



Written by [Raven Clabough](#) on November 10, 2010

Same-Sex Couple Takes on Defense of Marriage Act

Same-sex married couples find themselves confronted by federal law when it comes to federal benefits. When these couples attempt to add their "spouses" to their federal healthcare plan, they are rejected, simply because while individual states may recognize same-sex unions, federal law does not. Joanne Pederson and Ann Meitzen have experienced this obstacle first-hand, and as a result, intend to file a lawsuit challenging the constitutionality of the Defense of Marriage Act, a 1996 law that prohibits the federal government from recognizing same-sex marriage.



The *New York Times* reports that Meitzen and Pederson are "plaintiffs in one of two lawsuits being filed by the legal group Gay and Lesbian Advocates and Defenders, a gay rights legal organization based in Boston, and by the American Civil Liberties Union." The ACLU case was filed on behalf of Edith S. Windsor.

The Defense of Marriage Act was passed in 1996 when Hawaii appeared to be on the verge of legalizing same-sex marriage. Opponents grew concerned that other states would be forced to recognize such unions if Hawaii had, in fact, legalized same-sex marriages.

Today, Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, and the District of Columbia issue marriage licenses to same-sex couples. Though California has stopped issuing these marriage licenses, it continues to recognize the same-sex marriages for which licenses were previously issued. Additionally, Rhode Island, New York, and Maryland recognize same-sex marriages from other states. The state of New Jersey allows civil unions and spousal rights to same-sex couples.

However, the federal government does not recognize such same-sex relationships as marriages.

A federal judge in Boston ruled the Defense of Marriage Act to be unconstitutional in July after the Gay and Lesbian Advocates and Defenders (GLAD) challenged the portion of the law that prevents the federal government from affording pension and other benefits to same-sex couples. U.S. District Judge Joseph Tauro ruled that "as irrational prejudice plainly never constitutes a legitimate government interest," the Defense of Marriage Act is in violation of the Fifth Amendment.

Tauro added that the Act "plainly encroaches" upon the states' right to determine marriage.

According to the *Washington Post*, "Although his rulings apply only to Massachusetts, they could have broader implications for other states in which same-sex marriage is legal."

The ruling is currently under appeal by the Obama administration, though the President has called for a repeal of the act, calling it "discriminatory."

Obama's stance on same-sex marriages has been convoluted by his contradictory allegations on the one hand that the Defense of Marriage Act is unconstitutional, and his assertions on the other hand that he



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supports civil unions, not same-sex marriage.

However, in a meeting with liberal bloggers last month, Obama indicated that his position on the subject has “evolved.”

Tracy Schmalzer, a spokeswoman for the Department of Justice, said, “The Justice Department has a longstanding tradition of defending acts of Congress when they are challenged in court.”

The newest lawsuits involve plaintiffs from all over the Northeast region — New York, Vermont, Connecticut, and New Hampshire — and as reported by the *New York Times*, the challenges “encompass more of the 1,138 federal laws and regulations that the Defense of Marriage Act potentially affects — including the insurance costs amounting to several hundred dollars a month in the case of Ms. Pederson and Ms. Meitzen, and a \$350,000 estate tax payment in the A.C.L.U. case.”

According to Mary Bonauto, director of the Civil Rights Project for GLAD, the federal government violates equal protection of the law in differentiating between heterosexual marriages and homosexual marriages.

John McManus, president of The John Birch Society, sees an easy solution to avoiding charges that the federal government violates equal protection: “The federal government should have nothing to say about marriage, whether it’s between a man and a woman or a man and a horse. The fact that it does means that there are governmental intrusions into the very basic facts of life and it ought to stop.”

Furthermore, McManus asserts that marriage is a religious sacrament, and therefore should not be subject to the determinations of either the federal government or the state.

Even President Obama articulated similar sentiments in February, though his stance has since changed: “I do not support gay marriage,” he declared last February. “Marriage has religious and social connotations, and I consider marriage to be between a man and a woman.”

The National Organization for Marriage, a group opposed to same-sex marriage, views the legal challenge of the Defense of Marriage Act as a “court-based strategy ... of inventing rights that neither the founders nor the majority of Americans can recognize in our Constitution.”

The debate over same-sex marriage prompted *The Eastern Echo* to ask, “Why is the federal government defining and subsidizing the institution of marriage? I don’t understand. Shouldn’t that be determined by the individual’s church or religious organizations, be it Christian, Mormon, Muslim, or even Atheist?”

Like *The Eastern Echo*, McManus contends, “The federal government is sticking its nose where it does not belong.”

The dispute over same-sex marriage has been more hotly debated in recent months, particularly after U.S. District Chief Judge Vaughn Walker ruled against Proposition 8 — a referendum passed by California voters in November of 2008 that banned same-sex marriages in the Golden State. Judge Walker’s ruling was highly controversial in that it encroached upon the maxim “We the People,” since the people of California clearly indicated where they stood on the issue of same-sex marriage and were ignored.

On November 2, Iowa voters also expressly indicated how they felt about same-sex marriages by eliminating all three state Supreme Court justices who were up for term renewal, all of whom were part of a unanimous decision ruling as unconstitutional Iowa’s state law which preserved marriage as a union between a man and a woman.



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However, since the passage of the Defense of Marriage Act in 1996, support for same-sex marriage has grown from 25 percent to nearly 50 percent today, according to a [CNN poll](#). As reported by the *New York Times*, “Only Utah is still below where national support stood in 1996.”

Though a growing number of Americans are in favor of same-sex marriage, however, a January [Washington Post survey](#) shows that 58 percent of Americans believe same-sex marriage should remain a state issue.

John Eismel, “No legal basis for claim under equal protection claim. That simply means there can be no discrimination without a rational basis. Very clearly, there is a rational basis here. The fact that there can be no procreation between same sex couples.”

Photo: Civil Rights Project Director Mary Bonauto for the Gay & Lesbian Advocates & Defenders, or GLAD, center, discusses the filing of a federal lawsuit at a news conference in Hartford, Conn., Nov. 9, 2010: AP Images



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