveloped—we do not yet have any large, long-term, longitudinal studies that can tell us much about how children are affected by being raised in a same-sex household. Yet the larger empirical literature on child well-being suggests that the two sexes bring different talents to the parenting enterprise, and that children benefit from growing up with both biological parents.

Witherspoon Institute, *Marriage and the Public Good: Ten Principles* 18 (2008). The *Gill* district court's confident assertions to the contrary notwithstanding, Congress, in the words of the Eleventh Circuit,

> could rationally conclude that a family environment with married opposite-sex parents remains the optimal social structure in which to bear children, and that the raising of children by same-sex couples, who by definition cannot be the two sole biological parents of a child and cannot provide children with a parental authority figure of each gender, presents an alternative structure for child rearing that has not yet proved itself beyond reasonable scientific dispute to be as optimal as the biologically based marriage norm.

Lofton, 358 F.3d at 825 n.26 (quoting *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 999-1000 (Mass. 2003) (Cordy, J., dissenting)).

Second, the *Gill* district court also claimed that "an interest in encouraging responsible procreation plainly cannot provide a rational basis" for DOMA because "the ability to procreate is not now, nor has it ever been, a

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precondition to marriage." 699 F. Supp. 2d at 389. But it did not even acknowledge the many cases squarely and repeatedly rejecting precisely this argument. *See, e.g., Standhardt*, 77 P.3d at 462-63; *Baker*, 191 N.W.2d at 187; *Adams*, 486 F. Supp. at 1124-25; *In re Kandu*, 315 B.R. at 146-47; *Conaway*, 932 A.2d at 633 (applying state constitution); *Hernandez*, 855 N.E.2d at 11-12 (same); *Andersen*, 138 P.3d at 983 (same); *Morrison*, 821 N.E.2d at 27 (same).

As these cases have repeatedly recognized, it is well settled that rational-basis review allows the government to draw bright lines, "rough accommodations," *Heller*, 509 U.S. at 321, and "commonsense distinction[s]," *id.* at 326, based on "generalization[s]," *id.*, and "common-sense proposition[s]," *Vance*, 440 U.S. at 112. "[C]ourts are compelled under rational-basis review to accept [such] generalizations," *Heller*, 509 U.S. at 321, moreover, unless they hold true in "so few" circumstances "as to render [a line based upon them] wholly unrelated to the objective" of the law drawing that line, *Massachusetts Bd. Of Ret. v. Murgia*, 427 U.S. 307, 315-16 (1976). And the presumption that sexual relationships between men and women can result in pregnancy and childbirth holds true for the vast majority of couples and is plainly sufficient to render rational, at least, the "commonsense distinction" the law has traditionally drawn between opposite-

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sex couples, and same-sex couples, which are categorically incapable of natural procreation.

Furthermore, any policy conditioning marriage on procreation would presumably require enforcement measures—from premarital fertility testing to eventual annulment of childless marriages—that would surely violate constitutionally protected privacy rights. *See, e.g., Standhardt*, 77 P.3d at 462-63; *Adams*, 486 F. Supp. at 1124-25. And such Orwellian measures would, in any event, be unreliable. *See, e.g.*, Monte Neil Stewart, *Marriage Facts*, 31 Harv. J. L. & Pub. Pol'y 313, 345 (2008) (noting the "scientific (i.e., medical) difficulty or impossibility of securing evidence of [procreative] capacities"). Even where infertility is clear, moreover, usually only one spouse is infertile. In such cases marriage still furthers society's interest in responsible procreation by decreasing the likelihood that the fertile spouse will engage in sexual activity with a third party, for that interest is served not only by *increasing* the likelihood that procreation occurs *within* stable family units, but also by *decreasing* the likelihood that it occurs *outside* of such units.[4]

[4] Infertile opposite-sex marriages also advance the institution's central procreative purposes by reinforcing social norms that heterosexual intercourse—which in general, though not every case, can produce offspring—should take place only within marriage. *See, e.g.*, Stewart, *Marriage Facts*, 31 Harv. J. L. & Pub. Pol'y at 344-45.

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For all of these reasons, it is not surprising that societies throughout history have chosen to forego an Orwellian and futile attempt to police fertility and have relied instead on the common-sense presumption that sexual relationships between men and women are, in general, capable of procreation. *See, e.g.*, *Nguyen*, 533 U.S. at 69 (Congress could properly enact "an easily administered scheme" to avoid "the subjectivity, intrusiveness, and difficulties of proof" of "an inquiry into any particular bond or tie."). By so doing, societies further their vital interests in responsible procreation and childrearing by seeking to channel the presumptive procreative *potential* of opposite-sex relationships into enduring marital unions so that *if* any offspring are produced, they will be more likely to be raised in stable family units by the mothers and fathers who brought them into the world.[5]

Further, the *Gill* district court's assertions that "denying federal recognition to same-sex marriages ... does nothing to promote stability in

[5] Even where courts find that more rigorous scrutiny is required, they have not "required that the statute under consideration must be capable of achieving its ultimate objective in every instance." *Nguyen*, 533 U.S. at 70. Indeed, applying heightened scrutiny in a closely analogous context, the Supreme Court rejected as "ludicrous" an argument that a law criminalizing statutory rape for the purpose of preventing teenage pregnancies was "impermissibly overbroad because it makes unlawful sexual intercourse with prepubescent females, who are, by definition, incapable of becoming pregnant." *Michael M. v. Super. Ct. of Sonoma Cnty.*, 450 U.S. 464, 475 (1981) (plurality); *see also id.* at 480 n.10 (Stewart, J., concurring) (rejecting argument that the statute was "overinclusive because it does not allow a defense that contraceptives were used, or that procreation was for some other reason impossible," because, *inter alia*, "a statute recognizing [such defenses] would encounter difficult if not impossible problems of proof").

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heterosexual parenting," and that "denying marriage-based benefits to same-sex spouses certainly bears no reasonable relation to any interest the government might have in making heterosexual marriages mores secure," 699 F. Supp. 2d at 389, reflect a fundamental misunderstanding of settled principles of rational-basis review. There can be little doubt that *providing* federal recognition and benefits to committed opposite-sex couples makes *those potentially procreative relationships* more stable, and by doing so promotes society's interest in responsible procreation and childrearing. *See, e.g.*, Wendy D. Manning et al., *The Relative Stability of Cohabiting and Marital Unions for Children*, 23 Population Res. & Pol'y Rev. 135, 136 (2004) ("A well-known difference between cohabitation and marriage is that cohabiting unions are generally quite short-lived."). And under *Johnson* and other controlling Supreme Court authorities, the relevant inquiry is not, as the *Gill* district court would apparently have it, whether denying federal recognition and benefits to include same-sex couples is *necessary* to promote society's interest in responsible procreation and childrearing, but rather whether providing such recognition and benefits to committed opposite-sex relationships furthers interests that would not be furthered, or would not be furthered to the same degree, by recognizing same-sex relationships as marriages. *See, e.g., Andersen*, 138 P.3d at 984; *Morrison*, 821 N.E.2d at 23. And as demonstrated above, the answer to this inquiry is clear.

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The *Gill* district court's failure to "discern a means by which the federal government's denial of benefits to same-sex spouses might encourage homosexual people to marry members of the opposite sex," 699 F. Supp. 2d at 389, is even further afield. Marriage has always been uniquely concerned with steering potentially procreative sexual conduct into stable marital relationships. Its rationality in no way depends on its also steering those not inclined to engage in such conduct into such relationships.

CONCLUSION

For the forgoing reasons, DOMA is deserving of this Committee's support as both constitutionally-sound law and profoundly important public policy.

Respectfully submitted this 28th day of July, 2011,

Austin R. Nimocks

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THE BUSINESS CASE FOR MARRIAGE EQUALITY

Testimony submitted to the United States Senate Committee on the Judiciary
On "S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"
Wednesday, July 20, 2011

out&EQUAL
Workplace Advocates

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Out & Equal Workplace Advocates is a strong supporter of S.598, The Respect for Marriage Act. Out & Equal believes having the right to marry is a crucial quality of life and workplace issue for all lesbian, gay, bisexual and transgender employees. Every person deserves the right to the benefits and responsibilities of marriage, including the right to protect and provide for their loved ones. People of all sexual orientations create strong and lasting partnerships, which should be entitled to equal recognition.

For the past fifteen years, the Defense of Marriage Act (DOMA) has been a burden to American businesses in myriad and unforeseen ways. A strong majority of America's most dynamic and profitable businesses support equality for lesbian, gay, bisexual and transgender people in their workforces and recognize the needs of their employees in same-sex partnerships. Fully 83% of the Fortune 100 companies offer domestic partner benefits to their employees.[1]

These corporations know that a diverse, healthy workforce improves productivity and creativity within their ranks, helping them to excel in the modern world. The federal government's denial of marriage rights to some of their employees impedes these companies' ability to create the corporate climate which they feel is best suited to their strong and successful business model, and places a financial burden on those corporations.

Specifically, DOMA:

- Interferes with a corporation's climate of diversity, inclusion and creativity
- Impedes the recruitment and retention of talent, including a company's ability to relocate their employees as needed
- Limits a corporation's choices in the benefits they offer to their employees or requires them to provide expensive alternative solutions in order to treat their employees equally
- Imposes burdensome recordkeeping and management responsibilities on human resources departments

DOMA interferes with a corporation's climate of diversity, inclusion and creativity

Studies show that employees are more productive and businesses more competitive when all employees are treated equally. Yet, even companies with a high commitment to full diversity and inclusion in the workplace are forced by DOMA to be inconsistent and inequitable in their practices. When employees' identities—in this case, their sexual orientation—creates a difference in benefits and treatment, it makes it impossible for a company to achieve their full diversity goals, regardless of that company's desires. It creates a situation in which employees' compensation is based on *who they are* and *what type of personol relationship they are in*, rather than on the work they produce and the skills they bring to their job.

DOMA awards societal benefits to some employees that are denied to others, and thus runs counter to the climate of those businesses who believe that equality in the workplace benefits their products and innovation.

In addition, corporations are well aware that lesbian, gay, bisexual and transgender people are loyal consumers who pay attention to corporate stances and policies. Marriage equality is an important and visible issue for the LGBT community and one which LGBT consumers are following closely. Being a

[1] Human Rights Campaign, http://www.hrc.org/issues/workplace/benefits/domestic_partner_benefits.htm

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leader for marriage equality is crucial to building consumer loyalty, competitive edge and reputation within the community.

DOMA impedes the recruitment and retention of talent

Successful companies rely on their ability to recruit and retain the highest caliber employees. In today's world, most profitable businesses seek the best qualified candidates, period. They know that if prejudice blinds them to the skills of a potential employee, they lose the talents of that person.

DOMA impedes this process in two ways—domestically and internationally. Within the United States, employees in same-sex relationships are likely to choose to work in states where their relationships are both recognized and protected. This means that corporations with headquarters in states that deny equal treatment to same-sex couples will suffer from a decreased ability to recruit and retain talent. A recent Massachusetts study showed that creative class individuals in same-sex relationships were 2.5 time more likely to move into the state because of marriage equality.[2] The contributions of creative class professionals such as engineers, scientists, architects, designers, and educators are vital for business innovation.

In addition, businesses that operate in multiple states are inhibited in their ability to effectively manage human capital, since employees may avoid or even refuse promotion or transfer opportunities that require their families to relocate to states that lack critical protections and/or recognition of their marriages. Marriage equality, on the other hand, reduces turnover and provides greater stability for employees and their families.

Multinational corporations face the same challenge on a global scale. Employees who are legally married in their home countries are understandably very hesitant to travel to or work in the United States where their marriages are denied. This means that companies are limited in their ability to draw on their global talent to provide innovation, training and perspective to American workplaces. Global corporations value the ability to think globally and to place the best person—from whatever country—in the right job.

Finally, inequality places disproportionate stress on employees. Those in same-sex relationships must spend their own money to approximate the legal protections given by marriage; those with families must work even harder to protect their bonds with their children. The stress of a spouse's critical illness or an adoption is higher without the legal protections afforded by marriage. These challenges and very legitimate fears of separation are understandably distracting and taxing to employees.

DOMA requires employers to provide expensive alternative solutions in order to treat their employees equally

By creating a second class of citizens who are denied equal rights under federal law, DOMA forces employers to bear the burden of creating equity in the workplace. Doing so interferes with the rights of corporations to set equal benefits for all their employees or requires them to come up with costly "work around" solutions. Simply put, DOMA makes it impossible for employers to offer every employee the same benefits and equitable compensation for the same job, even in states which recognize same-sex marriages.

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[2] http://www.law.ucla.edu/williamsinstitute/pdf/MA_CreativeClass.pdf

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Employers actually pay more in payroll taxes when they try to extend benefits to their employees who are in same-sex marriages or domestic partnerships because those benefits are viewed by the government as "imputed income.[3]" Current taxation of domestic partner benefits costs American families and their employers $235,000,000 in additional income and payroll taxes every year.[4] Yet many businesses bear this increased burden because they recognize the importance of equal treatment and are committed to it.

DOMA imposes burdensome recordkeeping and management responsibilities on human resources departments

Currently, corporations must function within a patchwork of state and local laws. The variety of state laws and regulations regarding the status of same-sex couples who are married or in domestic partnerships increases the complexity of corporate salary and benefit policies and can put multi-state and multinational companies in legal limbo regarding appropriate treatment of these couples.[5]

For corporations that function in multiple jurisdictions, some of their employees may be considered married in some states, but not in others. If those employees are transferred to a different state, their legal marital status may change. This requires employers to keep track of a complex set of variables—whether their employees are in same-sex or opposite-sex marriages or partnerships, what state laws apply to each type of couple, and where their employees currently reside—costing them considerable time and money. In fact, it was business leaders in Vermont who urged the legislature to remove the initial two-tier system in place in that state.

Removing DOMA and other barriers to equal recognition of marriage rights will allow for the streamlining of recordkeeping and the distribution of benefits.

Conclusion

A diverse, vibrant and engaged workforce is critical to support the successes of American businesses and improving the American economy. In large and continually increasing numbers, American corporations are committing themselves to building equal and fair workplaces because they know that it is good for their employees and ultimately vital for their bottom line. Discriminatory laws, such as DOMA, interfere with this process by failing to treat every American as an equal. This means that the burdens of discrimination, including the costs, fall to businesses as well as to individuals in same-sex couples.

By granting marriage rights to some Americans, while denying the same rights to another class of Americans, DOMA enshrines discrimination in the law. Yet discrimination flies in the face of what is good for American businesses.

Therefore, we urge you to pass S.598, The Respect for Marriage Act.

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[3] http://www.law.ucla.edu/williamsinstitute/publications/UnequalTaxesOnEqualBenefits.pdf
[4] http://www.law.ucla.edu/williamsinstitute/pdf/Website_TaxPiece.pdf
[5] http://www.law.ucla.edu/williamsinstitute/publications/MarriageEqualityontheEconomy.pdf

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TESTIMONY
COURAGECAMPAIGN.ORG/TESTIMONY

Senate Committee on the Judiciary
"S.598, *The Respect for Marriage Act: Assessing the Impact of DOMA on American Families*"

Wednesday, July 20, 2011 at 10:00 a.m.
Room 216 of the Hart Senate Office Building

COURAGE CAMPAIGN MEMBERS – HEATHER AND KATH POEHLER

Married September 10, 2005

Pennsylvania State Law: *"It is hereby declared to be the strong and longstanding public policy of this commonwealth that marriage shall be between one man and one woman. A marriage between person of the same sex which was entered into in another state or foreign jurisdiction, even if valid where entered into, shall be void in this commonwealth."*

In December of 2004 in New Zealand, my girlfriend of four years asked me to make a lifetime commitment to her. I accepted. On September 10, 2005, we got married on the beach in Truro, Massachusetts. It was a beautiful, sunny day. A small gathering of about 40 family members and friends shared in the most wonderful day of our lives.

In January of 2007, I accepted a job offer from a mutual fund company based in Malvern, Pennsylvania. I did not move here permanently because I was originally supposed to move back to Massachusetts. However, after six months of on-site training, the company offered me a promotion. I accepted and on September 14, 2007, my wife Kath and I closed on a home in Downingtown.

Crossing state lines meant we were no longer married – thanks to a law signed by then-Governor Ed Rendell and the Defense of Marriage Act (DOMA). We suddenly lost our rights as a married couple. Perhaps in the eyes of our new neighbors, we were roommates, or two women simply living together.

Every year, we file our federal taxes but we do not get the benefits of filing as a married couple (in onr state of residence or with the federal government). When we refinanced our house, we both checked single because the loan was through FHA. We cannot get the health insurance we want because it has a federal savings account attached to it.

We love each other, we are committed to each other, we work hard, we volunteer and we contribute to our local community. DOMA and the state of Pennsylvania deny us our rights as a married couple – and as American citizens.

CONTACT:
Heather King Poehler, heather.poehler@gmail.com, (617) 755-1604
Ana Beatriz Cholo, Courage Campaign Communications Manager, anabeatriz@couragecampaign.org, 312-927-4845 (cell)

Courage Campaign is a multi-issue online organizing network that empowers more than 700,000 grassroots and netroots supporters to work for progressive change and full equality in California and across the country. Through a one-of-a-kind online tool called Testimony: Take A Stand, the Courage Campaign is chronicling the sights, sounds and stories of LGBT families and all who wage a daily struggle against discrimination across America. For more information about Testimony, please visit, http://www.couragecampaign.org/Testimony.

Courage Campaign • 7119 West Sunset Boulevard, No. 195 • Los Angeles, California • 90046
Phone: 323-969-0160 • Fax: 323-969-0157

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The Providence Journal projo.com

Rhode Island news

Comments 610 | Recommend 14

R.I. couple's fight for gay marriage is personal

01:00 AM EST on Friday, March 11, 2011

By Karen Lee Ziner

Journal Staff Writer

Pat Baker of Johnston, left, who has lung cancer, with her wife, Deborah Tevyaw.

The Providence Journal / Connie Grosch

JOHNSTON — Pat Baker has lung cancer and believes she has little time left. But twice this week, Baker dragged herself, her oxygen tank and a few extra pain pills to the State House, where she hoped to persuade lawmakers to vote for same-sex marriage.

On Thursday night, accompanied by her wife, Deborah Tevyaw, whom she married in Massachusetts, Baker testified at a Senate hearing.

"Every American is entitled to their civil rights under our Constitution. And it's Rhode Island's time to do the right thing," Baker said. "I don't feel any Rhode Islander wants to see another deprived of their civil rights. I hope I live to see this dream come true."

Baker, a 51-year-old correctional officer, was never a gay-rights activist. But after doctors diagnosed her with incurable lung cancer in December, she got an added jolt. The federal Defense of Marriage Act [currently

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under legal challenge] precludes Tevyaw from collecting the Social Security benefits Baker earned for a surviving spouse.

Legalizing same-sex marriage in Rhode Island will not change that for now.

Nonetheless, the discovery stunned Baker, leading her to embark on what may well be her first and last act of bravery in the name of marriage equality.

"I worked for those benefits. And when I say worked, I worked hard. You name it, it's happened. I've found inmates hanging; I've found inmates dead from suicide. I've been traumatized mentally and physically, only to get to this point in my life when I'm terminally ill … and I find out my wife is being begrudged $1,861 a month," Baker said.

"I'm going to fight until my last breath," Baker said in an interview at home this week. "Give 'em hell." She added, "This kind of bigotry has to be rectified."

A week or so ago, Baker addressed fellow correctional officers at 7 a.m. roll calls at the Adult Correctional Institutions. First, Baker told them, "Smoking kills. I'm living proof." Then, noting that the issue is one of "fairness, equality and human rights," she asked them to sign petitions. She said, "Ninety-eight percent of them signed it."

Baker and Tevyaw said state Sen. Frank Lombardo III, and Rep. Deborah A. Fellella, whom they voted for, were less receptive, and raised religious issues when they spoke with them earlier this week at the State House.

Baker said politicians who cannot separate church and state "should find another career." She added, "He [Lombardo] didn't ask us if we were gay or straight when he was knocking on doors, looking for our vote."

A justice of the peace married the couple in Provincetown, Mass., on Aug. 4, 2005. It was Baker's first marriage. Tevyaw was previously married: this is her first marriage to a woman.

Married life drew Baker into a close-knit family that cherishes holidays and frequent get-togethers. Baker is also close with Tevyaw's two children and two grandchildren.

But in a chair a few feet from a picture of those grandchildren, Baker sits and writes letters, as small-cell lung cancer shoots pain through her chest and steals her breath.

Tevyaw said, "My problem is that I watch her struggle every day. She sleeps three or four hours a night, and she's on this computer, writing letters to senators and this one and that one, and she isn't getting to live any dream that she had, because she's fighting for what's hers. And there's not enough quality time for me and her to do things, go places …

"I feel she's going to wind up dying behind that computer, and fighting and never getting to enjoy whatever she had. Other people out there, husbands and wives, I should say, they don't have to do any of this."

Karen Loewy, senior staff attorney with GLAD (Gay and Lesbian Advocates & Defenders), said Baker and Tevyaw are facing, at the worst possible moment, the fact that same-sex marriages obtained in other states are "inconsistently recognized" by public and private entities in Rhode Island. They are not entitled to the full scope of protections with regard to "end-of-life issues, disposition of remains, who is considered next of kin, who gets to make decisions of medical care, organ donations," and more.

Noting that the couple has spent "thousands of extra dollars" trying to put in place such protections, Loewy said, "I hope it's a reminder to the legislators that this is not au abstract. This is a really tragic illustration of

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how these vulnerable situations are made so much more difficult because these same-sex couples are not treated like everybody else."

kziner@projo.com

CAROL REED,

We are Carol and Anne We are lesbian foster parents and have been for 23 years. We have been together since 1987 and have had 20 foster children. Our oldest foster daughter is now 38 and our youngest was seven months when she came to live with us.
In 2007 we got married in Massachusetts but because of DOMA Anne will not be able to collect my social security. We want to offer each other the same safety and protections, a marriage recognized by the federal government offers non same sex couples.

For thirty years, I have worked at the same company and paid taxes and been a model citizen. For 23 years, Anne has taken care of children in need.
One little boy came into our home and told us that he "rode the short bus". He was a very bright young man but for some reason his mother convinced him he needed special help. We told him he was bright. By the time he moved home he knew he was capable of doing great work, we heard that he had graduated valedictorian of his HS class. One young lady went from a failing year with many disciplinary actions to the honor roll with praise from all her teachers. At one high school, we were known as "the ladies" and educators heaved a sigh of relief when they knew a "tough" child had us as their foster parents.

With kindness patience and compassion, our efforts have made great changes in 20 young lives. We are doing our best to make this a better world. Your kindness and compassion can make great changes in a great many lives and make this a better world. Please pass the Respect for Marriage Act and reverse DOMA We want to be able to tell our foster children we are married 100%.

Respectfully,
Carol Reed

ROCK E. RIPPLE, Providence

The Honorable Sheldon Whitehouse
170 Westminster Street, Suite 100
Providence, RI 02903

July 18, 2011

Senator Whitehouse,

David and I met and courted during the administration of George H.W. Bush. David was active duty military and I was completing my medical specialty training. The change of administration to Bill Clinton brought both DADT and DOMA. The implementation of DADT the military became increasingly difficult for gay service members to serve without being identified as homosexual.

We married in a ceremony without any state recognition in 1993. David retired from active duty after 22 years in the U.S. Navy so that we could live openly. We formed a household. I established a career. We welcomed an infant child into our home when adoption became possible for gay couples in Massachusetts. David worked limited hours until the child started school, at which point he established a civilian career.

We married in Massachusetts when equal marriage became law. We now both have active and busy careers, a teenager thinking about college, and the financial challenges of college tuition, shrinking retirement assets. We are involved in the community and in our church. We have the concerns of most families. In fact, if we were a heterosexual couple, ours would be the story of a conservative American family: the importance of education, the importance of faith, delaying marriage until financially stable, marriage followed by a shared household followed by child-rearing.

And then there is DOMA.

We carry our marriage documents, adoption documents and medical care proxy documents when we travel.

Due to a combination of DADT and DOMA, I am ineligible for inclusion in military family benefits.

While living in Massachusetts, I was eligible to participate in the family insurance plan offered by David's employer, but was billed an additional 25%, as it was considered to be earned income by the federal government. David now works for a Rhode Island employer that, even under the new Domestic Partnership legislation, does not provide medial coverage to same-sex spouses.

We are not eligible for file joint income tax.

We are ineligible for spousal Social Security benefits in the event of the death of one of us. This is particularly important when one spouse has chosen to stay at home with a child.

The list is much, much longer. And it has had real economic impact. I conservatively estimate that over the 18 years of our union, approaches $50,000.

It is time to end this discriminatory policy.

Sincerely,

Rock Ripple

2 Pratt Street, Unit A2
Providence, RI 02906

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July 20, 2011

United States Senate
Washington D.C.

Re. Respect for Marriage Act, S. 598 & H.R. 1116

Dear Senators

We are the Reverends David R. Ruhe and Matthew J. Mardis-LeCroy and we both serve at Plymouth Congregational United Church of Christ in Des Moines, Iowa. We are writing to express our opposition to the so-called Defense of Marriage Act, and to urge the passage of the Respect for Marriage Act. As citizens of the great state of Iowa, as ministers of the Gospel, we implore the Congress to undo a great injustice and to affirm the value and worth of all families.

Plymouth is one the oldest congregations in Des Moines. The 3,000 members of our church have a proud history of standing on the side of justice, from our founding in 1857 as an abolitionist congregation to our church council's resolution in January of 2010, calling on the state to uphold the rights of all people to legally marry, regardless of orientation. We came to this stance carefully and prayerfully, after much dialogue and discussion. Our support for legal same-sex marriage stems from many sources. In the interest of brevity, we will mention just two.

First, we plead with you on behalf of the couples that we have married: DOMA reduces them to the status of second-class citizens. As ministers at Plymouth Church, we have had the great privilege of officiating at many same-sex weddings. When you have stood before these couples, as we have—when you experience how their families and friends show up to support them, when you have heard them make their vows of lifelong faithfulness—when you have seen these marriages take place, then you know, as we know, that our communities are stronger when everyone has the right to make this commitment; to marry the person they love.

Second, we urge the repeal of DOMA because the current arrangement disregards the religious diversity of our nation. Religious people in the United States are not of one mind on the subject of marriage. Rabbis, imams, pastors and priests have debated the meaning of marriage for thousands of years. Some faith communities will marry persons who are divorced; some will not. Some

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clergy persons will officiate at interfaith weddings; some will not. Most houses of worship refuse to marry same sex couples –but many will marry them, including ours.

There is more than religious perspective on marriage. Here in Iowa, we have found that legal same-sex marriage respects the religious diversity of our state. Members of the clergy are free to marry, or not marry, whomever they wish. And all of Iowa's citizens are equal under the law. But DOMA has the opposite effect. It strips some citizens of equal protection under the law. It harms untold thousands of families. And it puts the federal government in the awkward, unconstitutional position of adjudicating a theological dispute.

On behalf of the couples we have married, in the name of religious diversity, for the sake of the common good, we urge the repeal of DOMA and the swift passage of The Respect for Marriage Act.

Grace and Peace,

The Rev. David R. Ruhe
Senior Minister
Plymouth Congregational United Church of Christ

The Rev. Matthew J. Mardis-LeCroy
Minister of Spiritual Growth
Plymouth Congregational United Church of Christ

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Statement of Sherri and Amy Shore

Before the Committee on the Judiciary

United States Senate

Submitted for the Record of a Hearing Entitled

"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

July 20, 2011

Our names are Sherri and Amy Shore. We have been together for twenty six years. In that time we have filed as domestic partners, been legally married twice (once was voided), and had a ceremonial wedding on our 20th anniversary. In many ways we are no different than many of you. We have worked hard, bought property, agonized over the challenges of a multiple sclerosis (MS) diagnosis, and many other un-favorable healthcare issues.

For eighteen years Amy worked in the high tech industry, fourteen of them with Silicon Graphics (SGI). I have worked for NASA Ames Research Center (ARC) for twenty one years, eleven as a civil servant. We have both demonstrated unconditional loyalty to our employers utilizing the strong work ethics and values we were both raised with. That same strong moral code led Amy to take a sabbatical after she was laid off during the economic downturn to assist her mother in caring for her father suffering from Alzheimer's.

Amy was laid off by SGI and she received a substantial package that included COBRA coverage. During much of Amy's tenure at SGI, I was carried on Amy's healthcare coverage under SGI's "Domestic Partners Benefit Package". This is significant because in 2001, when I was diagnosed with MS, my drug therapy was not covered under my Federal Employee Health Benefits (FEHB) plan. This cost was significant ($6,000.00 per month). When Amy's separation package concluded and converted to COBRA, we were informed that my coverage would be dropped because COBRA is a Federal program and the federal government does not recognize domestic partners.

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To avoid any interruption in coverage I quickly filed for "life changing circumstances" and requested that not only I be extended medical benefits outside the open enrollment period but that my domestic partner Amy be added as well. While I was approved, Amy was denied. Requests and appeals were filed with the OPM, EEO, and Union. All were denied citing DOMA.

At the conclusion of the one year COBRA coverage, we were forced to purchase private coverage which proved to be costly ($585 per month) due to Amy's pre-existing conditions. So in addition to large out-of-pocket co-pay for my MS medication we had Amy's medical insurance costs to deal with. We probably could have afforded such costs had Amy still been working, but without her income this became a huge financial burden. We began eliminating unnecessary comforts such as cable and internet services, limiting grocery and car trips, just like many other families in our situation.

At the same time Amy was taking a more active role in care-giving for her father as he became less physically able to perform the most basic tasks. Amy's father would eventually succumb to the ravages of multiple strokes and dementia. Amy takes great pride that he was able to remain at home until his death.

Unfortunately, his care took a physical toll on Amy, leaving her unable to work and in need of emergency surgeries to repair painful damage to her

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back, shoulders, and knee. Amy's costly insurance while covering a portion still left us with costs we simply could not afford.

We avoided recommended MRI's, X-Rays, and physical therapy, all in an attempt to avoid adding to growing medical bills.

All the while I continued annually to try to add Amy to my FEHB, writing numerous letters and emails to OPM, EEO, and union representation. All expressed their "heart-felt" concern for our situation but with almost painful ease referred to DOMA in their denial.

In October of 2008 Amy received a "fully favorable" notice of decision from Social Security/Disability. This had been a three year process that we'd hoped would give us some relief from the private sector insurance cost. We quickly found out how little Medicare covers and that a supplement was required.

Because Amy is under 50 years of age she did not qualify for any "gap" coverage. We turned to the State of California in an attempt to qualify for one of their many programs only to be told that we didn't qualify because we are "legally married" and in the state of CA employers are required to offer domestic partners benefits or spousal benefits to married employees, this includes same sex couples. Therefore Amy should be on my benefit plan. While the state employees heard our explanation that I was a "federal" employee and that DOMA denied such benefits, they too only offered their "heart-felt" concern for our situation but also denied our request.

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Currently our home is in foreclosure despite successful completion of a loan modification program by our lender. Outstanding medical bills have been the chief contributor to a poor credit score and hampering efforts to refinance. For years our property title was listed in our names but communicated as "Amy Shore an unmarried woman and Sherri Rybak (my maiden name) an unmarried woman." Do you have any idea how painful that kind of indifference and invisibility is? Now we are "legally married" and still invisible because of DOMA. In the last three years two of my office mates have gotten married, both adding their husbands to FEHB without so much as a hick-up! This type of discrimination has to stop!

We are honest, hard working, taxpaying individuals who care for their aging parents and face many of the same challenges every family does! We are just the same as every other American and should be afforded the same liberties and protections.

We respectfully request that you vote to repeal the Defense Of Marriage Act (DOMA).

Sherri and Amy Shore
San Jose, California

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Psychological and Social Outcomes for Children of Same-Sex Couples

One of the arguments against permitting same-sex couples to adopt or foster children is that allowing them to become parents would be detrimental to the psychological and social well-being of the children. Social science research, however, challenges this theory. Data suggests that children raised by same-sex couples are equivalent to children of heterosexual partners in their psychological adjustment, cognitive abilities, and social relationships with peers and adults.

Research Findings about Children raised by Same-Sex Couples

- Studies indicate that children of same-sex couples are equal to children raised by heterosexual parents in their school functioning (e.g., concerning grades or school connectedness),[1] cognitive and physical abilities, [2] and self-concept.[3]
- These children do not show greater tendencies toward psychosocial problems (e.g., depression, anxiety, or low self-esteem) than children in heterosexual households.[4]
- Researchers have consistently found that children of gay and lesbian parents reported having normal, positive and healthy relationships with their peers.[5]
- The overall perceived quality of parent relationship, care from other adults,[6] closeness with parents, understanding from parents, and perceived autonomy was reportedly equivalent among children with same-sex parents to youth raised by opposite-sex couples.[7]
- Studies show that children with lesbian mothers are equal in their emotional and behavioral adjustment to their counterparts raised by heterosexual mothers.[8]
- Empirical data suggest that children with lesbian mothers experience greater mother-child interaction and contact with biological fathers than children with single heterosexual mothers.[9]
- In a scientific survey, children of lesbian mothers reported having a better relationship with their step parent than those of heterosexual mothers.[10]
- Scholarly research confirmed that children with lesbian parents have equal contact with grandparents, other relatives, and adult non-relatives to those with heterosexual parents.[11]
- According to scientific evidence, substance abuse, delinquency, or feelings of victimization are no more common among children of same-sex couples than among children of heterosexual couples.[12]

About SPSSI

The Society for the Psychological Study of Social Issues (SPSSI) is an international group of approximately 3000 psychologists, allied scientists, students, and others who share a common interest in research on the psychological aspects of important social issues. In various ways, the Society seeks to bring theory and practice into focus on human problems of the group, the community, and nations, as well as the increasingly important problems that have no national boundaries.

For more information, please contact Alex Ingrams, SPSSI Policy Coordinator, at (202) 675-6956 or aingrams@spssi.org.

Fact sheet created by Abigail Woodruff and Jutta Tobias; December 2009.

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Psychological and Social Outcomes for Children of Same-Sex Couples

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Same-Sex Couples and U.S. Marriage Legislation

Currently, U.S. federal law defines marriage exclusively as a legal union between a man and a woman and prohibits marriage between same-sex couples, as do 44 state laws. Recent scientific research suggests that this may lead to substantial social, psychological and physical harm for lesbian, gay and bisexual individuals, as well as for their families.

The Underlying Science: Sexual stigma, a particular type of Societal Prejudice

- *Stigma* occurs when group labeling is based on a socially undesirable or negatively-stereotyped characteristic. The labeled group is then placed in a distinct category, separating them from the majority.[1]
- *Sexual stigma* occurs when non-heterosexual behavior or public expression of a non-heterosexual identity is denounced and devalued.[2]
- Laws that deny same-sex couples equal status negatively differentiate them, perpetuating the lingering societal stigma associated with same-sex attraction.

Selected research findings

- Recent data suggest that denying same-sex couples marriage equality devalues and delegitimizes sexual minorities,[3] which may motivate them to conceal their sexual orientation.[4]
- Research shows that sexual minorities who conceal their sexual orientation have significantly higher rates of cancer and other infectious diseases than those who do not.[5]
- Having contact with sexual minorities reduces prejudice among heterosexuals.[6] Since anti-marriage legislation renders sexual minorities more likely to conceal their orientation, the potential for open interaction between heterosexual and gay and lesbian individuals is decreased, as is the prospect for reduced prejudice towards same-sex couples.[7]
- Unmarried cohabiting heterosexual couples tend to show higher levels of depression and relationship instability than married couples.[8] Lesbian, Gay, and Bisexual individuals in U.S. states that have passed laws condemning same-sex marriage experience higher levels of psychological distress than those in other states.[9]
- Contrary to arguments against same-sex marriage, studies indicate that children raised by same-sex couples show no difference in psychosocial adjustment, romantic behavior, or school outcomes, compared to children of opposite-sex couples.[10]
- Children of same-sex couples benefit from the positive outcomes from their parents' being married,[11] such as a more durable and stable relationship and better psychological health.[12]

Policy Implications

The research cited above indicates that current laws prohibiting same-sex marriage may have serious detrimental effects on the health and well-being of same-sex couples and their family members. The scientific evidence suggests that these laws perpetuate the societal stigma that sexual minorities have been exposed to for centuries. Policy makers should take this psychological research into account when dealing with marriage legislation at state and federal levels.

For more information, please contact Alex Ingrams, SPSSI Policy Coordinator, at aingrams@spssi.org or (202) 675-6956

Fact Sheet created by Abigail Woodruff; October 2009.

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United States Senate

Committee on the Judiciary

Hearing on "S.598, The Respect for Marriage Act:

Assessing the Impact of DOMA on American Families"

Written Testimony of Joe Solmonese

President, Human Rights Campaign

July 20, 2011

Chairman Leahy and Members of the Committee, on behalf of the Human Rights Campaign and our more than one million members and supporters nationwide, thank you for the opportunity to offer testimony in today's historic hearing. As the nation's largest civil rights organization advocating for the lesbian, gay, bisexual and transgender (LGBT) community, the Human Rights Campaign strongly supports S. 598, the Respect for Marriage Act and a repeal of the discriminatory and ill-named Defense of Marriage Act (DOMA). Thank you to Senator Feinstein for her leadership on this legislation and on behalf of LGBT people in California and across the country.

As President of the Human Rights Campaign, I have the tremendous opportunity to travel the country, speaking to LGBT people, their family, friends, religious leaders, and employers about the difficulties they face because of discrimination. I have the privilege today to bring their stories and concerns before the Committee. Gay and lesbian couples work hard to provide for their families, obtain quality healthcare, plan for retirement, and save for college tuition – just like their family and friends, neighbors and coworkers. But

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they do so in a country that still refuses to recognize them and their families as equal. And for those who are lucky enough to live in states that do permit them to marry, they still face a federal government that treats their marriages as if they do not exist, denying critical benefits and protections to their families.

On behalf of the tens of thousands of married same-sex couples in this country, including myself and my husband, I urge this Committee and the Congress as a whole to pass the Respect for Marriage Act and end the federal government's disrespect for and discrimination against lawfully married same-sex couples.

A Great Deal Has Changed Since DOMA Was Enacted

Fifteen years and just about two months ago, my friend and predecessor as head of the Human Rights Campaign, Elizabeth Birch, offered testimony at the first congressional hearing on the Defense of Marriage Act before the House Judiciary Committee's Subcommittee on the Constitution. In her remarks, Elizabeth noted that, at that time, nowhere in the United States could gays and lesbians lawfully marry. Still, she reminded the subcommittee members of an important fact:

> Lesbian and gay Americans are your constituents, your sports heroes, your co-workers, your neighbors -- and in thousands and thousands of American homes, including many of yours, we are members of your own families. Gay Americans are found in every community, in all walks of life, at every income level and in all age groups. We are conservatives, liberals, Christians, Jews, Democrats, Republicans and independents -- and of every race. And being gay does not even affect the extent to which someone cherishes the true values of this Nation, the most sacred of which are fairness and nondiscrimination. There have always been gay Americans in the history of this country, and there always will be gay Americans.

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Today, one of these things remains true, and one of them does not. Lesbian, gay, bisexual and transgender people remain a part of the fabric of our nation, and a part of the states and communities that you represent. Gay and lesbian couples live in nearly every county in America. Many of them are raising children. But, unlike fifteen years ago, today tens of thousands of same-sex couples in the United States are lawfully married.

Eight years after DOMA was enacted, Massachusetts became the first state to extend the freedom to marry to loving, committed couples regardless of sexual orientation. Today, gay and lesbian couples can marry in five additional states – Connecticut, Iowa, New Hampshire and Vermont, as well as the District of Columbia. On Sunday, marriages between same-sex couples will begin in New York, after the state legislature passed marriage equality legislation just weeks ago. In 2008, thousands of gay and lesbian couples married in California before the adoption of a constitutional amendment stripping them of that right, and those marriages remain valid under California law. And finally, marriages between same-sex couples, while not available under state law, are nonetheless recognized in Maryland.

This sea change in laws recognizing the equality of LGBT people and their relationships is part of a broader shift in public perceptions of our community and laws that would treat us unequally. In the last year, a series of national public opinion polls have shown, for the first time, majority support for equal access to marriage for gay and lesbian couples. In March, HRC commissioned a poll about the Defense of Marriage Act and specific rights and benefits that it denies to married same-sex couples. That poll showed majority support for the repeal of DOMA, including across age and gender demographics and

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among both Catholics and Christians, and plurality support for repeal regardless of region, level of education and race.

While so much has changed for the positive in the last fifteen years, DOMA has also meant that gay and lesbian couples' joy at being recognized as equal by their states has been tempered by the reality that the federal government continues to treat them and their marriages as if they did not exist at all.

DOMA Does Real Harm to Real American Families

Shortly after DOMA was passed in 1996, the Government Accountability Office (GAO) prepared a report (updated in 2004) detailing more than 1,100 instances in which federal law conditions a right, benefit or responsibility on marital status. These include a host of social safety net benefits designed to protect American families when they are most in need – in difficult economic times, in retirement and when loved ones die. By denying these critical rights and benefits to lawfully married same-sex couples, DOMA is, in no uncertain terms, visiting real harm on American families, often when they are most vulnerable.

You have already heard compelling stories of those harms from Susan, Ron and Andrew. Our colleagues at Gay & Lesbian Advocates & Defenders have presented the Committee with a DOMA Story Book detailing many more. And these are just a small sample. For every married gay and lesbian couple in America, there is a laundry list of ways in which DOMA denies them critical health benefits, makes their finances and long-term plans

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more difficult, costs them thousands in additional tax dollars and even threatens their ability to be together at all.

As President of the Human Rights Campaign, I have heard these stories from gay and lesbian families from all corners of the country and all walks of life. Families like Rachel Black and Lea Matthews from the Bronx, who are here today with their five-year old daughter, Nora. Rachel and Lea met in college in Mississippi and have been together for thirteen years. With marriage now a reality for gay and lesbian couples in New York, Rachel and Lea are excited to be tying the knot at long last. But for gay and lesbian couples like them, the joy of finally being able to marry is tempered by the fact that DOMA remains in the way of true equality. Rachel and Lea worry about the important protections their family will still be denied, like unpaid leave from work for one to care for the other if she gets sick, or the ability to continue health coverage for their family if one of them gets laid off.

DOMA means that the many protections the federal government provides for the health and financial security of American families remain out of reach for same-sex couples and their children. Same-sex spouses of federal employees and active members of the military are denied access to health insurance coverage and a host of other benefits. Even when private sector companies voluntarily provide spousal health benefits, they are taxed, making it financially burdensome if not impossible for gay and lesbian couples to make use of these fair-minded policies. Gay and lesbian married couples cannot file their

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federal income taxes jointly, requiring some of them to pay thousands of dollars to the IRS that married heterosexual couples do not.

Beyond their day-to-day lives, gays and lesbians wonder how, after a lifetime of hard work, they will afford to enjoy their golden years and ensure that their spouses and children are provided for. DOMA weighs heavily on their minds, and for good reason. This discriminatory law denies Social Security survivors benefits to a same-sex spouse, leaving him or her without critical income earned through years of payments into the Social Security system. Notwithstanding the tremendous service to our country of retired federal employees and military veterans, DOMA bars their same-sex spouses from receiving the health insurance and share of a pension that surviving heterosexual spouses do. DOMA even prohibits the spouse of a gay or lesbian service member or veteran from being buried with him or her in a veterans cemetery. Same-sex spouses are not exempted from the taxation of a spousal inheritance, nor are their homes and incomes protected when a spouse enters nursing care under Medicaid. In short, in all the ways that federal laws seek to ensure spouses are protected and financially secure in retirement, DOMA leaves gays and lesbians –people like today's witnesses Andrew Sorbo and Ron Wallen– vulnerable when they are perhaps most in need.

And finally, for some same-sex couples, DOMA does not simply interfere with their financial security, it threatens their very ability to be together. Our nation's immigration laws permit American citizens to sponsor certain family members for legal residency in the United States, but because of this discriminatory law, gay and lesbian Americans are

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barred from doing so for a foreign spouse. As a result, thousands of bi-national same-sex couples struggle to find a way to stay together in the United States, and far too many gay and lesbian Americans are forced to choose between their country and the people they love.

In these and many other ways, the Defense of Marriage Act most clearly demonstrates the gross inaccuracy of its name. Rather than defending marriage, this law attacks the marriages of loving, committed same-sex couples and places far too many of them into difficult financial circumstances. DOMA does not protect a single marriage, but rather does immeasurable damage to many thousands.

DOMA Hurts More Than Gay and Lesbian Couples

DOMA does not just harm married gay and lesbian couples. It hurts all of those who share in their day-to-day struggles under this discriminatory law. First and foremost, it hurts the children of same-sex couples, who suffer from the financial instability created for their parents by DOMA's discrimination. But this discriminatory law burdens other children as well, namely LGBT youth, who see the federal government continue to formally disrespect and discriminate against their community. DOMA tells them, in no uncertain terms, that they cannot be full and equal citizens of their country.

DOMA also harms others who are part of the lives of married same-sex couples, like the parents and siblings who step in with financial and emotional support when health insurance is too costly or tax bills are unmanageable, or the friends who stay with one

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ailing spouse because the other is not permitted to take leave and cannot afford to stop working. It hurts fair-minded employers, who take on complicated administrative burdens, not to mention additional tax obligations, simply in order to offer equal benefits to the same-sex spouses of their employees. And it impacts religious leaders, who struggle to counsel their parishioners facing the financial and emotional burdens of DOMA's discrimination.

As you have heard today, particularly from those who have felt firsthand the hardships imposed by DOMA, the impacts of this discriminatory law are real and they are unconscionable. It is long past time for the federal government to end its discrimination against lawfully married same-sex couples. Congress must repeal this law enacted solely to treat gays and lesbians unequally. I urge you to pass the Respect for Marriage Act and ensure that all American families have the full respect and protection of their federal government. Thank you.

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United States Senate

Committee on the Judiciary

Hearing on "S.598, The Respect for Marriage Act:

Assessing the Impact of DOMA on American Families"

Written Testimony of Andrew Sorbo

July 20, 2011

Thank you, Senator Leahy, Senator Feinstein, and Senator Blumenthal for inviting me to testify before this committee.

I am Andrew Sorbo, a citizen of the United States of America and a resident of the state of Connecticut. I am 64 years old. I spent my professional life as a teacher and principal in parochial and public schools. I have taught various subjects, but history is the subject dearest to my heart. My father died when I was an infant, and my mother raised my older sister and me on welfare in a public housing project in Providence, Rhode Island. I grew up a devout Roman Catholic and was the first in my family to attend college and graduate school.

On July 29, 1979, my life was transformed when I met Colin Atterbury, an associate professor of medicine at Yale University, chief of the liver disease section at the West Haven Connecticut Veterans Administration Center, by chance while visiting New York City on a whim.

The mechanisms of how people fall in love remain a mystery to me. I don't know why love happens, only that it does.

Colin and I fell in love on the very day that we met. We both knew beyond doubt that some inexplicable force had brought us together, that we had each found in the other a soul mate, a partner for life.

And so we embarked on our joint journey.

We traveled the world and developed a second family of gay friends. We filled our lives with the arts. We bought our first home. We passed many happy hours reading together, content in silence just to be near one another.

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Colin's and my love grew and deepened. We could finish one another's sentences and recognize the meaning of the slightest movement of a facial muscle. Although we never contemplated that our churches, our families or our government would ever understand or accept the fullness of our relationship, we lived our whole lives together as if we had said the vows aloud before the whole world: "to love, honor and cherish, in sickness and in health, for richer or poorer, till death do us part." Sadly, too soon death did part us.

We were very spiritual people. From the beginning we believed that we were brought together, that it was not merely a coincidence or pure serendipity.

Twenty-five years later, Colin and I traveled to Vermont to mark the special anniversary of our meeting by celebrating a civil and holy union at Saint Mary in the Mountains Episcopal Church.

A year later, fate threw us a curve ball. In 2005, on a trip to Southeast Asia, Colin fell ill. What we thought must be a food-borne infection turned out, on further investigation, to be pancreatic cancer.

Colin's prognosis, six months to live, hit us both viscerally. Our dream of retirement and continuing to explore the world together was not to be. As befits someone with an undergraduate degree in philosophy, Colin faced the inevitable with quiet but determined stoicism. With a strength I did not know I had, for three grueling years I nursed him through chemotherapy, radiation therapy and surgery.

I wondered what would be worse – watching helplessly as the man I loved slowly died or spending the rest of my life without my other half?

Often I despaired. There was no hope of recovery. To raise my spirits, I reminded myself how Colin and I, throughout our relationship, had introduced each other to new experiences and to interests that had enriched our lives and made us better people.

In January of 2009, Colin realized he would not survive until our thirtieth anniversary in July. In a subdued ceremony in the living room of our home in Cheshire, Connecticut, two minister friends married us. Four months later, just short of our thirtieth anniversary, Colin died. Having had three years to prepare for his death did not lessen the pain or the sense of loss. But I was comforted by the fact that we had achieved something momentous in our final months – a marriage legally sanctioned in our home state of Connecticut.

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Our wedding rings now hang from a gold chain around my neck, linked together beside my heart.

But our happiness in our marriage was tempered by our sorrow that the federal government refused to recognize it. Colin and I were fully aware that his death would jeopardize my financial security. Once he died, I might be forced to sell our beloved home – an eventuality that in fact proved necessary.

Colin and I were never profligate. We lived within our means. But federal laws consistently presented insurmountable, and unforeseen, hurdles to our financial planning. DOMA hung like a thick and ominous cloud over our security and serenity.

Colin's paycheck came almost exclusively from the Veterans Administration and not from Yale University. When Colin died, I was forced to forfeit 80 percent of our household income, because his VA pension check stopped coming. Even though we had tried to prepare for his death, nonetheless the economic repercussions came as a shock. I quickly discovered that my legal Connecticut marriage license was paper thin in the eyes of the federal government.

In 2000, when he retired from the VA, Colin did not have the same option that my straight brother-in-law exercised when he retired – where my brother-in-law could take a cut in monthly benefits in order to allow his spouse, my sister, to inherit his pension and thereby maintain her financial security. This inequitable situation was a direct consequence of DOMA.

Colin was also denied the right to include me in his medical insurance plan through the federal government. When I retired as a teacher in 2005, I had no alternative except to pay for my insurance coverage in full through my former school district, at a much higher cost than if I could have been covered under Colin's plan as a spouse. Last year my insurance payments consumed almost a third of my $24,000 teacher pension.

Although Colin and I planned carefully to protect our assets, as any married couple prudently should, DOMA prevented Colin from leaving me his Yale IRA under the same rules that apply to straight couples. Were I a woman, the IRA would simply have transferred to my name alone. However, because we were a same-sex couple, even though we were legally married, different rules applied. To my financial disadvantage, I was required to begin withdrawing money from Colin's IRA in the December following Colin's death. This deprived

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me of the opportunity to allow Colin's investment to grow for an additional 7 years – as other spouses may, and something that would help me as I continue to age.

There were other unforeseen consequences because of DOMA after Colin's death. Securing our assets was an extremely complicated process because our marriage was not universally recognized. My financial advisor and I made numerous calls to the various companies in which Colin had invested our savings, which often lasted for hours because the companies were conflicted about how to allow me to roll over and consolidate our assets. We would get different opinions from different employees of these companies, which was extremely frustrating. Everyone involved knew that I would get more favorable treatment if our marriage was recognized federally or if we had been a heterosexual couple, but ultimately the legal advisors at the various companies decided that because of DOMA they could not recognize my marriage. My advisor and I tried to secure my retirement so that I would not exhaust my resources too early and would be able to account for inflation and higher medical costs as I aged. But, as a result of DOMA, he could not administer my retirement plan in the same manner as he would have if Colin and I were an opposite-sex couple.

Colin and I were both receiving Social Security at the time of his death, and his payment was larger than my monthly payment, which is less than $500 a month. If there were no DOMA, and Colin had survived five more months, I would have qualified to receive the difference between Colin's payments and my own, as my mother was able to do when my step-father died. This is yet another way in which DOMA would have deprived me of an important safety net that other surviving spouses have.

The toll was not exclusively financial. The emotional strain was often worse.

While Colin was sick with cancer, there were tense moments with hospital employees when I asserted my rights as his spouse to supervise his care. It was deeply hurtful to be asked by hospital staff what right I had to be at his bedside. Such treatment is not directly because of DOMA, but it is consistent with the kind of disrespect DOMA imposes on married same-sex couples. The psychological toll that DOMA inflicts took an incalculable toll on my and Colin's sense of the justice and fairness of our society and its treatment of our committed, loving relationship. DOMA singled out our marriage and told us that in the eyes of the federal

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government, our loving relationship was wrong. That our love was unacceptable. That *we* were unacceptable.

Were Colin sitting by my side today, he would implore you to stop disrespecting our marriage and treat us equally to other married couples, and to repeal DOMA.

Colin would implore you to restore the justice that DOMA denies us. Colin would remind you that we are your brothers and your sisters, your aunts and your uncles, your cousins and your friends, your workmates and your neighbors, your sons and your daughters, and, yes, even sometimes your moms and dads.

And then Colin, the doctor who was also a philosopher, would stop to ruminate, because he was a thoughtful man. He would lower his voice, solemnly. He would look every one of you in the eye before saying, "*Everybody* deserves equal treatment, and all marriages between loving, committed adults should be treated equally."

Statement of Cathy Speck

Before the Committee on the Judiciary

United States Senate

Submitted for the Record of a Hearing Entitled

"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

July 20, 2011

My name is Cathy Speck, and I appreciate you for listening to our story and our plea for equal marriage rights. I live in Davis, CA with my wife Linda Duval. Though we have no children, we did adopt Mazie the Amazing Monkey-Face Pug/Poodle Terrier Princess. She is a SPCA rescue dog who came into our lives at the right time.

In January 2009, I was diagnosed with Amyotrophic Lateral Sclerosis (ALS) a.k.a. Lou Gehrig's Disease. This is a progressive, fatal neuromuscular disease. Most people with ALS die 2 to 5 years after diagnosis. ALS is very rarely genetic, in fact only two percent of the cases are caused by a genetic mutation. The SOD1 positive chromosome mutation runs in my family, and each of my surviving siblings has a 50/50 chance of getting the disease. Our family has already lost my mom, Dorothy, her Aunt Mary, my brothers Paul and Larry, and I'm still hanging on. I have a powerful incentive to live long enough to see the federal government recognize our marriage. Without this recognition, my wife Linda will not receive my social security benefits.

I met my wife, Linda, in 1993 and we had our first unofficial wedding celebration on June 16, 2001. In February of 2004, we were one of thousands of couples who got married in San Francisco City Hall after Gavin Newsom honored our rights to

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marry. We had to travel three times to San Francisco in attempts get our marriage license because we weren't allowed to schedule appointments as is done for heterosexuals. With thousands of other couples, we had to line up for blocks in rain, fog, cold, and wind for up to thirteen hours each trip. Our determination and steadfast love prevailed. The fourth time, we, like other couples, were allowed to schedule appointments and receive our marriage license. We exchanged vows immediately after in the glory of the S.F. City Hall rotunda. We framed our marriage license from the County of San Francisco, which the courts later nullified.

Again we did not give up. We were one of the 18,000 gay couples who did get married legally in California before California's Proposition 8 put an end to gay marriages in the state. Our marriage is still considered valid in California, so we do have the same rights as any married couple in California.

However, when we step out of California, or deal with federal laws, we have none of those rights. This means if Linda and I travel out of state and my ALS requires a trip to the emergency room or a hospital stay, Linda could be denied the right to be with me at a time when I could be breathing my last breath.

When I die, Linda will not get my social security benefits. For heterosexual couples all over the country, when a person

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dies, their partner gets their social security benefits. You get a monthly stipend because you've been paying into social security all your working life. You then draw off that money after you retire and if you die, it goes to your spouse or your dependent.

However, since the federal government does not recognize our marriage, Linda won't get that. All the money I would have gotten to help support us if I were to grow older just goes back to the government. Linda can't have it.

I contacted attorneys to see if there was anything I could do. They told me that, in the eyes of the federal government, I have no spouse. A few friends suggested that I legally adopt Linda, but the only way I could do that was if she were mentally incompetent. I don't have any children so when I die my hard-earned money goes back into a government that doesn't honor our legal California vows. Not only will Linda suffer the loss of her wife, her life companion, she will suffer financially.

Although some people consider social security benefits to be of minimal help, in this case it could mean the difference of Linda being able to pay her rent. We are not wealthy and, even though we are known regionally as "rock stars," most of our years together we lived paycheck to paycheck. We did inherit some money after my brother Larry died of ALS, but most of this was

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spent on pre-paying my cremation, the death certificates, and taking care of other legal matters upon my death.

So once again I emphasize that with DOMA currently in place, the absence of social security benefits will burden Linda during her already stressful and sorrowful grief and mourning. Because her immediate and extended families shun her, they certainly will not be helping her emotionally or financially. As more of my family members die of ALS, Linda's support system will continue to diminish.

Linda and I had a well-known duo, Duval Speck, a band, The Essentials, and produced three CDs. We performed all over California sometimes, for LGBT rights and celebrations, and other times at "mainstream" public events. We never changed a word in any song, which made us vulnerable to "haters." For example, if the lyrics were: "I fell in love with her, and knew she'd be my wife; I would comfort her for all of her life," we'd never switch "her" to "him."

In 2009, the first year and a half after I was diagnosed, we directed and played in many benefit concert fundraisers for ALS.

Sadly, the ALS has now taken away my ability to sing, and my arms and hands hurt and are too weak to play percussion. I have

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to sleep with special equipment to deliver oxygen now, and my energy continues to decline. My degree of fatigue determines what I can accomplish each day. Nothing, and if you could see my face right now, you'd know I ***mean nothing will dampen my spirit.*** And I hold onto hope that if I live long enough, maybe the laws will change and the federal government will recognize our marriage. That keeps me getting out of bed in the morning, striving for LGBT equal rights, and continuing to raise funds to find a cause and cure for ALS.

I'm a tangible poster child for why DOMA should be repealed. If someone asks what's unfair about our marriage not being recognized in all states, I can offer several examples, but here is the most glaring one: I'm dying. I have a terminal illness and I pretty much know my life span. Linda and I have been together since 1993, and we're legally married in the state of California, yet the federal government does not recognize our marriage and the rights included therein.

And talk about the old standard marriage vows: "in sickness and health, til death do us part." Ask any caregiver of an ALS patient: is there a more cruel and heart wrenching disease? Linda took big risk when she married me. And before I was diagnosed, she and I were the primary caregivers of my brother

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Larry who died of ALS in June 2008, about eight months before I was diagnosed.

Once again if you want a real-life example of why DOMA is unjust, I'm right here--a 51-year-old woman dying from ALS (a disease our society tends to hide) and my wife, 53, with still plenty of life to live. I'm the "poster child" for "Repeal DOMA" and "Defeat ALS." Some people in our great country don't think we're as good as they are, and don't think we deserve the same rights. Well, we are as "good as they are" and we do deserve the same marriage rights. Go ahead and plaster my story on every wall and every screen.

I'm not dead yet. Even the terminally crippling disease of ALS won't stop me as I strive to open hearts and eyes, so that may all live with love and equality.

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Testimony of Maria Tomaselli of Ludlow, VT for the hearing titled
"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"
July 20, 2011

I'm a Vermonter who is in a same sex relationship with an Australian citizen. We are not married yet because we're still trying to figure out what we're going to do to keep her here after next winter. She works seasonally as a ski instructor in VT with me on an H2B visa. Inevitably, she has to leave at the end of each winter. Even if we were to marry, I still couldn't keep her here thru immigration sponsorship or through a fiancee visa because of DOMA. I need something to change quickly before the end of next winter or I may have to leave this country just for us to be together. Australia will recognize our relationship, but my country won't! So much for liberty and justice for all!!!

TESTIMONY
COURAGECAMPAIGN.ORG/TESTIMONY

Senate Committee on the Judiciary
"S.598, *The Respect for Marriage Act: Assessing the Impact of DOMA on American Families*"

Wednesday, July 20, 2011 at 10:00 a.m.
Room 216 of the Hart Senate Office Building

COURAGE CAMPAIGN MEMBERS
BETH VORRO and BETH CODERRE

Married September 18, 2004, Together 26 Years

By the time we got married in Massachusetts in 2004, my spouse and I had already been together for 19 years. As a federal employee, I immediately filled out the appropriate paperwork for a change in marital status. Although I knew it would be rejected, I also filled out the form to add my spouse to my health insurance plan. Someone apparently made a mistake at first, as we received a membership card and welcome packet for my spouse – even though I had included her name and gender on the application. After a few weeks, I received a call from someone in the Office of Personnel Management, saying I had "obtained health benefits illegally," and that the Defense of Marriage Act (DOMA) prevented the government from extending these benefits to my spouse.

Because my wife, Beth Coderre, is a psychotherapist in private practice, she purchases an individual health insurance policy – to the tune of about $635 a month. DOMA directly costs us over $7,000 a year and denies me wages and benefits equal to those extended to my colleagues. We estimate that's about $70,000 of wasted money already in our careers. Money we could have tucked away for our retirement or some nice vacations. After 26 years together, we are still not considered a couple in the eyes of the federal government – a travesty created and perpetuated by DOMA.

Rhode Island recently passed a civil unions law. It states that any same sex couple who had a civil union in another state would be recognized as civilly united here. However, it's silent on the issue of couples married in other states. Our marriage is not recognized as a marriage in Rhode Island because of DOMA. Nor is it recognized as a civil union because of the statute's language. In other words, we can't get civilly united in our state because we would have to state that we are not married. As a result, we have fewer rights as a married couple than one joined in a civil union. How unfair is that?

The bottom line is DOMA really makes a mess in the states, and causes couples the unnecessary stress of not knowing our legal status or rights. In Rhode Island, it puts us right back to where we were before we got married.

It occurred to us that we could have marriage in all 50 states, but if the federal government doesn't recognize it, then what's the point? Unless DOMA is repealed, our marriage is legally meaningless and our 26 years together dishonored.

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Courage Campaign is a multi-issue online organizing network that empowers more than 700,000 grassroots and netroots supporters to work for progressive change and full equality in California and across the country. Through a one-of-a-kind online tool called Testimony: Take A Stand, the Courage Campaign is chronicling the sights, sounds and stories of LGBT families and all who wage a daily struggle against discrimination across America. For more information about Testimony, please visit, http://www.couragecampaign.org/Testimony.

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Written Testimony

of Ron Wallen

Before the Committee on the Judiciary

United States Senate

For the Hearing

"S. 598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

July 20, 2011

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Thank you, Chairman Leahy, and members of the Senate Judiciary Committee, for inviting me to testify at this important hearing today. I want to especially thank my Senator, Senator Feinstein, for introducing the Respect for Marriage Act. I am humbled and honored and appreciate the opportunity to tell you my story.

My name is Ron Wallen. I am 77 years old and I live in Indio, California.

Four months ago, my husband and partner of 58 years, Tom Carrollo, died of leukemia. Tom and I first met way back in 1953 when Tom was 23 and I was 19. We were properly introduced, and had an old-fashioned courtship. And even though it sounds corny in this day and age, Tom was the one and only man in my life. And, from the first day, we enjoyed a sense of togetherness, which never weakened in both good times and bad.

When we first got together in the 1950s, we faced some difficult challenges; in those days we could easily lose our jobs if people at work knew we were gay. This was certainly the case when we held jobs with security clearances.

Tom served in the U.S. Navy during the very first combat engagement of the Korean War and I later served in the Army for two years. That service represented the only time in our 58 years that Tom and I were really apart for any significant period of time. We were proud to serve our country when called.

In 1978, on our 25th anniversary, Tom suffered a massive heart attack, and his doctor told us that he had to retire from work in order to survive beyond that year. He was only 47 years old. We were just entering the good earning years of our lives, but when faced with that kind of verdict, you do what you have to do.

We left our businesses, and moved to Mexico, and then Florida, where we lived for 14 years. We carefully invested our savings (which became severely depleted during the financial crisis), and we did a lot of volunteer work -- especially at an AIDS service organization during the early years of the AIDS crisis.

We later relocated to the Palm Springs area, near our three nieces. We have always been very close to our nieces and nephews – I was "Uncle Ron" to Tom's nieces and nephew and he was "Uncle Tom" to my nieces.

In 2005, we bought a home in Indio, California, where we enjoyed many gatherings with friends and family. Tom was a great cook, and our joy in life was hosting small dinner parties at our wonderful home. Our lives were filled with spending time together and with friends and family. And that was pretty much our life together until his last illness.

A very important day for us was June 24, 2008, after the California Supreme Court ruled that same-sex couples could marry in California. We were among the 18,000 lucky couples given the opportunity to stand before family and friends and marry the one person they loved above all others. It was glorious. It was wonderful – a day of pure joy! We shared our marriage with our family and friends—including our beloved friend Annie, who was 82 years old when she stood up for us on our wedding day.

Despite over 50 years together, marriage was that *something* that had been missing all through those years together—the opportunity to stand before our peers and families and the rest of society and make a public vow of the commitment and devotion we had shared for so long. And as longstanding as our love for each other was, we were nevertheless

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taken by surprise by the amount of emotion that came to us when the words "by the power vested in me by the State of California, I now pronounce you married for life" were spoken. Imagine, after 55 years together, the two of us were blubbering on our wedding day.

We all know that part of the marriage vow is "in sickness and in health" -- and even at our wedding we were already facing the worst because Tom had been diagnosed with lymphoma, which later morphed into leukemia. And, knowing the handwriting on the wall, I threw a party for Tom's 80th birthday. It was the last time we had both of our families and all of our friends together, celebrating with us. That was a wonderful day.

Tom's illness was four years of pure hell, with more hospitalizations than I can count using both hands and feet. I was up day and night trying to make things easier and more comfortable for him; and not a month went by that I was not rushing him to the emergency room. But, like any other married couple facing troubles, we were in it together. Tom didn't have leukemia, **we had leukemia!** And as rotten as those four years were, they were made ever so much easier because we had each other for comfort and love, *and* **because we were married.**

Tom died four months ago on March 8, and I miss him terribly. At times it is hard to imagine how life will go on without him. I wake up in the morning, and forget for a minute, that he is not in the kitchen making coffee. And beyond the emptiness caused by the loss of the man I have spent my entire adult life with, my life has also been thrown into financial turmoil, because of DOMA.

Like a lot of retirees, we took a big financial hit in the stock market these past couple of years. But between Tom's social security benefit of $1,850, his small private pension of about $300, and my social security check, which was $902, we had a combined **steady** monthly income of $3,050, which covered our mortgage, and other basic costs of keeping a roof over our heads. The rest of our living expenses were covered by the income from our diminished investments - not sumptuous, but enough.

As you know, for married couples in this country, Social Security allows a widow or widower to either claim their own benefit -- or the benefit amount of their deceased spouse, if that was higher. That Survivor's Benefit is often what allows the widow or widower to stay in their family home, at a very difficult time. But DOMA says that gay and lesbian couples—including those like us who were legally married—cannot get that same treatment from Social Security.

Knowing this, I still went to the Social Security office a week after Tom's funeral to apply for his benefit. I was immediately told that I would not qualify for Tom's benefit, due to the Defense of Marriage Act. It took 4 months to receive a letter from the Social Security Administration, after I prodded them multiple times.

With this rejection of Tom's benefits, my reliable income went from $3,050 a month, down to $900 per month. To pay the mortgage and taxes each month on my home is $2078. By spending some of our savings, I could have stayed there longer while planning next steps for my future. But you don't have to be an accountant to see that from the first day after Tom passed away, I have had to worry about how I could pay that mortgage and

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support myself.

You may be thinking that lots of widows and widowers downsize, and make adjustments, after the loss of their spouse. Downsizing is one thing, but panic sale of a home which is underwater, is another. That is my current reality. I am selling the last house I shared with my husband in a panic sale because I can't afford the mortgage and expenses. I am spending my days and nights sorting through our possessions, packing boxes to move -- even while I am still answering the condolence cards that come in the mail.

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.

In the end, without the Survivor's Benefit, I am forced to sell our home and find a new place for all the wonderful things that are the touchstones of our 58 years of togetherness. As you know, the real estate market is in a shambles right now -- and that is especially true around Palm Springs. I am selling our home at a terrible loss and I have already lowered the price substantially twice. I have had very few lookers, and no serious buyers.

After a lifetime of being a productive citizen, I am now facing financial chaos. Tom and I worked hard, and together we tried to live out our own version of the American dream. We served our country; we paid our taxes; we volunteered in the community; we bought a home and maintained it properly; and got married as soon as we were legally able to do so. And yet, as I face a future alone without my spouse of 58 years, it is hard to believe that it is the American government that is throwing me out of my family home.

There is an easy fix to the problem and that is repealing DOMA. This is a discriminatory law against women and men like me who share our love and commitment with a partner of the same sex. All we ask is to be treated fairly, just like other loving and committed married couples. I beg you to repeal this law and allow all married couples the same protections.

Thank you again for inviting me to testify today and I will be happy to answer any questions you may have.

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Testimony of Jason A. Stuart Walt of Essex Junction, VT for the hearing titled
"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"
July 20, 2011

Thank you for coordinating the updates on the Respect for Marriage Act. I am a current resident of Essex VT and am married to a French Canadian citizen living in Montreal. We have been together for 5 1/2 years now, and married since September of last year. DOMA prevented my husband, Sylvain, from being eligible to immigrate to the United States as my spouse. After a period of time we decided that we wanted to spend every day together and not have to commute back and forth between Essex and Montreal every weekend. It isn't enough to have so little time with the man you love. Given DOMA's effect on immigration eligibility, I have had to leave my job, my friends, my family and country behind to begin the process of becoming a permanent resident of Canada. We are currently working on the immigration paperwork. It is sad to think that the United States of America, with all its talk of freedom for all, is behind other international countries like Canada on human rights. Actually, it is just sad.

Anyway, thank you for supporting this legislation and keeping us updated. Maybe someday soon my husband and I could even consider living in the United States together!

Testimony of Mark S. Westergard of South Burlington, VT for the hearing titled
"S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

Both my husband, Curt, and I work for the one employer in Vermont that is permitted to discriminate against us: the Federal government. Neither of us can carry the other on our health insurence. All of our co-workers in opposite-gender marriages have the option of carrying their spouse on their health insurance. If Curt could insure me I would retire but because he can't I continue working to get health insurance. I like my job but I could do a lot of good work if I retired. Unfortunately I am not able to do that. I would be a great witness. I'm a lawyer that has tons of experience speaking to the governing bodies of governments. I'm not the least bit nervous or reluctant and I know how to answer the question asked, if any. Thanks for your work.

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United States Senate

Committee on the Judiciary

Hearing on the So-Called "Respect for Marriage Act of 2011"

July 20, 2011

Statement of Edward Whelan
President, Ethics and Public Policy Center

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Thank you very much, Chairman Leahy and ranking member Grassley, for inviting me to testify before this Committee on S. 598, which is misleadingly titled the "Respect for Marriage Act of 2011."

I will briefly explain in my testimony why I oppose S. 598 and why I support the continuation in law of the Defense of Marriage Act ("DOMA"). S. 598 should also be understood in the broader political context of the Obama administration's stealth campaign to induce the courts to invalidate DOMA and to invent a constitutional right to same-sex marriage. I will therefore discuss more extensively how, even before its February announcement of its formal decision to abandon defending DOMA, the Obama administration's Department of Justice was systematically sabotaging its supposed defense of DOMA.

I offer my views in my capacity as president of the Ethics and Public Policy Center and director of EPPC's program on The Constitution, the Courts, and the Culture.[1] In that capacity, I have written and lectured widely on matters of federal law. I draw on my familiarity with the Department of Justice, including from my service as principal deputy assistant attorney general in the Office of Legal Counsel. I also draw on my broader experience over the past two decades in matters relating to constitutional law and other federal law: In addition to my program work at EPPC and my stint in OLC, that experience includes serving as a law clerk to Justice Antonin Scalia and as a senior staffer to the Senate Judiciary Committee.

[1] The views I express in this statement and at the hearing are mine alone and are not to be imputed to EPPC as an institution.

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Far from respecting marriage, S. 598 would empty the term of any core content. In its section 3, S. 598 would redefine marriage for purposes of federal law to include *anything* that any state, now or in the future, recognizes as a marriage.

The inevitable effect, and the presumed purpose, of section 3 of S. 598 is to have the federal government validate so-called same-sex marriage by requiring that it treat as marriage for purposes of federal law any such union recognized as a marriage under state law. Section 3 would also require taxpayers in the states that maintain traditional marriage laws to subsidize the provision of federal benefits to same-sex unions entered into in other states.

Further, the principles invoked by advocates of same-sex marriage in their ongoing attack on traditional marriage clearly threaten to pave the way for polygamous and other polyamorous unions,[2] especially via the judicial invention of a state constitutional right to polyamory. If the male-female nature of traditional marriage can be dismissed as an artifact and its inherent link to procreation denied, then surely the distinction between a marriage of two persons and a marriage of three or more is all the more arbitrary and irrational.[3] The administrative burden of allocating the benefits of

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[2] I use the term "polygamy" and its cognates to refer to the situation in which one man has two or more wives, and I use the term "polyamory" and its cognates to refer to any multipartner marital union.

[3] See, e.g., "Beyond Same-Sex Marriage," BeyondMarriage.org (July 26, 2006), available at http://beyondmarriage.org/full_statement.html (statement drafted by "nearly twenty LGBT and queer activists" calling for "[l]egal recognition for a wide range of relationships, households, and families" and praising "[c]ommitted, loving households in which there is more than one conjugal partner"; the thousand or more signatories include such leftist luminaries as Gloria Steinem, Barbara Ehrenreich, and Cornel West); Sherif Girgis, Robert P. George & Ryan T. Anderson, "What is Marriage?," 34 Harv. J. L.& Pub. Pol. 245, 272-274 (2010).

As it happens, the *New York Times* reported just last week on a lawsuit brought by a law professor to challenge a state's anti-polygamy law. See "Polygamist, Under Scrutiny in Utah, Plans Suit to Challenge Law," *New York Times*, July 12, 2011. (The law professor contends that the suit seeks only to decriminalize

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marriage among the members of a polyamorous union so that they would not exceed those of a two-member union is surely insignificant in the face of the polyamorists' asserted right (in the language of *Planned Parenthood v. Casey* (1992)) "to define [their] own concept of existence, of meaning, of the universe, and of the mystery of human life." Indeed, it's doubtful that any further sliding down the slippery slope would be necessary to get to polyamory: unlike the novelty of same-sex marriage, the polygamous version of polyamory has been widely practiced throughout history (and is therefore arguably *up* the slope from same-sex marriage).

Under section 3 of S. 598, any polyamorous union recognized as a marriage under state law would have to be recognized by the federal government as a marriage for purposes of federal law. Thus, the foreseeable effect of S. 598 would be to have the federal government validate any state's adoption of polyamory and to require taxpayers throughout the country to subsidize polygamous and other polyamorous unions.

II

Section 2 of S. 598 would repeal the Defense of Marriage Act. That proposed repeal is wholly unwarranted.

The Defense of Marriage Act, approved by overwhelmingly majorities in both Houses of Congress (85-14 in the Senate and 342-67 in the House of Representatives) and signed into law by President Clinton in 1996, has two substantive provisions. Section 3 defines marriage for purposes of federal law to mean "only a legal union between one man and one woman as husband and wife." It thus reaffirms the longstanding understanding of what the term "marriage" means in provisions of federal law. In Section

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polygamy, not to require state recognition of polygamous and other polyamorous marriages, but one would have to be naïve or stupid not to discern the next step.)

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2, Congress defends the prerogative of each state to choose not to treat as a marriage a same-sex union entered in another state. Section 2 is a genuine exercise in protecting federalism. It operates to help ensure that one state does not effectively impose same-sex marriage on another state. At the same time, it leaves the citizens of every state free to decide *whether or not* their state should redefine its marriage laws.

It is worth noting that of the eight current members of this Committee who voted on DOMA in 1996, seven voted for DOMA. Those seven include Chairman Leahy and Senators Kohl, Schumer, and Durbin (the latter two of whom voted for DOMA as members of the House). Among the many other prominent Democratic senators who voted for DOMA in 1996 were Vice President Joseph Biden, Tom Daschle, Chris Dodd, Tom Harkin, Frank Lautenberg, Carl Levin, Joe Lieberman, Barbara Mikulski, Patty Murray, Harry Reid, Jay Rockefeller, Paul Sarbanes, and Paul Wellstone. This list of supporters of DOMA suffices by itself to refute the empty revisionist claim that DOMA somehow embodies an irrational bigotry against same-sex couples. Nor should anyone who voted for DOMA have any reason to be surprised by the entirely foreseeable consequences that it has had. (On the broader substantive case for DOMA, I won't restate here the arguments presented by my fellow pro-DOMA panelists but will instead generally adopt them.)

DOMA has also been criticized for supposedly being inconsistent with values of federalism. This criticism is badly confused (and particularly brazen when offered by those who support invention of a federal constitutional right to same-sex marriage that would override all contrary state laws). As I've explained, Section 2 of DOMA advances values of federalism by helping to ensure that one state does not effectively impose same-

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sex marriage on another state while at the same time preserving each state's freedom to define its marriage laws. Section 3 of DOMA merely defines the term "marriage" (and the term "spouse") *for purposes of federal law*. It is a profound confusion to believe that values of federalism somehow require the federal government to defer to, or incorporate, the marriage laws of the various states in determining what "marriage" means in provisions of federal law.

Moreover, it is wrong to assert, as some do, that even the state-law definition of marriage has always been purely a matter left to the states.

Our predecessors understood what too many Americans today have forgotten or never learned or find it convenient to obscure—namely, that the marriage practices that a society endorses have real-world consequences that extend far beyond the individuals seeking to marry and that shape or deform the broader culture. That understanding underlay the 19th-century effort to combat polygamy, which was recognized to be incompatible with democracy.[4] That is why Congress, in its separate enabling acts for the admission to statehood of Arizona, New Mexico, Oklahoma, and Utah, conditioned their admission on their including anti-polygamy provisions in their state constitutions.[5] That history makes it all the more jarring that supporters of S. 598 would require that federal law treat as a marriage—and require federal taxpayers to subsidize—any polygamous marriage recognized by any state.

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[4] See, e.g., Stanley Kurtz, "Polygamy Versus Democracy," *Weekly Standard*, June 5, 2006.

[5] See Arizona Enabling Act, 36 Stat. 569; New Mexico Enabling Act, 36 Stat. 558; Oklahoma Enabling Act, 34 Stat. 269; Utah Enabling Act, 28 Stat. 108.

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III

As a political matter, the effort to reconsider and repeal DOMA is obviously fueled by the Obama administration's recent decision to abandon defending—or, more precisely, as I will show, to abandon *pretending* to defend—DOMA. It is therefore important to recognize that that decision reflects a sharp departure from the Department of Justice's longstanding practice of defending congressional enactments. Further, the Obama administration's own explanation of that decision cannot be taken seriously. Rather, as its broader sabotage of DOMA litigation makes clear, the Obama administration has subordinated its legal duty to its desire to please a favored and powerful political constituency, and it is eager to obscure from the public its stealth campaign to induce the courts to invent a constitutional right to same-sex marriage.

A

I will first outline the general principles that should govern a presidential administration in deciding whether and when to decline to defend a federal law against a constitutional challenge brought in federal court.

At the outset, it is essential to distinguish between laws that an administration opposes or disfavors on policy grounds only and laws that it regards as unconstitutional. When a president opposes a law on mere policy grounds, he is nonetheless obligated to defend it vigorously from constitutional attack. That obligation flows directly from the president's duty under Article II of the Constitution to "take Care that the Laws be faithfully executed," for the duty to faithfully execute, or enforce, a law entails acting to preserve the law's vitality against improper judicial invalidation.

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The president's "take Care" obligation does not apply to laws that are unconstitutional, as the Constitution is first and foremost among the "Laws" that the president is dutybound to "take Care … be faithfully executed." In other words, the president is not obligated to enforce unconstitutional statues. Indeed, he is obligated *not* to enforce unconstitutional statues.

It is worth emphasizing the parallels between the president's authority to decline to enforce unconstitutional statutes and the president's authority to issue so-called constitutional signing statements, which present constitutional objections to provisions of legislation that the president is signing and which state whether and how the executive branch will enforce such provisions. In both cases, the president's authority is rooted in his "take Care" obligation not to enforce unconstitutional provisions of law. In both cases, it would be wrong to contend (as some who should have known better did with respect to President George W. Bush's constitutional signing statements[6]) that no such authority exists. In both cases, one must carefully examine the particulars to determine the soundness of any specific exercise of that authority.

Recognizing the president's obligation not to enforce unconstitutional statutes leads to the difficult theoretical question how the president ought to go about deciding whether a particular law is unconstitutional and therefore ought not be enforced or defended. May he, for example, regard a law as unconstitutional only if the Supreme Court's precedents clearly dictate that it would so hold? Or may he form that judgment

[6] See, e.g., Report of American Bar Association's Task Force on Presidential Signing Statements and the Separation of Powers Doctrine, August 2006. Evidently indulging its political biases, the ABA task force, which included legal luminaries like Harold Koh, Kathleen M. Sullivan, and Judge Patricia M. Wald, somehow reached the widely discredited and badly confused conclusion that the longstanding practice of presidential constitutional signing statements is "contrary to the rule of law and our constitutional system of separation of powers." The ABA adopted the task force report, but has not seen fit to object to President Obama's continuation of the practice of issuing constitutional signing statements.

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on his own, where the Court's case law is unclear or even where his judgment is contrary to, say, a recent unanimous ruling by the Court that the law is constitutionally permissible?

As it turns out, these questions have been much weightier in theory than in practice, at least insofar as the Department of Justice's duty to litigate in defense of a federal statute is at issue. Over the last several decades, presidential administrations with very different theoretical understandings of the president's authority to interpret the Constitution have embraced the general proposition that, with the exception of laws that intrude on the executive branch's constitutional prerogatives, the Department of Justice should vigorously defend the constitutionality of any law for which a *reasonable* defense may be made in the courts.

This "reasonable" standard sets a very low bar: it basically means that the Department of Justice will defend a federal law against constitutional challenge when it can offer *non-frivolous* grounds (or even a single non-frivolous ground) in support of the law. Given the wide range of accepted argument in the legal profession and the breadth of interpretive methodologies among federal judges, the "reasonable" standard is very easy to meet.

The consensus across presidential administrations on this easy-to-meet standard is nicely captured in the embrace by Drew S. Days III, Solicitor General in the Clinton administration, of testimony by Rex Lee, a senior DOJ official (and later Solicitor General) in the Reagan administration. In what Days described as possibly the "best formal statement of the Justice Department's policy of defending congressional statutes,"

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Lee testified that the only situation (apart from a law intruding on executive-branch authority)

> in which the Department will not defend against a claim of unconstitutionality involves cases where the Attorney General believes, not only personally as a matter of conscience, but also in his official capacity as the Chief Legal [O]fficer of the United States, that a law is *so patently unconstitutional* that it cannot be defended. Such a situation is thankfully most rare.[7]

As Days explains, this consensus practice affords Congress "the respect to which [it] is entitled as a coordinate branch of government" and "prevents the Executive Branch from using litigation as a form of post-enactment veto of legislation that the current administration dislikes."[8]

To be sure, presidential practice has not absolutely complied with this general consensus. In rare instances, as Clinton Justice Department official Walter Dellinger outlined in an op-ed last fall,[9] an administration has determined not to offer a substantive constitutional defense of a defensible law. Instead, it has pursued only a nominal defense: It has set forth in its briefs its position that the law is unconstitutional but has also filed a formal appeal from a decision adverse to the law in order to ensure that the judicial hierarchy can operate to correct a wrong decision. Further, as Dellinger explains, in those rare instances when an administration pursues the option of making only a nominal defense of a defensible law, the courts can and should invite other interested and capable persons to defend the law.

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[7] Drew S. Days III, "In Search of the Solicitor General's Clients: A Drama with Many Characters," 83 Ky. L.J. 485, 500-501 (1994-1995) (emphasis added).

[8] Id. at 499, 502.

[9] Walter Dellinger, "How to Really End 'Don't Ask, Don't Tell,'" *New York Times*, Oct. 21, 2010; see also Letter from Assistant Attorney General Andrew Fois to Senate Judiciary Committee Chairman Orrin G. Hatch, March 22, 1996 (identifying instances in which the Department of Justice has declined to defend in court the constitutionality of laws that the executive branch has enforced).

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B

On February 23, 2011, the Obama administration announced that it would no longer defend Section 3 of DOMA, which defines the word "marriage" for purposes of federal law to mean "only a legal union between one man and one woman as husband and wife." In a letter to congressional leaders[10] and in a separate prepared statement,[11] Attorney General Eric Holder undertook to explain the Obama administration's decision. According to Attorney General Holder, President Obama "has made the determination that Section 3 ..., as applied to same-sex couples who are legally married under state law, violates the equal protection component of the Fifth Amendment." What was said to have triggered President Obama's determination was the filing in November 2010 of two lawsuits against Section 3—*Windsor v. United States* and *Pedersen v. OPM*—"in jurisdictions without precedent on whether sexual-orientation classifications are subject to rational basis review or whether they must satisfy some form of heightened scrutiny." The Obama administration's previous defenses of Section 3 had come "in jurisdictions where circuit courts have already held that classifications based on sexual orientation are subject to rational basis review, and [the Department of Justice] has advanced arguments to defend DOMA Section 3 under the binding standard that has applied in those cases." The two new lawsuits, by contrast, "will require the Department to take an affirmative position on the level of scrutiny that should be applied to DOMA in a circuit without binding precedent on the issue."

[10] Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act, Feb. 23, 2011, *available at* http://www.justice.gov/opa/pr/2011/February/11-ag-223.html. The quotations in this Part II are from this letter.

[11] *Available at* http://www.justice.gov/opa/pr/2011/February/11-ag-222.html.

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Listing four factors that Supreme Court decisions have "set forth … that should inform" the judgment whether heightened scrutiny applies to a particular classification, Attorney General Holder asserted, "Each of these factors counsels in favor of being suspicious of classifications based on sexual orientation," and he offered very brief assessments of the four factors. He acknowledged both that the Supreme Court "has yet to rule on the appropriate level of scrutiny for classifications based on sexual orientation" and that "there is substantial circuit court authority applying rational basis review to sexual-orientation classifications." Among the reasons he offered for discounting the "substantial circuit court authority" is that some of the decisions "rely on claims regarding 'procreational responsibility' that the Department has disavowed already in litigation as unreasonable."

President Obama, the Attorney General continued, "has concluded that given a number of factors, including a documented history of discrimination, classifications based on sexual orientation should be subjected to a heightened standard of scrutiny" and that Section 3 cannot meet that heightened standard. Therefore, "the President has instructed the Department not to defend" Section 3 in *Windsor* and *Pedersen*.

Attorney General Holder maintained that the Administration's decision not to defend Section 3 in *Windsor* and *Pedersen* was consistent with the Department's "longstanding practice of defending the constitutionality of duly-enacted statutes if reasonable arguments can be made in their defense." Under the Department's longstanding practice, he asserted, the Department "does not consider every plausible argument"—or every "professionally responsible" argument—"to be a 'reasonable' one."

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Attorney General Holder further stated that he "will instruct Department attorneys to advise courts in other pending DOMA litigation"—that is, the pending cases in jurisdictions that subject classifications based on sexual orientation to rational-basis review—of the Obama administration's new position that a heightened standard should apply to Section 3, that Section 3 is unconstitutional under that standard, and that the Department will no longer defend Section 3. At the same time, notwithstanding President Obama's determination that Section 3 is unconstitutional and shouldn't be defended in court, President Obama has instructed executive-branch agencies to continue to comply with, and enforce, Section 3.

C

Attorney General Holder's explanation of the Obama administration's supposed legal reasons for abandoning defense of DOMA's Section 3 cannot be taken seriously on its own terms.

Most starkly, the Attorney General's claim to be acting consistent with the Department's "longstanding practice of defending the constitutionality of duly-enacted statutes if reasonable arguments can be made in their defense" is clearly wrong. Attorney General Holder can make that claim only by mistakenly asserting—without citing any supporting authority—that the "reasonable" threshold requires some undefined quantum of force beyond what "plausible" or "professionally responsible" arguments provide. That assertion does *not* accurately describe the Department's longstanding practice across different presidential administrations, as my discussion above shows.

In my judgment, there are compelling arguments in support of the constitutionality of Section 3 of DOMA—arguments that ought ultimately to prevail in

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court. But for present purposes I will limit myself to the far more modest proposition that there are plenty of reasonable arguments that any competent lawyer could develop in defense of Section 3 in those few jurisdictions that haven't yet ruled that sexual-orientation classifications are subject to rational-basis review. Among the available arguments (which I will only summarize at a high level of generality here):

(1) The Supreme Court's jurisdictional dismissal of the appeal in *Baker v. Nelson* (1972) for want of a substantial federal question is binding precedent for the proposition that limiting marriage to a man and a woman does not violate equal-protection principles.[12]

(2) Section 3 does not in fact classify on the basis of sexual orientation.[13]

(3) Whatever weight is to be accorded the four factors that "should inform" the decision whether heightened scrutiny should apply can't possibly offset the fact that traditional marriage laws were universal at the time that the Constitution was adopted as well as when the Fourteenth Amendment was ratified (and that, with only a handful of recent exceptions, marriage has always been understood in every civilized society as limited to opposite-sex unions).[14]

(4) All eleven federal circuit courts to address the question have determined that classifications based on sexual orientation are subject to rational-basis review.[15]

(5) Consideration of the four factors that "should inform" the decision whether heightened scrutiny should apply doesn't support heightened scrutiny for classifications based on sexual orientation. Among other things, there is no scientific consensus on what even constitutes sexual orientation; sexual orientation is not an observable characteristic; gays and lesbians are not politically powerless; and, far from being a characteristic that is immutable at birth, there is no established understanding of the origins of sexual orientation and there is ample empirical evidence that sexual orientation can shift over

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[12] Before it succumbed to political pressure and reversed course (see Part IV), the Department of Justice in the Obama administration made this argument in its opening brief in support of its motion to dismiss in *Smelt v. United States*, No. 09-286 (C.D. Cal. June 11, 2009).

[13] Here too, before it succumbed to political pressure and reversed course (see Part IV), the Department of Justice in the Obama administration made this argument in its opening brief in support of its motion to dismiss in *Smelt v. United States*, No. 09-286 (C.D. Cal. June 11, 2009).

[14] See Defendant-Intervenors-Appellants' Opening Brief, *Perry v. Schwarzenegger*, No. 10-16696 (9th Cir. Sept. 17, 2010), at 51-60.

[15] See id. at 70-71.

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time and does shift for a significant number of individuals.[16]

(6) Even if heightened scrutiny were to apply, the level of increased scrutiny should be very modest.

(7) The same interests that would readily satisfy rational-basis review of Section 3—including the interests in supporting traditional marriage as the best vehicle for responsible procreation and childrearing[17]—would also suffice to satisfy any heightened standard of scrutiny.

By contrast, the Administration's argument for the proposition that Section 3 is unconstitutional is remarkably feeble and certainly comes nowhere close to establishing that Section 3 is "so patently unconstitutional" that it shouldn't be defended under the Department's longstanding practice. Attorney General Holder does not even present a complete argument: With very little intermediate reasoning, he bounces from the (highly contestable) assertion that the four factors that "should inform" the decision on level of scrutiny "all counsel[] in favor of being suspicious of classifications based on sexual orientation" to the statement that "[a]fter careful consideration, … the President has concluded that *given a number of factors*, including a documented history of discrimination, classifications based on sexual orientation should be subjected to a heightened standard of scrutiny." (Emphasis added.) What assessment did President Obama make of each of these factors? What weight did he give to them? How did he consider them in conjunction with other information that "should inform" a legal judgment? Attorney General Holder says nothing directly about President Obama's thinking on any of these matters. Even if the reader were to assume that President Obama assessed the four factors in the same way that Attorney General Holder did, Attorney

[16] See id. at 70-75.

[17] See id. at 77-93.

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General Holder's own assessment is far too sketchy and conclusory to amount to a coherent, much less a persuasive, legal argument.

President Obama's determination that Section 3 fails to meet heightened scrutiny is equally conclusory. Again, even if the reader were to assume what is not stated—that President Obama's analysis on all points was identical to the Attorney General's—Attorney General Holder's own conclusion rests on cherrypicking snippets from the legislative record of DOMA's enactment and then tendentiously construing those snippets. There is no sign that it rests on a careful consideration of all relevant evidence and information. Further, in a brazen bit of bootstrapping, Attorney General Holder dismisses the public interest in the connection between traditional marriage and "procreational responsibility" because the Department has already (wrongly) disavowed that interest as unreasonable.

One advantage that President Obama might find in keeping as opaque as possible the reasoning underlying his conclusion that Section 3 of DOMA is unconstitutional is that that same reasoning would surely dictate a similar conclusion that traditional marriage laws are also unconstitutional. But President Obama won election to his office maintaining that he opposed same-sex marriage[18] (and keeping contrary evidence buried until it was too late[19]), and his supposed position in support of traditional marriage laws necessarily conveyed his belief that traditional marriage laws are constitutionally permissible. Indeed, that implication was particularly compelling given that he had taught

[18] See, e.g., "Barack Obama Answers Your Questions About Gay Marriage, Paying For College, More," MTV, Nov. 1, 2008 ("I believe marriage is between a man and a woman. I am not in favor of gay marriage."), *available at* www.mtv.com/news/articles/1598407/did-barack-obama-answer-your-question.jhtml.

[19] See "Obama changed views on gay marriage," *Windy City Times*, Jan. 14, 2009, at 6 (disclosing Obama's signed statement from 1996 that "I favor legalizing same-sex marriages, and would fight efforts to prohibit such marriages"), *available at* www.politico.com/static/PPM110_wct_20090114_obama.html.

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constitutional law, including equal-protection issues, for years. Nothing in the Supreme Court's constitutional landscape on the issue of same-sex marriage has changed since the 2008 election, so President Obama would have some considerable difficulty explaining how his constitutional thinking has flipped. And he might prefer not to give millions and millions of American voters ample cause to believe that he had bamboozled them on this fundamental question.

It is also noteworthy that President Obama does not have the courage of his supposed convictions about Section 3 of DOMA. If he genuinely believed that Section 3 is clearly unconstitutional, why would he continue to direct executive-branch officials to enforce it? One legal commentator offers this compelling explanation: President Obama "is the 'un-Lincoln.'" Whereas Abraham Lincoln compellingly explained the defects of the Supreme Court's notorious *Dred Scott* ruling and declared that the executive branch under his direction would not abide by the mistaken principles set forth in that ruling, Barack Obama embraces the notion that the Constitution means whatever five justices say that it means. President Obama "would rather hint, and wheedle, and pine for an eventual Supreme Court ruling in favor of same-sex marriage," for he is "the Court's courtier, surrendering the dignity of his office, and the legislative power of Congress, to a hope that the Supreme Court too will 'evolve' in its view, change the effective meaning of the Constitution, and foist same-sex marriage on the American people with an authority more difficult to challenge than that of a mere president"[20]—much less of a president who was elected to office while prominently claiming to oppose same-sex marriage.

[20] Matthew J. Franck, "Obama, DOMA, and Constitutional Responsibility," *Public Discourse*, March 1, 2011, *available at* www.thepublicdiscourse.com/2011/03/2827.

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For all its flaws, the Obama administration's decision to abandon its formal defense of DOMA has the modest virtue of making overt a far greater scandal that the Obama administration has been attempting to obscure: namely, that the Department of Justice has only been pretending to defend DOMA but in fact has been actively sabotaging it.

Here is the overarching narrative (a similar version of which could be recounted for the Department's deliberate mishandling of "Don't Ask, Don't Tell" litigation[21]):

1. On June 11, 2009, in *Smelt v. United States*, No. 09-286 (C.D. Cal.), the Department of Justice in the Obama administration filed its first brief in defense of DOMA. In straightforward and unremarkable legal prose, that brief argued that the claim of plaintiffs, "a same-sex couple married under the laws of California," that DOMA is unconstitutional should fail for various reasons.

2. The Obama administration's opening brief in *Smelt* elicited a firestorm of opposition and outrage from gay and lesbian groups. As one gay publication put it (in an article titled "Gay Blogosphere Erupts Over Obama's DOMA Defense"[22]), "The gay blogosphere lit up like a firecraker [*sic*] Friday on news that the Obama administration was defending the Defense of Marriage Act … in a federal lawsuit." One "[p]rominent blogger" called the brief "despicable, and gratuitously homophobic"—among other things, because he somehow found it objectionable that "the brief argued that DOMA is reasonable…, is constitutional …, [and] wasn't motivated by any anti-gay animus."

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[21] See Edward Whelan, "Don't Defend, Don't Tell," *Public Discourse*, Oct. 15, 2010, *available at* http://www.thepublicdiscourse.com/2010/10/1836.

[22] *Available at* http://www.ontopmag.com/article.aspx?id=4002&MediaType=1&Category=26.

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Another labeled President Obama "the homophobe in chief." The head of the Human Rights Campaign wrote President Obama a letter stating that "this brief would not have seen the light of day if someone in your administration who truly recognized our humanity and equality had weighed in with you." And much, much more evidently went on behind the scenes in meetings between the Administration and gay and lesbian advocates.

3. In a stark demonstration of the power of a purportedly powerless group, the Department sharply altered the course of its advocacy. In its reply brief in *Smelt*, filed on August 17, 2009, the Department prominently stated (p. 2 (emphasis added)):

> With respect to the merits, this Administration does not support DOMA as a matter of policy, *believes that it is discriminatory*, and supports its repeal. Consistent with the rule of law, however, the Department of Justice has long followed the practice of defending federal statutes as long as reasonable arguments can be made in support of their constitutionality, even if the Department disagrees with a particular statute as a policy matter, as it does here.

This halfhearted advocacy contradicts the promises made in confirmation testimony by the Department's political leaders. As a typical example, then-Solicitor General nominee Elena Kagan testified at her confirmation hearing that the "critical responsibilities" that the Solicitor General owes to Congress include "most notably the vigorous defense of the statutes of this country against constitutional attack."[23] She made clear the obvious point

[23] As for the situation in which the policy of a new Administration might differ from that of a previous Administration, Kagan declared (in response to a written question):

> The cases in which a change between Administrations is least justified are those in which the Solicitor General is defending a federal statute. Here interests in continuity and stability combine with the usual strong presumption in favor of defending statutes to produce *a situation in which a change should almost never be made.* [Emphasis added.]

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that an effective advocate must give the impression that he believes his own arguments, whether or not he actually does.[24]

It gets much worse. In that same reply brief (pp. 6-7), the Department gratuitously repudiated grounds for defending DOMA, as it asserted that "the United States does not believe that DOMA is rationally related to any legitimate interests in procreation and child-rearing and is therefore not relying upon any such interests to defend DOMA's constitutionality." Never mind that these grounds had proven *successful* in previous litigation against DOMA[25] (as well as in challenges to traditional marriage laws). And never mind that, as the Department's opening brief had pointed out, the "United States," in the form of a report of the House Judiciary Committee, had invoked these very interests when Congress enacted DOMA.

A proponent of same-sex marriage promptly celebrated the Department's reply brief with these apt observations (emphasis added):

> *This new position is a gift to the gay-marriage movement, since it was not necessary to support the government's position.* It will be cited by litigants in state and federal litigation, and will no doubt make its way into judicial opinions. *Indeed, some state court decisions have relied very heavily on procreation and*

[24] As Kagan put it, "I know that [former Solicitor General] Ted Olson would not have voted for the McCain-Feingold bill, but he … did an extraordinary job of defending that piece of legislation…. And that's what a solicitor general does." In response to then-Senator Feingold's joking observation that "I could have sworn he almost was believing what he was saying," Kagan replied: "For that day he was persuaded, and that's all you need."

[25] See *Smelt v. County of Orange*, 374 F. Supp. 2d 861, 880 (C.D. Cal. 2005) ("Because procreation is necessary to perpetuate mankind, encouraging the optimal union for procreation is a legitimate government interest. Encouraging the optimal union for rearing children by both biological parents is also a legitimate purpose of government."), *reversed on standing grounds*, 447 F.3d 673 (9th Cir. 2006); *Wilson v. Ake*, 354 F. Supp. 2d 1298, 1309 (M.D. Fla. 2005) (applying Eleventh Circuit precedent that "encouraging the raising of children in homes consisting of a married mother and father is a legitimate state interest"); *In re Kandu*, 315 Bankr. R. 123, 146 (2004) (applying authorities recognizing that "the promotion of marriage to encourage the maintenance of stable relationships that facilitate to the maximum extent possible the rearing of children by both of their biological parents is a legitimate congressional concern").

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> *child-rearing rationales to reject SSM [same-sex marriage] claims. The DOJ is helping knock out a leg from under the opposition to gay marriage.*[26]

4. Thereafter (and up until its outright abandonment of DOMA), the Department took this same position in every DOMA case, and ultimately engineered the desired result. In *Gill v. OPM* (D. Mass. Jul. 8, 2010), the lone judge to rule against DOMA noted that "the government has disavowed Congress's stated justifications" for DOMA and stated that he would therefore address them "only briefly": "This court can readily dispose of the notion that denying federal recognition to same-sex marriages might encourage responsible procreation, because the government concedes that this objective bears no rational relationship to the operation of DOMA."

5. In November 2010, Assistant Attorney General Tony West, the head of the Department's Civil Division, told a group of liberal bloggers that it was "difficult" for the Obama administration to defend DOMA (and "Don't Ask, Don't Tell"). West admitted that the Department was modifying and diluting its legal arguments in DOMA cases to comport with the Obama administration's "policy values." As one sympathetic account[27] put it (emphasis added):

> West said Monday that DOJ was discharging its responsibility to the tradition of the Justice Department while making adjustments to the arguments in line with the administration's views.
>
> "I think that the best example -- let me give you one -- in the Defense of Marriage Act -- you'll notice that we have not only discharged our responsibility to defend the constitutionality of a congressional statute, but *we've done so in a way which reflects the policy values of this administration*," West said.

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[26] Dale Carpenter, "DOJ Boosts the Cause of SSM," Aug. 17, 2009, *available at* volokh.com/archives/archive_2009_08_16-2009_08_22.shtml#1250541892.

[27] *Available at* http://tpmmuckraker.talkingpointsmemo.com/2010/11/doj_official_defending_dadt_doma_difficult_for_administration.php.

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> "We disavowed some arguments that we believed had no basis in fact, and in fact we presented the court through our briefs with information which seemed to undermine some of the previous rationales that have been used [in] defense of that statute," West added.

According to the same account (emphasis added), West further revealed that the Civil Division "has worked with the Civil Rights Division's liaison to the gay, lesbian, bisexual and transgender community to *make sure that future briefings don't advance arguments that they would find offensive*." In other words, West was conceding that the Department was allowing the sensitivities of a favored political constituency to have extraordinary influence over how the Department defended, or pretended to defend, DOMA.

In sum, far from providing the vigorous defense of DOMA that it promised, the Obama administration undermined that litigation for the obvious purpose of pleasing a powerful and favored political constituency.

* * *

S. 598 is ill-conceived legislation that should proceed no further. Legislators who genuinely want to respect marriage should defend traditional marriage, not undermine it.

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Written Testimony of
Rev. Dennis W. Wiley, Ph.D., Covenant Baptist United Church of Christ
Submitted to
The U.S. Senate Committee on the Judiciary
For the Hearing Record on
The Respect for Marriage Act (S.598)
July 20, 2011

My name is Rev. Dr. Dennis W. Wiley and for nearly 26 years I have been the pastor of Covenant Baptist United Church of Christ in the far southwest section of Washington, DC. For the last seven of those years, my wife, Rev. Dr. Christine Y. Wiley, and I have served together as co-equal pastors of our congregation and together we co-chaired DC Clergy United for Marriage Equality—a multiracial, multifaith coalition that was a leading voice in the District's 2009 campaign to legalize same-sex marriage.

In the summer of 2007, two-and-a-half years prior to the passage of DC's marriage equality law, we led our church in becoming the only traditional Black church in the District to perform same-sex union ceremonies. As pastors of a congregation dedicated to the inclusion of all people, regardless of race, class, gender, or sexual orientation, our decision to take this unprecedented step arose from our earnest desire to hold loving, monogamous couples, whether heterosexual or homosexual, to the same standards of commitment, loyalty, and fidelity. We consider it unjust to place same-sex couples in a moral "catch 22" whereas, on the one hand, we accuse them of promiscuity, and, on the other, deny them the right to marry. Hence, after receiving extensive pastoral counseling, a gay couple and a lesbian couple, both members of our congregation and each including a partner who aspired to become an ordained minister, decided they wanted to have their relationships consecrated. Although our decision to honor their requests was initially met with overwhelming congregational support, many members gradually left our church because of their opposition to same-sex union ceremonies. While this exodus has been painful, our church has been blessed by the addition of many new members, including loving, same-sex couples who have longed for a safe place in which their identities, authenticity, and committed relationships would be respected, affirmed, and honored.

Marriage and the vows of life-long love, honor and respect are held in highest regard at Covenant Baptist United Church of Christ. Now that same-sex marriage is legal in the District of Columbia, premarital counseling is a requirement for all couples wishing to be married in our church by one of our ordained ministers. While no two couples are the same, after years of counseling with engaged partners, I can testify that the fears, anxieties, hurdles, hopes, excitements, and aspirations faced by all couples are remarkably similar. In fact, other than sexual orientation, the only difference between the marriage of same-sex couples and straight couples is the tangible benefits marriage provides to the latter.

When my wife began counseling the gay and lesbian couples mentioned above over a year prior to their respective union ceremonies, they were solid, devoted members of our congregation giving outstanding service to the life of our church and our community. However, despite their

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loving relationships and exemplary ecclesiastical and civic contributions, Washington, DC did not grant marriage licenses for same-sex couples. Some may question why they did not settle for the status quo by continuing their relationships without any formal ceremony of commitment and dedication. One answer is that a marriage ceremony was their way of honoring the commitment, love, and relationships modeled by their parents and/or other significant role models. It was also their way of honoring the sacred covenant between Jesus and the Church. It was the only way they felt that adequately honored the love and devotion they had for one another. This act was not simply the next logical step in their relationship nor was it about the acquisition of rights, responsibilities, or benefits married couples enjoy, and too often take for granted. Marriage, for these couples, was the living embodiment of the pursuit of happiness—it was how they were raised; it was what they believed. There are few couples I have married who have believed with any greater conviction in the importance of vows exchanged before God, family, and community.

When these couples were united in 2007, they were not eligible to receive any of the state or federal benefits that married straight couples in our church enjoy. Though both of the couples understood this reality and accepted it with grace, this does not mean that they did not suffer the piercing sting of discrimination. No other couples required a church-wide discernment and consensus process before they could be united in holy matrimony that year. No other couple over whose union I presided was denied legal recognition. Further, come April of the following year, no other couples whose relationship was consecrated in our congregation were required to submit separate tax return forms or penalized for jointly purchasing a new house simply because real estate laws did not recognize the couple as a family unit. As a pastor who is called to work for justice and dignity for all, I felt with them the pain of their discrimination and unfair treatment.

In a time of economic difficulty and limited opportunity for all too many Americans, the unjust tax burdens faced by lawfully married same-sex couples is, in a word, unconscionable. I am proud to say that DC Clergy United for Marriage Equality played an instrumental role in achieving marriage rights in the District and that the same-sex couples who have wed at Covenant since 2009 now enjoy the equal recognition, rights, and responsibilities of marriage under DC law. But there are still 1,138 benefits and protections that same-sex couples are excluded from under federal law due to the so-called "Defense of Marriage Act." When it comes time to file taxes each spring, it takes married same-sex couples in my congregation twice as long to complete their federal tax return paperwork because the IRS refuses to view them as a single family unit charging them, literally, excess taxes on health insurance and property or income they hold jointly. Moreover, they are denied the spousal benefits heterosexual couples enjoy from critical government programs like Social Security, Medicare, Family-Medical Leave, or Medicaid, adding unnecessary and unjust financial burdens to relationships. From a pastoral care and counseling perspective, I have found that financial troubles are a leading cause of dissension and hostility in relationships and the monetary penalties same-sex couples suffer under DOMA only serve to exacerbate tensions in a relationship, instead of strengthening the institution of marriage.

There are many same-sex couples in my congregation who have adopted children, children who, in many cases, have been overlooked for adoption by heterosexual couples. These couples are committed to and are doing an inspirational job creating loving, wholesome family units for these

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kids despite the fact that they are denied equal access to parenting rights and protections in the eyes of the federal government. And, unfortunately, it is the children who are suffering most from the economic and societal instability and injustice DOMA imposes upon their families.

Every Sunday I see the diverse beauty same-sex couples and families bring into our congregation. It has been a blessing and a privilege to preside over the many joyous life cycle events of the LGBT members of our congregation, but this joy does not come without the sadness in knowing that while we strive for justice in our congregational walls, the world beyond does not necessarily uphold the same values. Though more than 50% of the American public now supports the freedom to marry,[1] there is still tremendous trepidation from our nation's political and religious leaders. As a member of the Black church community, I acutely understand the conflict over marriage equality in the religious community. I also believe that those of us who are religious leaders have nothing to fear from the repeal of DOMA as it relates to our right to sanctify only the marriages which meet our religious and communal criteria.

I deeply cherish the first amendment and the rights it affords. As such, the separation of church and state must guarantee that no religion is able to dictate to the government which couples are eligible to receive a legal marriage license. Similarly, no religion should, by default, dictate to another the weddings over which a clergy person legally presides. The marriages my wife and I perform should be recognized legally and equally by state and federal government, regardless of whether the couple is straight or gay. This recognition is an expression of the free exercise clause of the first amendment.

I strongly believe that the time is now for the federal government to step up with courage and conviction and allow for federal marriage rights and responsibilities to flow to same-sex couples and families legally married by their state or the District of Columbia. I pray you will stand with me for love, inclusion, equality, and justice for all.

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[1] Gallup Poll. May 20, 2011. http://www.gallup.com/poll/147662/first-time-majority-americans-favor-legal-gay-marriage.aspx

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the Williams INSTITUTE

United States Senate
Committee on the Judiciary

Hearing on "S.598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

Written Testimony of
The Williams Institute, UCLA School of Law

July 20, 2011

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The Williams Institute, an academic research center of UCLA School of Law, advances sexual orientation and gender identity law and public policy through rigorous, independent research and scholarship, and disseminates it to judges, legislators, policymakers, media and the public.

We are pleased to offer testimony that summarizes demographic data about same-sex couples and the serious financial, legal, social and health consequences of the Defense of Marriage Act (DOMA) for them and their families. While the Williams Institute and other scholars have documented many of these consequences through academic research, DOMA also has the impact of impairing further research on same-sex couples and their families, and the consequences that DOMA has on them.

I. Same-Sex Couples and Their Families in the United States

The Census Bureau's 2009 American Community Survey (ACS) estimates that there are 581,300 same-sex couples in the United States. More than half of lesbians and gay men are in committed cohabiting relationships.[1]

Counts from state administrative agencies show that more than 50,000 same-sex couples have married. Analyses of the 2010 Williams Institute/Harris-Interactive Same-sex Couple Survey show that nearly 14% of same-sex couples in the United States are legally married under state law.[2] This study along with the state administrative agency counts imply that there are 50,000 to 80,000 legally married same-sex couples in the United States today. In addition, another 85,000 same-sex couples are in civil unions or registered domestic partnerships.

ACS data also suggest that approximately 20% of same-sex couples are raising nearly 250,000 children. Rates of child-rearing are even higher among members of same-sex couples who are racial and ethnic minorities. For example, an analysis of 2008 ACS data reveals that 38% of African-American and 27% of Latino/a members of same-sex couples are raising children. Studies also suggest that half of gay men and more than 40% of lesbians who have not yet had a child want to have children some day.[3]

Census and ACS data also reveal that members of same-sex couples are diverse in terms of race and ethnicity, income, veteran status, and age. According to ACS data, almost one in four members of same-sex couples is a person of color. Although 93% of members of

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[1] C. Carpenter & G.J. Gates, *Gay and Lesbian Partnership: Evidence from California,* 45 DEMOGRAPHY 573 (2008).

[2] GARY J. GATES, SAME-SEX COUPLES IN U.S. CENSUS BUREAU DATA: WHO GETS COUNTED AND WHY (2010), *available at* http://www3.law.ucla.edu/williamsinstitute/pdf/WhoGetsCounted_FORMATTED1.pdf.

[3] GARY J. GATES ET AL, ADOPTION AND FOSTER CARE BY GAY AND LESBIAN PARENTS IN THE UNITED STATES (2007) *available at* http://www3.law.ucla.edu/williamsinstitute/publications/FinalAdoptionReport.pdf.

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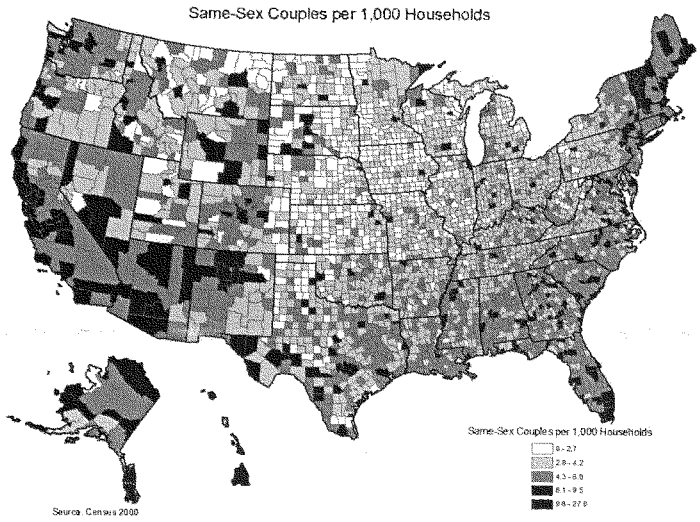
same-sex couples in the labor force are employed, and 45% of members have college degrees, they come from every economic class. A Williams Institute report analyzing data from the 2002 National Survey of Family Growth found that 15% of gay men and 24% of lesbians live in poverty. In particular, analysis of Census 2000 data revealed that one in five children being raised by a same-sex couple lives in poverty. Analyses of 2009 ACS data show that over 7% of individuals in same-sex couples, approximately 85,000 individuals nationally, are veterans of the armed forces and almost 5% are 65 years of age or older.

U.S. Census and ACS data also reveal that same-sex couples live throughout the United States. Census Bureau data has identified same-sex couples in every congressional district and in almost every county in the United States. According to 2009 ACS data, approximately 15% of male same-sex couples and 19% of female same-sex couples live in rural areas.



As a result of DOMA, legally married same-sex couples and individuals who have had a same-sex spouse are not recognized as such by the federal government. This lack of recognition results in legal, financial, social, and psychological hardships for many of these couples and their families. These hardships have tangible negative effects on their health and welfare.

II. Legal and Financial Consequences of DOMA

The federal non-recognition of marriage for same-sex couples articulated in DOMA imposes substantial legal and financial costs on married same-sex couples and their

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families by denying them the benefits and protections that federal law affords to married couples and their families.

By failing to be recognized by the federal government, an individual who needs to take time off work to care for their same-sex spouse is not protected, Similarly, both same-sex spouses might lose their home if one of them enters long-term care covered by Medicaid. DOMA imposes barriers that prevent them from receiving benefits, including health care benefits that are otherwise provided to different-sex spouses of federal employees, veterans, and employees in the private sector. Employees whose same-sex spouses are provided with health benefits by their employers have to pay a tax on these benefits that employees with different-sex spouses do not. Same-sex couples may also face higher income and estate taxes. For bi-national same-sex couples, DOMA can mean that the couple must choose between not living together, or living outside the United States. The Williams Institute has conducted research to assess and quantify many of these impacts of DOMA on same-sex couples and their families:

A. Family Medical Leave Act (FMLA) Benefits

The FMLA allows an individual to take employment leave to care for various family members, including a different-sex spouse. However, employees cannot take leave under the FMLA to care for a same-sex partner. A recent Williams Institute research brief uses 2008 Census Bureau data to estimate that approximately 38% of same-sex partners (approximately 430,000) are both employed and would be eligible for FMLA benefits to care for same-sex spouses if the FMLA covered same-sex partners.[4]

B. Benefits for Spouses of Federal Employees

Because DOMA prohibits federal recognition of same-sex married couples, it means that same-sex spouses of federal employees cannot receive all of the same employee benefits that are provided to an employee with a different-sex spouse. A 2008 Williams Institute report found that the federal government has approximately 34,000 employees with same-sex partners.[5] Of these, approximately 30,200 employees are partnered with a non-federal employee. The remaining 3,000 employees are partnered with another federal employee, who already receives federal benefits. Benefits denied to spouses of federal employees, who are not employed by the federal government, include coverage for health insurance, retiree health insurance and annuities, and work injury/death compensation.

C. Veteran Partner Benefits

Based on analyses of 2009 ACS data, 7.3% of individuals in same-sex couples, or approximately 85,000 individuals, are veterans of the armed forces. Of these, nearly

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[4] M.V. LEE BADGETT, THE IMPACT OF EXPANDING LEAVE RIGHTS TO CARE FOR CHILDREN OF SAME-SEX PARTNERS (2010) *available at* http://www3.law.ucla.edu/williamsinstitute/pdf/FMLA_Final.pdf.

[5] NAOMI G. GOLDBERG, CHRISTOPHER RAMOS & M.V. LEE BADGETT, THE FISCAL IMPACT OF EXTENDING FEDERAL BENEFITS TO SAME-SEX DOMESTIC PARTNERS (2008), *available at* http://www3.law.ucla.edu/williamsinstitute/publications/S2521FiscalAnalysis_WilliamsInst.pdf.

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68,000 veterans have same-sex partners who are not also veterans. Spouses of veterans are eligible for a variety of benefits including pensions, educational assistance, and vocational training. Same-sex partners are not eligible for any of these benefits.[6]

D. Taxation of Employee Health Benefits for a Same-Sex Spouse

Even when employers do offer health insurance to same-sex spouses and domestic partners, because of DOMA these benefits are taxed under federal law burdening both employees and employers. Recognizing the benefits created by workplace equality for recruitment and retention, numerous companies offer the same health benefits for their employees' same-sex domestic partners and spouses as they do for employees' different-sex spouses.[7] However, though the benefits received by different-sex spouses are tax-exempt, the federal government taxes the benefits received by same-sex spouses and domestic partners. Same-sex spouses and domestic partners cannot claim the same tax exemptions as different-sex spouses under current federal law. A 2007 Williams Institute and Center for American Progress study found that an employee with a same-sex spouse or domestic partner pays $1,069 more in taxes per year than an employee receiving the same health benefits for a different-sex spouse.[8] This results in these employees paying 11% more in taxes than they would pay if they were married and the federal government recognized that marriage.[9] The 2007 study shows that 41,000 same-sex couples have to pay this imputed income tax for these spousal and domestic partner health insurance benefits.

E. Private Employment Health Insurance Benefits Affected By ERISA

The federal Employee Retirement Income Security Act (ERISA) limits the power of states to control benefits in the private sector.[10] ERISA preempts state laws that attempt to regulate benefits that "relate to"[11] the benefits provided as part of group plans offered to employees by private sector employers; such plans are governed only by ERISA. Because of the so-called "savings clause,"[12] which exempts state insurance laws from preemption, states can require insurance carriers doing business in the state to sell only plans that offer coverage to same-sex partners on the same terms as apply to different-sex spouses.[13] Because ERISA does not apply to government-sponsored health plans, state

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[6] Analysis of 2009 ACS PUMS, Craig Konnoth, Fellow, Williams Institute, Jul. 15, 2011.

[7] *See* HUMAN RIGHTS CAMPAIGN, CORPORATE EQUALITY INDEX (2011) *available at* http://www.hrc.org/cei2011/index.html.

[8] M.V. LEE BADGETT, UNEQUAL TAXATION OF DOMESTIC PARTNER BENEFITS (2007) *available at* http://www.americanprogress.org/issues/2007/12/pdf/domestic_partners.pdf.

[9] *Id.* at 7.

[10] 29 U.S.C. § 1001 et. seq. (2009).

[11] For a discussion of the current "relate to" test, see *Shaw v. Delta Airlines*, 463 U.S. 85 (1983) and progeny (in particular *N.Y. State Conf. of Blue Cross and Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995), which modifies the test, but does not explicitly overrule prior cases).

[12] 29 U.S.C. §§ 1144(a), (b)(2)(A) ("savings clause"); 1002(32); 1003(b)(1) (non-application to government-sponsored plans).

[13] Jeffrey G. Sherman, *Domestic Partnership and ERISA Preemption*, 76 TUL. L. REV. 373 (2001) (citing *Metropolitan Life Ins. Co. v. Mass.*, 471 U.S. 724 (1985).).

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laws can require state and local government employers to offer equal benefits.[14] Numerous states, including states which do not recognize marriage between same-sex partners such as Hawaii, Oregon, Maine and New York (before it passed its marriage equality law), require insurance carriers to provide coverage to same-sex partners.[15]

The biggest impact of ERISA preemption is therefore on self-funded (or self-insured) employer-sponsored health insurance plans.[16] When an employer elects to self insure, ERISA effectively bars the state from setting criteria for how its workplace benefits plans are structured. As a result, none of the states listed above require self-funded plans to insure same-sex partners. Indeed, Oregon's Act explicitly states that it does "not require the extension of any benefit under any employee benefit plan that is subject to federal regulation under the Employee Retirement Income Security Act of 1974 [ERISA]."[17]

Employers' treatment of same-sex spouses of employees in Massachusetts demonstrates the harm that can result. Data from 2009 shows that almost all, or 93%, of employers who offered employee health coverage also covered different-sex spouses. However, only 71% of those employers provided coverage to same-sex spouses of employees. The Massachusetts Division of Health Care Finance and Policy believes the difference is a result of the fact that some employers are self-insured and are therefore regulated by federal law rather than state insurance law.[18]

F. Spousal Impoverishment Protections for Medicaid Long Term Care (LTC)

Medicaid's long-term care program covers long-term care facility costs for those eligible and expected to remain in the care facility for at least 30 days.[19] As with other Medicaid programs, income and assets are evaluated to determine whether an individual is eligible for Medicaid-covered long-term care. If a Medicaid recipient in long-term care moves into a facility without the intent to return home, transfers a home for less than fair market

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[14] 29 U.S.C. §§ 1002(32); 1003(b)(1).

[15] New York Office of the General Counsel representing the State Insurance Dep't, Re: Health Insurance for Same-Sex Spouses in Legal Out-of_-State Marriages, OGC op no 08-11-05 (Nov. 21, 2008), *available at* http://www.ins.state.ny.us/ogco2008/rg081105.htm (before the passage of marriage equality law in New York); HAW. REV. STAT. § 572C (2009) (Hawai'i's reciprocal beneficiary law providing for extension of several benefits, including employer-based non-self-funded health insurance, to reciprocal beneficiaries of insured employees); David A. Weber, Deputy Att'y Gen., Health Insurance Coverage for Reciprocal Beneficiaries, Haw. Att'y Gen. Opinion 97-10, Dec. 2, 1997, *available at* http://hawaii.gov/ag/main/publications/opinions/1993_1999/97-10.pdf; ME. INS. CODE tit. 24-A, ch. 33, § 2741-A (2009); ORS § 106.300 et seq. (2009).

[16] Under self-funded employer-sponsored plans, the employer is responsible for funding the plan out of its general assets; no third party insurance carrier is involved. Janice Kay McClendon, *A Small Step Forward in the Last Civil Rights Battle: Extending Benefits under Federally Regulated Employee Benefit Plans to Same-Sex Couples*, 36 N.M. L. REV. 99, 108 (2006).

[17] *Id.* at § 106.340(7).

[18] See discussion in M. V. Lee Badgett, "The Economic Value of Marriage for Same-sex Couples," *Drake Law Review*, Vol. 58, No. 4, 2010, p. 1088.

[19] U.S. Dep't of Health and Human Svcs, Medicaid Treatment of the Home: Determining Eligibility and Repayment for Long-Term Care (Apr. 2005), *available at* http://aspe.hhs.gov/daltcp/reports/hometreat.htm (last visited Jan. 31, 2011).

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value, or dies, the home becomes a countable resource.[20] Furthermore, income received by the recipient is countable after he or she moves to long-term care.[21] The practical effect is that these assets and income will be spent down to pay for long-term care as part of the Medicaid program.[22] If the participant in the long-term care program is married to a different-sex spouse, the program will protect the spouse who remains in the family home from being left destitute due to the asset and income long-term care rules. Congress enacted protections known as "spousal impoverishment provisions" to accomplish this goal. These provisions operate by exempting certain income and assets from being used 1) to determine Medicaid eligibility under the long-term care program; and 2) to offset Medicaid expenditures for the recipient's long-term care, as required by the Medicaid program.[23] Therefore, the different-sex spouse who is not in long-term care will not be forced to lose the couple's home or to subsist without adequate income.[24] Although DHHS has recently issued guidance that states can include same-sex couples under existing spousal impoverishment protections, states are not required to included same-sex couples and no state has yet changed its policies as a result of this guidance.

Almost 1.2 million individuals live with a same-sex partner. Of those individuals, 4.8% are 65 years of age or older. Since 1.4% of those younger than 65 require LTC and 14% of those 65 or older require LTC,[25] we estimate that 23,300 of people with same-sex partners require LTC of some kind. Most will not need formal care, but 22% will require at least some formal paid care.[26] After adjusting the estimate upward to account for the fact that 14% of people will be receiving care in an institution, such as a skilled nursing facility, we estimate that about 6,000 people in same-sex couples are receiving paid LTC.

Medicaid pays for about half of all spending on LTC,[27] although approximately 29% of recipients of LTC receive Medicaid.[28] We use both percentages to provide a conservative range of estimates. Therefore, our best estimate is that about 1,700-3,000 individuals with same-sex partners receive Medicaid-financed long-term care.[29]

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[20] *Id.*

[21] U.S. Dep't of Health and Human Svcs, Spouses of Medicaid Long-Term Care Recipients (Apr. 2005), *available at* http://aspe.hhs.gov/daltcp/reports/spouses.htm (last visited Jan. 31, 2011).

[22] U.S. Dep't of Health and Human Svcs, *supra* note 10.

[23] U.S. Dep't of Health and Human Svcs, Centers for Medicare & Medicaid Svcs, Medicaid Eligibility: Spousal Impoverishment, *available at* https://www.cms.gov/MedicaidEligibility/09_SpousalImpoverishment.asp#TopOfPage (last visited Jan. 31, 2011).

[24] SERVICES & ADVOCACY FOR GAY, LESBIAN, BISEXUAL & TRANSGENDER ELDERS & MOVEMENT ADVANCEMENT PROJECT, IMPROVING THE LIVES OF LGBT OLDER ADULTS 15 (2010), *available at* http://www.lgbtmap.org/file/improving-the-lives-of-lgbt-older-adults.pdf.

[25] GEORGETOWN UNIVERSITY, LONG-TERM CARE FINANCING PROJECT, WHO NEEDS LONG-TERM CARE? (2003), *available at* http://ltc.georgetown.edu/pdfs/whois.pdf.

[26] *Id.*

[27] JUDITH FEDER, HARRIET L. KOMISAR, ROBERT B. FRIEDLAND, GEORGETOWN UNIVERSITY, LONG-TERM CARE FINANCING PROJECT, LONG-TERM CARE FINANCING: POLICY OPTIONS FOR THE FUTURE 5 (June 2007), *available at* http://ltc.georgetown.edu/forum/ltcfinalpaper061107.pdf.

[28] This percentage is derived from figures showing that 3 million people receive Medicaid for LTC out of 10.3 million needing LTC, in KAISER COMMISSION ON MEDICAID FACTS, MEDICAID AND THE UNINSURED (2010), *available at* http://www.kff.org/medicaid/upload/2186-07.pdf.

[29] Analysis by M.V. Lee Badgett, Research Director, Williams Institute, Feb. 10, 2011.

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It is harder to estimate the number of people who would gain eligibility for LTC under Medicaid if the income and assets of both members of same-sex couples were to be counted (called "spousal deeming"), but it is conceivable that some people in same-sex couples would become eligible. For instance, a wealthier partner requiring LTC would have some assets shifted by the program's rules to a partner with fewer economic resources, and thus would qualify without as much spending down. If these types of situations are distributed fairly evenly across same-sex couples, then about half of the time the wealthier partner will need LTC, and half the time the partner with fewer resources will need LTC.

Our estimates above imply that about 3,000-4,500 people are receiving LTC and are paying for it through some other means than Medicaid. In addition to Medicaid, LTC care is also paid for by Medicare (19%), private health and LTC insurance (7%), out-of-pocket payments (19%), and other private (3%) or public (3%) sources.[30] If the share of recipients in each category is at least roughly similar to the shares of payments from those sources, then we can estimate an upper bound: about one-fifth of those individuals, or 600 to 900 are paying for LTC out-of-pocket but might possibly now qualify for Medicaid if they were treated as spouses.

G. Inheritance Tax

In 2009, the Williams Institute released a report detailing the estate tax disadvantages that same-sex couples face under federal law since they cannot be recognized as a married couple.[31] The report documents that assets inherited from a different-sex spouse are largely not subject to inheritance tax. One consequence of DOMA is that same-sex spouses are treated as legal strangers and thus subject to different taxation rules. Analyses conducted in 2011 by the Williams Institute suggest that in 2011 and 2012, it is likely that more than 9,000 same-sex couples will file estate tax returns. Of that group, more than 40 couples will have assets that exceed allowable non-taxable transfer of assets, adding an average tax burden of nearly 4 million dollars to these estates.

H. Filing Income Taxes Jointly

While many same-sex couples avoid the so-called "marriage penalty" associated with filing joint tax returns, many same-sex couples would gain from being able to file joint tax returns. Currently, those same-sex couples cannot take advantage of the option to reduce their tax burden. Moreover, many same-sex couples must calculate two sets of state tax returns. In some states, same-sex couples can file their state returns as a married couple. But because federal law prohibits same-sex couples from filing as married couples, federal forms require tax calculations from state returns completed as if they were single.

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[30] GEORGETOWN UNIVERSITY, LONG-TERM CARE FINANCING PROJECT, NATIONAL SPENDING FOR LONG-TERM CARE (2007), available at http://ltc.georgetown.edu/pdfs/natspendfeb07.pdf.

[31] MICHAEL D. STEINBERGER, FEDERAL ESTATE TAX DISADVANTAGES FOR SAME-SEX COUPLES (2009), available at http://www3.law.ucla.edu/williamsinstitute/pdf/EstateTax_FINAL_Nov2009.pdf.

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I. Social Security Survivor or Spousal Benefits

Under the current system of Social Security, different-sex spouses of insured workers can get a monthly check for half their spouse's benefit if it is higher than what he or she would get on his or her own. Also, when one spouse dies and both receive social security, the surviving spouse gets the higher of the pair's monthly benefit amount. For example, for a married different-sex couple, the husband may receive $12,073 each year while his wife may receive $6,835 each year. When the wife passes away, the husband continues to receive his monthly payment of $12,073. However, if the husband dies first, the wife would then begin receiving the higher of their payments, or $12,073.

Because the federal government does not recognize same-sex partners, same-sex couples do not benefit from this potential survivor benefit. This loss can be sizable. Recent data on same-sex couples aged 65 or older shows the difference in social security income between partners is $5,700 for female same-sex couples and $5,770 for male couples. If the partner receiving higher social security payments dies first, the surviving same-sex partner would lose this amount in potential benefits.[32]

Social Security also provides a survivor benefit to some widows and widowers whose spouses have paid into the system but have not yet retired. According to the Social Security Administration, a surviving spouse is eligible not only for a $255 lump-sum benefit on the death of a covered worker, but he or she is also provided with survivor benefits that can be worth as much as a $433,000 life insurance policy to a young family. Because their marriages are not recognized, members of married same-sex couples are not allowed this survivor benefit at all, nor are they eligible for the lump-sum benefit.

If a covered worker becomes disabled, his or her spouse—if 62 or older—receives a benefit of one-half the disabled recipient's Social Security benefit. For example, in December 2008, the average spousal disability benefit in Massachusetts was $265 per month, or $3,180 per year. Again, members of same-sex couples are not allowed this spousal disability benefit at all.

J. Immigration for Bi-National Couples

While current United States immigration policy is based primarily on family reunification, it does not provide any rights for unmarried partners of citizens. As a result, gay and lesbian couples that include a U.S. citizen and a non-citizen (referred to as bi-national couples) can be forced to separate if the non-citizen partner is not able to legally remain in the country. A forthcoming report from the Williams Institute reveals that nearly 26,000 same-sex couples in the United States are bi-national couples who could be forced to separate because they cannot participate in green-card and accelerated

[32] NAOMI G. GOLDBERG,THE IMPACT OF INEQUALITY FOR SAME-SEX PARTNERS IN EMPLOYER-SPONSORED RETIREMENT PLANS 9 (2009), *available at* http://www3.law.ucla.edu/williamsinstitute/pdf/RetirementAnalysis_Final.pdf.

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citizenship mechanisms offered to non-citizen spouses of American citizens.[33] In addition to the emotional toll incurred by same-sex couples who live under the threat of forced separation if one partner cannot acquire legal residency, economists also demonstrate that there are clear financial repercussions. There are significant financial benefits of naturalization due to increased labor mobility and employment opportunities, which means that wages of naturalized citizens increase more rapidly than among immigrants who are not naturalized.[34]

III. Social and Health Consequences of DOMA

One of the most harmful effects of DOMA is the imposition of a government sanctioned stigma on same-sex couples and their families. Psychologists define stigma as "having an attribute that conveys a devalued social identity."[35] DOMA constitutes structural (or institutional) stigma. This "represents the policies of private and governmental institutions that restrict the opportunities of stigmatized groups."[36] Structural stigma burdens the liberty and dignity of members of a stigmatized group by legitimizing the unequal treatment of some groups in society. Laws like DOMA uphold and enforce stigma toward same-sex couples and their families by asserting that their relationships are not deserving of equal status when compared to different-sex couples and their families. More broadly, such laws reinforce negative attitudes toward LGBT people and create conditions where these negative attitudes are not only socially acceptable, but also viewed as legally desirable. Ample evidence shows that in our society, negative attitudes toward LGBT people are too often expressed as prejudice, discrimination and even violence against them.[37]

A central aspect of the stigma directed toward LGBT people concerns family relations and intimacy. LGBT people have long been seen as incapable of—and even uninterested in—sustained intimate relationships. Thus, stigma about LGBT people often promotes the perception that because they cannot or do not want intimate partners, families, and children, they live isolated lives and are destined to die lonely.[38] As summarized above, ample research exists to contradict such views.

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[33] CRAIG J. KONNOTH & GARY J. GATES, SAME-SEX COUPLES AND IMMIGRATION IN THE UNITED STATES (forthcoming 2011).

[34] Bernt Bratsberg, James F. Ragan, Jr. & Zafar M. Nasir, *The Effect of Naturalization on Wage Growth: A Panel Study of Young Male Immigrants*, 20 J. OF LABOR ECON. 568 (2002).

[35] J. Crocker, B. Major & C. Steele, *Social Stigma*, *in* 2 THE HANDBOOK OF SOCIAL PSYCHOLOGY 504, 506 (D. Gilbert et al, eds., 4th ed. 1998).

[36] Patrick W. Corrigan, et al., *Structural stigma in state legislation*, 56 PSYCHIATRIC SERVICES 557, 557 (2005).

[37] Gregory M. Herek, *Sexual Stigma and Sexual Prejudice in The United States: A Conceptual Framework*, *in* CONTEMPORARY PERSPECTIVES ON LESBIAN, GAY AND BISEXUAL IDENTITIES: THE 54TH NEBRASKA SYMPOSIUM ON MOTIVATION 67 (D. A. Hope, ed., 2009); Gregory M. Herek, *Hate Crimes and Stigma-Related Experiences among Sexual Minority Adults in the United States: Prevalence Estimates from a National Probability Sample*, 24 J. OF INTERPERSONAL VIOLENCE 54 (2009).

[38] Ilan H. Meyer & L. Dean. *Internalized Homophobia, Intimacy, and Sexual Behavior among Gay and Bisexual Men*, *in* 4 PSYCHOLOGICAL PERSPECTIVES ON LESBIAN AND GAY ISSUES: STIGMA AND SEXUAL ORIENTATION 160 (Gregory Herek, ed., 1998).

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By explicitly denying married same-sex couples full legal equality and recognition under federal law, DOMA strengthens the structural stigma affecting LGBT persons by limiting their access to a cherished social institution that is rich with both symbolic meaning and tangible privileges. The harm of DOMA to LGBT people is especially enhanced because of the importance and esteem of marriage in our society. Marriage is the social institution that largely governs intimate relations in the United States. Marriage not only provides tangible benefits to married individuals, it also provides social approval and recognition. DOMA both reflects and propagates the stigma that LGBT people do not have and cannot obtain intimate relations that are of similar value and respect as those of heterosexual couples.

By preventing same-sex relationships from obtaining the respect paid to other marital relationships, DOMA essentially enshrines the age-old stigma of LGBT people as lonely and incapable of healthy and happy relationships into the law of the United States. A survey of people married to a same-sex spouse in Massachusetts finds that couples gain social support from their families and a greater level of commitment to their partners when they are allowed to marry.[39] Same-sex couples who can marry report that they feel more socially included,[40] but they are still critically aware that they are excluded from legal recognition and treated as second-class citizens by the federal government as a result of DOMA.[41]

Stigma can produce serious adverse impacts on the health of LGBT people by causing stress and disease. This has been recognized by public health authorities including Healthy People 2010 and 2020, which sets health priorities for the United States.[42] Healthy People objectives identify the LGBT population as a group targeted to reduce health disparities in the United States. In explaining the reason for the inclusion of the LGBT population as one of the groups requiring special public health attention, the Department of Health and Human Services noted: "The issues surrounding personal, family, and social acceptance of sexual orientation can place a significant burden on mental health and personal safety." This conclusion was reiterated by the Institute of Medicine of the National Academies, an independent body of scientists that advises the federal government on health and health policy matters, in its recent report, *The Health of Lesbian, Gay, Bisexual and Transgender People*, where it noted, "LGBT people . . . face a profound and poorly understood set of . . . health risks due largely to social stigma."[43]

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[39] C. RAMOS, N. GOLBERG, & M. V. L. BADGETT, THE EFFECTS OF MARRIAGE EQUALITY IN MASSACHUSETTS: A SURVEY OF THE EXPERIENCES AND IMPACT OF MARRIAGE ON SAME-SEX COUPLES (2009), *available at* http://www3.law.ucla.edu/williamsinstitute/publications/Effects_FINAL.pdf.

[40] M. V. Lee Badgett, *Social Inclusion and the Value of Marriage Equality in Massachusetts and the Netherlands*, 67 J. OF SOCIAL ISSUES 316 (2011).

[41] M. V. Lee Badgett, *The Economic Value of Marriage for Same-sex Couples*, 58 DRAKE L. REV. 1100 (2010).

[42] U.S. Dep't of Health and Human Svcs., Healthy People 2020, http://www.healthypeople.gov/Document/html/uih/uih_2.htm#goals, last accessed July 19, 2011. .

[43] INSTITUTE OF MEDICINE, THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING (2011).

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The stress that comes from social exclusion takes an emotional toll that can lead to adverse health outcomes and a poor sense of well-being. Researchers have shown that LGBT people are harmed by the impact of stress related to stigma. Indeed, LGBT populations have higher prevalence of such health outcomes as depression, anxiety, substance use disorders, and suicide attempts. It is reasonable to conclude that DOMA's categorical disrespect by the federal government of the actual legal status of tens of thousands of married lesbian and gay couples inflicts similar stigma, with similar attendant harms. In contrast, early research shows that where gay people have been allowed to legally marry, marriage confers mental health benefits, reversing some of the effects of stress related to stigma.[44]

IV. DOMA Impedes Further Research and Understanding of Same-Sex Couples

DOMA has also impaired the ability of researchers to assess its impact on same-sex couples and their families. Throughout the last decade, the U.S. Census Bureau maintained that DOMA restricted it from reporting any information about married same-sex couples. Legally married same-sex couples who responded that they were spouses on the American Community Survey were publically reported to be same-sex "unmarried partners" even though many were, in fact, legally married.

Recently, the Bureau has begun to reevaluate this policy and has made some positive changes to their procedures. However, a legacy of DOMA is evident in a general resistance on the part of federal statistical agencies to collect detailed, accurate, and reliable data on same-sex couples and their families. This means that policy debates on laws like DOMA have too often been driven as much by anecdote and stereotype as by sound social science research and facts.

V. Conclusion

The best data available reveal that there are over 580,000 same-sex couples in the United States and that over 50,000 to 80,000 of these couples are married and over 85,000 are in civil unions and registered domestic partnerships. By denying same-sex couples the federal benefits and obligations that are designed to strengthen families, DOMA imposes legal, financial, social and psychological burdens on same-sex couples and their families that result in tangible harms. Moreover, DOMA impedes the very research that is necessary to understand these families and the impact that DOMA has upon them.

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[44] E.D.B Riggle, S.S. Rostosky, & S.G. Horne, Psychological Distress, *Well-Being, and Legal Recognition in Same-Sex Couple Relationships*, 24 J. of Family Psychology 82 (2010).

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Written Testimony

of Evan Wolfson

Founder and President,

Freedom to Marry

Before the Committee on the Judiciary

United States Senate

For the Hearing

"S. 598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families"

July 20, 2011

Mr. Chairman and Members of the Committee:

I am Evan Wolfson, Founder and President of Freedom to Marry, the national campaign to win marriage. I am also author of *Why Marriage Matters: America, Equality, and Gay People's Right to Marry* (Simon & Schuster 2004).

On behalf of Freedom to Marry, I am pleased to be here with you today to testify in support of S.598, the Respect for Marriage Act, which would repeal the so-called "Defense of Marriage Act" ("DOMA") and return the federal government to its traditional and appropriate role of respecting marriages performed in the states. I thank Chairman Leahy for holding this hearing and Senator Feinstein for her leadership in introducing this important legislation in the Senate.

Fifteen years ago this summer, I was in a courtroom in Hawaii along with my non-gay co-counsel, Dan Foley (now a highly respected appellate judge), representing three loving and committed couples who, despite being together for many years, some of them for decades, had been denied marriage licenses by the state. In the clear, cool light of Judge Kevin Chang's courtroom, we presented evidence, called and cross-examined witnesses, and made logical and legal arguments, as did the state's attorneys. At the end of that historic trial – the world's first ever on marriage for same-sex couples – the court concluded, based on that record, that there is no good reason for the government to deny the freedom to marry to committed couples simply because of their sex or sexual orientation.

Unfortunately, Congress compiled no such record in 1996, and did not wait to consider evidence or undertake serious analysis, before rushing to add a new layer of marriage discrimination against couples already barred from marrying. In floor debate, Members repeatedly voiced disapproval of homosexuality, calling it "immoral," "depraved," "unnatural," "based on perversion" and "an attack on God's principles." By contrast, there was no examination of how undermining lawful marriages furthered any legitimate goal for federal programs, families, businesses, or others interacting with the couple.

From the get-go, DOMA flunked the basic test of equal protection, as Justice Jackson put it: "that the principles of law which officials would impose upon a minority must be imposed generally."[1] Rather, DOMA willfully singles one class of lawfully married couples for radically different treatment from all other similarly married couples, for any and all federal programs and policies, regardless of purpose or circumstance. DOMA carves out a "gay exception" to the way the federal government historically and currently treats all other married couples.

DOMA divides those married at the state level into first-class marriages for those the federal government prefers and second-class marriages for those the federal government doesn't like. But in America, we don't have second-class citizens, and we shouldn't have second-class marriages either.

And from the start, DOMA subverted the freedom to marry itself, stigmatizing and setting asunder couples committed in life who have entered into the legal commitment of marriage, treating them as legal strangers for all federal programs and policies – no matter what the

[1] *Railway Exp. Agency v. New York,* 336 U.S. 106, 112–13 (1949) (Jackson, J., concurring)

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purpose or circumstance. DOMA was and is an anti-marriage law that should never have been enacted, whose justifications have proven false as states have removed their restrictions on same-sex couples marrying, whose popular support has swiftly dwindled as understanding has grown, and whose time for repeal is now at hand.

For more than 200 years, the federal government relied on states to determine whether a person is married or not. The Supreme Court has repeatedly affirmed the states' primacy in this area. Throughout our country's history, states' marriage laws have varied—regarding the age when someone could marry, whether or not first cousins could marry, whether common law marriage is recognized, and so on. Yet, until DOMA, there was no intervention by the federal government. The federal government traditionally accepted state marriage determinations for purposes of triggering federal marriage protections and responsibilities. But in this case, before same-sex couples could marry anywhere in the world, Congress approved DOMA.

The record is clear that Congress did so for one and only one reason—to express disapproval of gay and lesbian people and the idea that gay people, too, share in the values of love, commitment, family, connectedness: the values that underline the freedom to marry.

Much has changed since the "Defense of Marriage Act" was adopted in 1996.

Nearly eight years after DOMA's passage, Massachusetts in 2004 ended the exclusion of same-sex couples from marriage. Through litigation and legislation, other states – Connecticut, Iowa, Vermont, New Hampshire – and our Nation's capital, the District of Columbia, all, too, have now ended the denial of marriage licenses. And as of this coming Sunday, when New York ends the exclusion, the number of Americans living in a state where gay couples share in the freedom to marry will more than double, to over 35 million. The Chairman and ranking Republican Member of this Committee represent two of those states. Nearly half of the members of this Committee, 8 out of 18, represent states that have enacted state-level recognition for same-sex couples and their families, whether marriage itself or a legal mechanism providing some measure of protections as a step toward marriage – all up from zero when DOMA was passed.

In 1996, many wild gloom-and-doom claims were made about the scary consequences of permitting same-sex couples to share in the freedom to marry. They could not be proven, but because same-sex couples were denied marriage, neither could they all be fully disproven. Today, however – with gay couples sharing in the freedom to marry in 12 countries on four continents – we know for a fact that the dire predictions and supposed risks were simply false.

Opponents of the freedom to marry predicted that "traditional marriage" would be harmed if gay couples could marry. The claim was perplexing even then, and now it is clear that even the most vociferous opponents have been unable to show that any individual or marriage has been harmed as a result of gay and lesbian couples sharing in the freedom to marry. During last year's federal trial challenging California's Proposition 8, the lead defense attorney was asked by the judge how ending marriage discrimination would harm anyone else. The attorney's answer, literally, was "I don't know, your honor; I don't know."

In Massachusetts, where same-sex couples have been marrying for the longest, the divorce rate is the lowest in the country, by a significant margin. While allowing gay couples to marry may not be the cause of the low divorce rate, by that illustrative measure, marriage is doing better in

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Massachusetts than in any other state in the country. Nor is this an anomaly; we see the same pattern that the states that are inclusive of same-sex couples and their families show better family outcomes across a wide range of measures, as cited most recently by the American Medical Association and other leading public health authorities.

Some DOMA proponents argued that allowing gay couples to marry would harm children because, they repeat, children need a mother and a father. There are a number of reasons why that purported justification is faulty as well as inadequate, including that same-sex couples are raising children irrespective of whether or not they can marry – and children have the parents they have. The more relevant question is why punish the children of same-sex couples by denying them and their families the protections and security that would come to them were their parents equally able to marry.

When DOMA was passed, all existing studies of how children fared with same-sex parents refuted the opponents' scary claims, but the number of studies was limited. Since then, however, there has been extensive research, a mountain of evidence, and it all has consistently demonstrated that lesbian and gay parents are as capable as heterosexual parents, and that their children are as psychologically healthy and well-adjusted as children raised by heterosexual parents. There is, in fact, more consensus on gay parenting and the successful outcomes for children than there is in virtually any other area of social science; literally every single reputable public health and child welfare authority in the country weighing the science, evidence, and clinical as well as personal experience has agreed with our nation's kids' doctors, the American Academy of Pediatrics and, most recently, the American Medical Association, that the best interests of the children and public health in general warrant support of the freedom to marry.[2] All these authorities refute the kinds of unsubstantiated claims we've heard today to justify DOMA; all have taken clear and explicit stands in support of the freedom to marry.

In the 15 years since DOMA passed, as Americans have gotten to know same-sex couples living in their communities, public support for the freedom to marry has increased dramatically. In a 1996 Gallup poll, only 27% of the American people were in favor. Today, according to Gallup and five other recent surveys, support has doubled to 53%, a clear national majority for marriage. Younger Americans across the board are overwhelmingly in support; according to Gallup, 70 percent of those aged 18 to 34 favor allowing same-sex couples to marry. 63% of Catholics are for the freedom to marry, according to an ABC News/Washington Post poll this year. And opposition is falling among all parts of the public, with accelerating momentum and bipartisan voices, as reflected in last month's historic vote in New York. As Vice President Biden said last December, "there's an inevitability for a national consensus" on ending marriage discrimination.

Even the author of DOMA, Republican Congressman Bob Barr (R-GA), concluded in 2009 that it should be repealed, stating that "DOMA is neither meeting the principles of federalism it was supposed to, nor is its impact limited to federal law." Like many Americans, Congressman Barr has heard the real stories of real families, and looked at the real evidence; he now supports the freedom to marry, as does the Democratic President who signed DOMA into law, Bill Clinton.

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[2] These organizations include the American Academy of Child and Adolescent Psychiatry, the American Psychiatric Association, the American Psychological Association, the American Psychoanalytic Association, the National Association of Social Workers, the Child Welfare League of America, and the North American Council on Adoptable Children, among others.

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Nor has the "Defense of Marriage Act" withstood the test of constitutionality. In *Gill v. Office of Personnel Management* brought by New England's Gay & Lesbian Advocates & Defenders (GLAD) on behalf of eight same-sex couples and three surviving spouses, Judge Joseph L. Tauro, appointed to the bench by President Nixon, ruled that none of the rationales for DOMA—neither those put forward by Congress at the time of enactment nor those argued by the Justice Department in its defense in *Gill*, met even the rational-basis test for a law, the least stringent standard of review.

Reviewing the record and the absence of justifications in evidence or argument, Judge Tauro found that it serves no legitimate policy interest for the federal government to force states to carve the class of married people into two:

> In the wake of DOMA, it is only sexual orientation that differentiates a married couple entitled to federal marriage-based benefits from one not so entitled. And this court can conceive of no way in which such a difference might be relevant to the provision of the benefits at issue. By premising eligibility for these benefits on marital status in the first instance, the federal government signals to this court that the relevant distinction to be drawn is between married individuals and unmarried individuals. To further divide the class of married individuals into those with spouses of the same sex and those with spouses of the opposite sex is to create a distinction without meaning. And where, as here, "there is no reason to believe that the disadvantaged class is different, in *relevant* respects" from a similarly situated class, this court may conclude that it is only irrational prejudice that motivates the challenged classification. As irrational prejudice plainly *never* constitutes a legitimate government interest, this court must hold that Section 3 of DOMA as applied to Plaintiffs violates the equal protection principles embodied in the Fifth Amendment to the United States Constitution.

The court held that that animus towards gay people was and is the only explicable basis for the law, and that, as a result, DOMA is unconstitutional.

Following the ruling in *Gill*, the Department of Justice likewise concluded that, under heightened scrutiny, DOMA is unconstitutional and indefensible, and, as a result, the United States will no longer defend the discriminatory law in ongoing challenges. In a July 1, 2011 brief filed in federal district court, the Justice Department argued powerfully that DOMA is unconstitutional, because it "treats same-sex couples who are legally married under their states' laws differently than similarly situated opposite-sex couples, denying them the status, recognition, and significant federal benefits otherwise available to married persons."

Why is the repeal of DOMA so important for same-sex couples and their families? Because marriage matters. Gay and lesbian couples want the freedom to marry for the same mix of reasons as other couples – reasons that are emotional as well as economic, practical as well as personal, social as well as spiritual, and reasons that resonate in law as they do in love. Like non-gay people, gay people want to be able to protect themselves and their families, and marriage provides literally thousands of protections and supports at the federal and state level. Most profoundly, gay people seek to make a lifetime commitment to the person they love and to protect their families. They share similar values to those that other couples hold—like the importance of family and helping out their neighbors; they share similar worries—like making

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ends meet or the possibility of losing a job; and they share similar hopes and dreams—like finding that special someone to grow old with, and standing in front of friends and family to make a lifetime commitment.

By treating married same-sex couples as legal strangers, DOMA degrades those couples, their loved ones, and marriage itself, depriving loving and committed American of the unique respect, support, and public and personal meanings that come with marriage. DOMA goes so far as to require same-sex couples to deny the existence of their own marriages through civil and criminal statutes that prohibit them from acknowledging they are married in dealings with the federal government, such as on federal forms. DOMA wreaks a wholesale undermining of their state-sanctioned family status, insults the states that have celebrated their legal union, and brands targeted Americans with the stamp of a second-class marriage that the federal government doesn't acknowledge. That is harsh, it is harmful, it is unfair, and it is un-American.

With respect to tangible protections, according to GAO and CBO studies conducted in 1997 and 2004, there are at least 1,138 federal laws in which marital status is a factor. The direct testimony presented today demonstrates that these federal incidents of marriage represent some of the critical legal safety-nets that couples count on when they marry, as they plan their lives and futures together, as they raise children and deal with hard times, and as they pay their taxes.

As I note in my book, *Why Marriage Matters,* the protections and responsibilities that come with marriage touch every part of life, from birth to death, with taxes in between. Attached is a detailed list of the protections the federal government affords married couples, prepared by our colleagues at GLAD. Among the most important are:

- Social Security spousal protections that ground a family's economic security while living in old age, and upon disability and death;
- The ability to be included in a health insurance family policy without being taxed on the value of that coverage;
- The ability to use the "Married Filing Jointly" status for federal income tax purposes that can save families money;
- Family medical leave from a job to care for a seriously ill spouse;
- Disability, dependency or death benefits for the spouses of veterans and public safety officers;
- Employment benefits for federal employees, including access to family health insurance benefits, as well as retirement and death benefits for surviving spouses;
- Estate/death protections that allow a spouse to leave assets to the other spouse – including the family home – without incurring any taxes; and
- The ability of a citizen to obtain a visa for a non-citizen spouse and sponsor that spouse for purposes of citizenship.

One specific area I want to highlight today is how DOMA destabilizes families and harms the children of married same-sex couples. Consider just one family:

Mary Ritchie and Kathy Bush, of Framingham, Massachusetts, have been married for seven years. While Mary works as a state police lieutenant, Kathy is a stay-at-home mom with their two children, 12-year-old Ryan and 10-year-old William. Mary and Kathy and their family are

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reminded how vulnerable their family is every time a member of law enforcement dies in the line of duty– and, appallingly, they are even more vulnerable because of DOMA.

Because they cannot file their federal taxes jointly as a married couple, they've paid $19,066 more in taxes since they've been married, money that could go to household expenses, be put away for their boys' college funds, or to save for a rainy day.

Social Security also protects young families by providing support in the case of a tragedy. For example, if a heterosexual parent of a child under 16 passes away, the surviving spouse would receive a "children's benefit" for each child as well as a "parent benefit" until the kids are 16. In the case of Mary and Kathy, however, should Kathy pass away, the family would receive the children's benefit but not the parent benefit. The children as well as the surviving spouse are directly injured by the federal government's refusal to respect this lawful marriage.

In Kathy's words, "We work hard, pay taxes, volunteer, and do our part for our community. But the federal government still tells us we're less of a family than other families in our neighborhood—families Mary risks her life every day to protect."

In an effort to combat these discriminatory policies, certain corporations, states and municipalities have begun to offset the extra taxes and burdens to which same-sex couples are subject. At least 17 companies, including Boston Consulting Group, Google, and Facebook, compensate same-sex couples to offset the tax that they must pay on employer-provided health insurance policies that cover their same-sex spouse. The city of Cambridge, Massachusetts has done the same. The state of Massachusetts has enacted a law in which the state will compensate a same-sex couple if one spouse enters a nursing home and the couple is forced to spend down their savings, ensuring the other spouse does not need to give up their home in order to receive Medicaid benefits. But this patchwork of support, though commendable, barely scratches the surface in trying to make up for the federal government's discriminatory withholding of the extensive protections available to all other married couples and their families.

Companies, cities, and courts, of course, are not the only ones who can act. Congress can, and should, undo the damage caused by the "Defense of Marriage Act" and federal marriage discrimination. The remedy at hand is the straightforward and restorative Respect for Marriage Act.

The Respect for Marriage Act repeals "DOMA" in its entirety. It doesn't tell states what marriages they must celebrate or how to treat marriages, but provides that the federal responsibilities and protections accorded married couples will remain stable and predictable no matter where a couple lives, works, or travels, and no matter whether that couple is gay or non-gay. The Respect for Marriage Act doesn't require any person, religious organization, locality, or state to celebrate or license any marriage, gay or non-gay. The First Amendment protects the right of churches and religious bodies to determine the qualifications for religious marriage, and the Respect for Marriage Act cannot and will not upset that longstanding protection.

Mr. Chairman, in just four days, same-sex couples will begin marrying in New York, the result of both Democratic-led and Republican-led legislative chambers approving, and the governor

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signing into law, a simple bill ending the exclusion of same-sex couples from marriage. Beginning this Sunday, Americans will watch on television as these couples, some of whom have been together forty, fifty – in the case of one couple who contacted Freedom to Marry, Richard Dorr and John Mace, sixty-one – years, express their love and have their commitment celebrated by family and friends and confirmed by the state.

As these joyous couples join in marriage, they will at the same time become the newest Americans who experience first-hand the sting of discrimination by the federal government. They will endure the intangible yet very real pain of once again being deemed a second-class citizen by Congress, and suffer the tangible harm of being excluded from the safety-net of protections and responsibilities that their heterosexual married family members and friends cherish.

Congress can remove this sting, eliminate this pain, end this harm – by enacting the Respect for Marriage Act, repealing the so-called "Defense of Marriage Act," and standing up for American values of the pursuit of happiness, personal responsibility, and treating others as you would want to be treated.

Freedom to Marry urges this Committee, and the Senate, to pass the Respect for Marriage Act.

Thank you.

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