



Written by [Dave Bohon](#) on October 19, 2012

Another Federal Court Rules Against Traditional Marriage

A federal appeals court in New York has ruled that the 1996 federal Defense of Marriage Act (DOMA), which defines marriage as between a man and a woman in the context of federal business, is unconstitutional because it violates the Constitution's equal protection clause. The ruling follows a similar one by the 1st Circuit Court of Appeals in Boston earlier this year, making it likely that the future of DOMA will eventually be decided by the U.S. Supreme Court.



Writing for a two-to-one majority of the 2nd U.S. Court of Appeals, Judge Dennis Jacobs declared that homosexuals had "suffered a history of discrimination" and there was no reason same-sex couples should be denied the same rights and benefits traditional married couples enjoy. The ruling affirmed a lower court verdict in favor of a woman who had been required to pay \$363,000 in federal estate tax following the death of her longtime lesbian partner.

While mirroring the 1st Circuit Court's ruling that DOMA is unconstitutional, Jacobs moved beyond the Boston court's, reported the [Associated Press](#), "saying discrimination against gays should be scrutinized by the courts in the same heightened way as discrimination faced by women was in the 1970s. At the time, he noted, they faced widespread discrimination in the workplace and elsewhere. The heightened scrutiny, as it is referred to in legal circles, would mean government discrimination against gays would be assumed to be unconstitutional."

The issue, wrote Jacobs, who was appointed by President George H.W. Bush in 1992, "is not whether homosexuals have achieved political successes over the years; they clearly have. The question is whether they have the strength to politically protect themselves from wrongful discrimination." Declared Jacobs: "Homosexuals are not in a position to adequately protect themselves from the discriminatory wishes of the majoritarian public."

Jacobs wrote that the relatively small number of homosexuals serving in positions of power and authority "is attributable either to a hostility that excludes them or to a hostility that keeps their sexual preference private — which, for our purposes, amounts to much the same thing."

The AP reported that Jacobs "rejected arguments by supporters of the law that it was intended to limit new categories of eligibility for federal funds, promote uniform administration of federal law, protect traditional marriage, and encourage responsible procreation. 'Even if preserving tradition were in itself an important goal, DOMA is not a means to achieve it,' he said."

In the court's lone dissenting opinion, Judge Chester J. Straub wrote that it is not up to the courts to decide the definition of marriage. "I believe it is for the American people to do so," he said. "Courts should not intervene where there is a robust political debate, because doing so poisons the political well, imposing a destructive anti-majoritarian constitutional ruling on a vigorous debate."

In a statement after the ruling, Edith Windsor, the plaintiff in the case, said that DOMA "violated the fundamental American principle of fairness that we all cherish," adding that her late lesbian partner of 44 years "would have been so proud to see how far we have come in our fight to be treated with dignity."



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ACLU attorney James Esseks called the ruling a “watershed moment in the legal movement for lesbian and gay rights. It’s fabulous news for same-sex couples in New York and other states.”

And Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) said the ruling was an affirmation that DOMA “has damaging effects on the lives of thousands of American *families* who are denied the same federal protections as millions of other Americans.” (Emphasis added.)

By contrast, Brian Brown, president of the [National Organization for Marriage](#), said the ruling “is yet another example of judicial activism and elite judges imposing their views on the American people, and further demonstrates why it is imperative for the U.S. Supreme Court to grant review in the currently pending DOMA cases as well as to [California’s] Proposition 8 case. The American people are entitled to a definitive ruling in support of marriage as the union of one man and one woman, as 32 states have determined through popular vote.”

Similarly, Matt Staver of [Liberty Counsel](#) said that “while citizens of the majority of states have voted for natural marriage in their state constitutions, activist judges and even the President of the United States have been actively promoting an agenda to undermine the nation’s marriage laws.” He added that weakening marriage and family weakens society as a whole. “Children fare best when raised with a mom and a dad,” Staver said. “Redefining marriage is not in the best interest of children or society.” Last year President Obama, who has been a solid supporter of the efforts of homosexual activists as he seeks a second term, ordered the Department of Justice to halt all efforts to defend DOMA, prompting Republicans in the House of Representatives to take up the fight. The Supreme Court is expected consider one or more DOMA cases in the next several months, with its ruling becoming a deciding factor in the future of homosexual marriage in America.

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