

Federal Defense of Marriage Act (DOMA)

Introduction:

Article III of the Defense of Marriage Act (DOMA), enacted in 1996 by President Bill Clinton, defines marriage in federal law as only between one man and one woman, thereby requiring the federal government to ignore legally recognized same-sex marriages conducted by several states. As a result, more than 80,000 legally married couples and over 85,000 couples in civil unions and domestic partnerships intended to grant the same legal rights and obligations are harmed by this law. While the DOMA statute only specifically defines marriage, it has generally been interpreted by federal agencies to bar any federal recognition of same-sex relationships without specific Congressional action enabling such recognition. Therefore, while removal of DOMA would not require the federal government to recognize civil unions or domestic partnerships, the existence of DOMA is frequently a barrier to such recognition.

The 1,138 federal policies associated with civil marriage include income and estate taxes, social security, federal employee benefits, recognition of the partners of military service members, and much more. As noted by Judge Tauro in the 2010 case of *Massachusetts v. Department of Health and Human Services*, "DOMA plainly intrudes on a core area of state sovereignty - the ability to define the marital status of its citizens." Log Cabin Republicans oppose DOMA as an unconstitutional assault on federalism and the principle of equality under the law.

States Affected:

- States with Civil Marriage Equality
 - o CA (18,000 couples married pre-Proposition 8), CT, DC, IA, NH, MA, VT
 - o States likely to see marriage enacted soon: NY, RI, MD
- States with Civil Unions/Domestic Partnerships
 - o CA, HI, IL, NJ, NV, OR, WA
- States which recognize marriages, civil unions, or domestic partnerships from other jurisdictions
 - o MD, NY, NM, RI

One Example of the Harms of DOMA's Interference with State Law: Filing Taxes

It is said that two things in life are certain: death and taxes. For same-sex couples married in states from California to Connecticut, because of DOMA's interference with state law the annual ritual of filing taxes is anything but certain or clear. In California, if a person is legally married – one of the 18,000 couples wed before the passage in Proposition 8 – or in a registered domestic partnership, they are entitled to file state income taxes jointly. However, the Internal Revenue Service, because of DOMA, requires these couples to file as individuals, thereby doubling the amount of work involved for the taxpayer.

To further complicate matters, California is a community property state, meaning that the income and property of each partner is imputed to the other for tax purposes. The IRS recently promulgated guidelines instructing married same-sex couples and registered domestic partners in community property states (CA, WA and NV) to calculate community income earned by both members of the couple and to allocate half to each one's separate federal return in a process called "income splitting." Because of the difference between the taxpayer's W-2s and his or her reported income, these individuals will likely frequently face IRS auditing, and are unable to file taxes online. Without the interference from DOMA, these couples would be free to file taxes in the same manner as other married couples, thus avoiding significant confusion and expense.