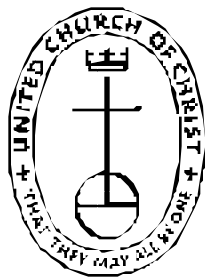


WHY THE FEDERAL “DEFENSE OF MARRIAGE” ACT (DOMA) IS UNCONSTITUTIONAL

This is an Equal Marital Rights for Same Gender Couples educational/advocacy resource of the United Church of Christ, Wider Church and Justice and Witness Ministries. United Church of Christ congregations have permission to reproduce this resource for use in the local church.



For additional information contact:

**Equal Marital Rights for Same Gender Couples
Office of Lesbian, Gay, Bisexual & Transgender Concerns
Wider Church Ministries
700 Prospect Avenue
Cleveland, OH 44115-1100**

Why the Federal “Defense of Marriage” Act (DOMA) Is Unconstitutional

DOMA Is Unconstitutional

DOMA violates constitutional protections that forbid the Government from discriminating by creating disfavored, second-class citizens—and disfavored, second-class marriages. Such unconstitutional election-year bills appeal to anti-gay disapproval, dislike, or discomfort—the very animus rejected by the Supreme Court as a basis for government discrimination.

DOMA gives congress the power to punish disfavored marriages by denying them federal protections and benefits such as social security, federal pensions for surviving spouses, and “family unification” in immigration.

DOMA inserts the federal government—for the first time in history—into the definition of marriage, violating the Tenth Amendment, which reserves powers for the states.

DOMA violates the Constitution’s Full Faith and Credit clause, which requires that official acts and proceedings of each state be recognized by sister states. Congress does not have the constitutional power to decide when, or which, state acts get interstate respect or when people are stripped of those rights as they travel through the country.

DOMA makes America a “house divided” for the couples who would be unsure whether they remained married whenever they moved or traveled from state to state.

DOMA also creates an untenable situation for these couples’ children, their employers, creditors, businesses, government agencies, and others.

DOMA Is Bigoted Against Lesbians and Gay Men

DOMA seeks to dehumanize lesbians and gay men, promote hatred against the gay community and scapegoat one group of Americans as a threat to the community.

The extreme right is exploiting emotions and religious beliefs about marriage to promote discrimination against lesbians and gay men. Religions are not obliged to recognize marriage among gay couples—although many do. Civil marriage is a fundamental source of many legal and economic protections that couples cannot obtain anywhere else.

No matter what one’s position on marriage for gay couples, DOMA legislation is nothing more than an election-year ploy to score political points at the expense of gay Americans. It is gratuitous, since gay couples cannot legally marry anywhere in the country and might only win that right in one or two states, Hawaii and Vermont, in the foreseeable future.

Committed lesbian and gay relationships are a reality. Allowing such couples to share in civil marriage would not threaten or detract from non-gay marriages.

“Traditional’ definitions of marriage are not good reasons for laws that discriminate against lesbians and gay men—just as laws no longer ban marriages between people of different races or define wives as the property of their husbands. Likewise, divorce laws have changed, and now all states recognize divorce without forcing couples to “go to Reno” to legally end their marriages.