

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
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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

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.

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

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

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

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

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

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.