

Doma: support or repeal?

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DOMA: Support or Repeal? BCOM 275 DOMA: Repeal or Support? Abstract

This debate argues whether the Defense of Marriage Act (DOMA) should be supported or repealed on the basis of its definition of marriage, its constitutionality, and its impacts on non-heterosexual families. This debate argues that the Defense of Marriage Act should be repealed because its definition of marriage is heavily based on values of tradition in this country and because the definition violates the Fifth Amendment of the United States Constitution. DOMA: Support or Repeal? The Argument in support of DOMA

The Defense of Marriage Act (DOMA) is a federal law that was first introduced by Republican Bob Barr from Georgia in May of 1996. The bill passed in the house by a vote of 342-67 and in the Senate by a vote of 85-14. It was signed into law by President Bill Clinton on September 21, 1996. DOMA gives states the right not to recognize same-sex marriage that another state has already recognized. Secondly, the law provides a federal definition of marriage. DOMA defines marriage as a union between a man and a woman. In this paper, we are going to outline the two major provisions of DOMA. We will explore the federal definition of marriage and whether this is justified. We will further discuss the rights granted to the states and their ability to decline same sex marriage from other states. We will discuss both pros and cons of each part of DOMA, and then provide our teams determination on which is the more persuasive argument. First let's explore the DOMA mandated federal definition of Marriage. The language, taken directly from the law itself, is defined as follows: " In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the

word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." By this definition, it is very clear cut that DOMA defines marriage as a traditional man and woman union. Since 1998, following in the footsteps of DOMA, 30 states have had their voters approve constitutional amendments to define marriage as a union between a man and a woman. Although not overwhelming, it is a majority and represents 60% of our states that have taken steps to protect the traditional definition of marriage. The question next becomes a matter of whether this definition, based in tradition is justified? The traditional argument is based in the belief that marriage, rooted in tradition has always been between a man and a woman, and that this is also the best environment to raise children. The belief that marriage should be defined traditionally is not about taking away rights from anyone, it is just about not redefining the word marriage. Many supporters of a marriage definition argue that they don't have any issues with gay couples; they just want the definition of marriage to be traditional. They are not proponents of banning anyone's rights. The definition of marriage, is only part of DOMA's mandate, the second part is the power granted to the states. The second part of DOMA that we will discuss is the rights granted to the state. It is defined as: " No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from

such relationship." This very simply means that if you are a same sex couple and were married in a particular state that recognizes same sex marriage, then other states are not required to recognize that marriage. It serves to protect the rights of the states and the voters who have enacted rules in their states that define marriage as only between a man and a woman.

These rights granted to the states are extremely important to respect the laws of the states that are already in place and are being adhered to. It is very important for people who live in a certain place to be able to rely on the community beliefs being upheld legally and not be changed when couples from other states move there and want the same recognition as they had in another state. It helps protect the states' rights, and although some will argue that what is good for one state should be good for another, it is important to have the voters of each state decide what is right and wrong.

The decision of DOMA to grant this power to states helps preserve this sense of community and provide a stable way ahead in this matter. The Argument to repeal DOMA The Defense of Marriage act should be repealed because it discriminates against same-sex couples; it violates the equal protection component of the Fifth Amendment: and because it simply is not necessary.

Congress enacted the Defense of Marriage Act in 1996 because of the concern of states that do not support same-sex marriages. Section 3 of DOMA states: " In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ' marriage' means only a legal union between one man and one woman as husband and wife, and the word ' spouse' refers only to a person of the opposite sex who is a husband or a

wife" (CNN Washington, 2011). This definition of marriage clearly discriminates against those individuals who desire to legally enter into marriage with persons of the same gender because it prohibits such individuals from obtaining any of the rights afforded to persons who marry opposite their gender. This act of discrimination toward same-sex couples violates the equal protection component of the Fifth Amendment by requiring the federal government to deny recognition of the existing legal marriages of same-sex couples (Gay & Lesbian Advocates & Defenders, 2012). The Fifth Amendment has an explicit requirement that the Federal Government not deprive individuals of " life, liberty, or property," without due process of the law and an implicit guarantee that each person receive equal protection of the laws (Find US Law, 2012). Because Section 3 of DOMA excludes same sex couples from having their marriages recognized legally under federal law it does, in fact, deprive those individuals of life, liberty, or property without due process of the law. For many people, regardless of their sexual orientation, marriage is a major event in life. DOMA deprives homosexual individuals from fully participating in marriage because they do not reap the same benefits from marriage as their heterosexual counterparts. DOMA treats married same-sex couples as unmarried for purposes of all 1, 138 federal laws in which marital status is a factor (Gay & Lesbian Advocates & Defenders, 2012). For example, at tax time, legally married same-sex couples suffer financially because of they are unable to file their federal tax returns jointly, as heterosexual married couples do. They also they don't have the same access to Social Security benefits as heterosexual couples. Children of same-sex couples do not have the same

inheritance rights in regards to Social Security and retirement benefits as do children of heterosexual couples, because both parents cannot be listed on their birth certificate. Same-sex spouses also do not have the same next of kin rights in making medical decisions during a medical crisis for their spouse. In order for them to have any decision making role, they are forced to take additional legal steps just to provide their spouse with a decision making capacity, that is automatically and freely afforded to married heterosexual couples. The fact that Section 3 of DOMA discriminates against homosexuals was supported on February 23, 2011, when a public letter was sent to the House of Representatives by Attorney General Eric Holder. In his letter Holder wrote, " The President and I have concluded that classifications based on sexual orientation warrant heightened scrutiny and that, as applied to same-sex couples legally married under state law, Section 3 of DOMA is unconstitutional. " In the letter, Holder also informed the Speaker of the House that the Department of Justice of the United States would no longer defend DOMA " unless and until Congress repeals Section 3 or the judicial branch renders a definitive verdict against the law's constitutionality. " The Defense of Marriage Act was enacted by Congress to exclude same sex married couples from being able to receive the same benefits afforded to opposite sex married couples. Section 2 of DOMA states: " No state, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such

relationship. " Only states can marry people and Congress has always deferred to state status determinations. The Tenth Amendment provides that powers that the Constitution does not delegate to the United States and does not prohibit the states from exercising, are " reserved to the States respectively, or to the people" (New World Encyclopedia, 2009). Since each state has the sovereign right to decide on whether same-sex marriage is legal or not, there is no need for the Defense of Marriage Act. Additionally DOMA not only violates the Fifth Amendment, it violates and was written to circumvent Article IV, Section 1, of the U. S. Constitution, more commonly known as the Full Faith and Credit Clause. The Full Faith and Credit Clause provides " Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof. " (Wikipedia. org, Full Faith and Credit Clause). Essentially, the clause states that evidence, judicial proceedings, and the like, if accepted by in the state it took place in, must be accepted in any other state. This is exactly how a marriage in good legal standing in Michigan is recognized in good legal standing, in California. While this clause has been applied to family law protective orders and child support collection, it was never applied to force any state to recognize an interracial marriage, prior to all laws banning such marriages were struck down by the Supreme Court, in 1967. To date, the clause has never been applied to any same sex marriage. DOMA unnecessarily contradicts this clause and creates a needless legal quandary by allowing states to pick and choose which regulations they will honor, from other states, all the while

further engendering further discrimination. Not only does this clause apply to interstate legal matters, it is applied to international marriages. The definition of marriage, as defined by DOMA, prevents the federal, and thus the state government from recognizing same sex marriages from countries where it is legal. This then also impacts the legal and economic rights of immigrants and international travelers. DOMA has been cited as protecting traditional marriage and supporting the family unit. DOMA only provides a definition of marriage, it does nothing to support or protect traditional, heterosexual marriages or the children of those marriages. DOMA only protects economic and legal privileges for heterosexual married couples. As such, it condones and enforces discrimination based on the gender of married couples. Non heterosexual families have and raise children, our future community members, just like heterosexual couples. By not repealing DOMA, we as a nation, are telling future generations that it is acceptable to withhold legal, inheritance, medical and economic rights and privileges, based upon someone's gender. Conclusion The arguments of this debate have been made a team of individual who have differing views on this legislation. We have respectfully agreed to conclude our arguments, based on a majority vote, which in this case, is for repealing DOMA. While DOMA established a federally determined definition of marriage based on tradition, that very definition unjustifiably restricts certain rights afforded to heterosexual couples from non-heterosexual couples. DOMA serves to act as a divisive piece legislation that does nothing to protect heterosexual married couples, or their families, all the while, endangering same-sex couples' financial, legal, medical, and inheritance rights, and destabilizing their

families. DOMA violates the Fifth Amendment of the U. S. Constitution, as well as contradicts Article IV, Section 1 of the Constitution, the Full and Fair Credit Clause, and needlessly creates national and international litigation. Ultimately, DOMA should be repealed because it is discriminatory, divisive, and unconstitutional. References CNN Washington. (2011, February 23). The 1600 Report`. Retrieved from CNN Politics: <http://whitehouse.blogs.cnn.com/2011/02/23/attorney-general-declares-doma-unconstitutional/> Dayna K. Shah. (2004). GAO-04-353R Defense of Marriage Act. Washington D. D., : U. S. G. A. O. Defense of Marriage Act. (2004). Retrieved from http://www.pbs.org/newshour/bb/law/gay_marriage/act.html Find US Law. (2012). U. S. Constitution- 5th and 14th Amendments. Retrieved from