

***UNITED STATES v. WINDSOR***<sup>1</sup>  
570 U.S. \_\_\_\_ (2013)

Justice Kennedy delivered the opinion of the Court.

Two women then resident in New York were married in a lawful ceremony in Ontario, Canada, in 2007. Edith Windsor and Thea Spyer returned to their home in New York City. When Spyer died in 2009, she left her entire estate to Windsor. Windsor sought to claim the estate tax exemption for surviving spouses. She was barred from doing so, however, by a federal law, the Defense of Marriage Act [DOMA], which excludes a same-sex partner from the definition of “spouse” as that term is used in federal statutes. Windsor paid the taxes but filed suit to challenge the constitutionality of this provision. The United States District Court and the Court of Appeals ruled that this portion of the statute is unconstitutional and ordered the United States to pay Windsor a refund.

I

DOMA contains two operative sections: Section 2, which has not been challenged here, allows States to refuse to recognize same-sex marriages performed under the laws of other States. Section 3 is at issue here. It amends the Dictionary Act in Title 1, §7, of the United States Code to provide a federal definition of “marriage” and “spouse.” Section 3 of DOMA provides 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.” [1 U. S. C. §7](#).

The definitional provision does not by its terms forbid States from enacting laws permitting same-sex marriages or civil unions or providing state benefits to residents in that status. The enactment’s comprehensive definition of marriage for purposes of all federal statutes and other regulations or directives covered by its terms, however, does control over 1,000 federal laws in which marital or spousal status is addressed as a matter of federal law.

[...] This case is unusual, however, because [...] [a]lthough “the President . . . instructed the Department not to defend the statute in Windsor,” he also decided “that Section 3 will continue to be enforced by the Executive Branch” and that the United States had an “interest in providing Congress a full and fair opportunity to participate in the litigation of those cases.” *Id.*, at 191–193. The stated rationale for this dual-track procedure (determination of unconstitutionality coupled with ongoing enforcement) was to “recogniz[e] the judiciary as the final arbiter of the constitutional claims raised.” *Id.*, at 192.

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<sup>1</sup> Note: This majority opinion has been edited from the original text by Travis Braidwood for classroom use. The full case text can be found here: < [http://www.supremecourt.gov/opinions/12pdf/12-307\\_6j37.pdf](http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf) >

In response to the notice from the Attorney General, the Bipartisan Legal Advisory Group (BLAG) of the House of Representatives voted to intervene in the litigation to defend the constitutionality of §3 of DOMA.

On the merits of the tax refund suit, the District Court ruled against the United States. It held that §3 of DOMA is unconstitutional and ordered the Treasury to refund the tax with interest. Both the Justice Department and BLAG filed notices of appeal, and the Solicitor General filed a petition for certiorari before judgment. Before this Court acted on the petition, the Court of Appeals for the Second Circuit affirmed the District Court's judgment. It applied heightened scrutiny to classifications based on sexual orientation, as both the Department and Windsor had urged. The United States has not complied with the judgment. Windsor has not received her refund, and the Executive Branch continues to enforce §3 of DOMA.

[...]

III

[...]

Slowly at first and then in rapid course, the laws of New York came to acknowledge the urgency of this issue for same-sex couples who wanted to affirm their commitment to one another before their children, their family, their friends, and their community. And so New York recognized same-sex marriages performed elsewhere; and then it later amended its own marriage laws to permit same-sex marriage. New York, in common with, as of this writing, 11 other States and the District of Columbia, decided that same-sex couples should have the right to marry and so live with pride in themselves and their union and in a status of equality with all other married persons. After a statewide deliberative process that enabled its citizens to discuss and weigh arguments for and against same-sex marriage, New York acted to enlarge the definition of marriage to correct what its citizens and elected representatives perceived to be an injustice that they had not earlier known or understood. [...]

Against this background of lawful same-sex marriage in some States, the design, purpose, and effect of DOMA should be considered as the beginning point in deciding whether it is valid under the Constitution. [It is] established that Congress, in enacting discrete statutes, can make determinations that bear on marital rights and privileges. [...] [T]he general principle [is] that when the Federal Government acts in the exercise of its own proper authority, it has a wide choice of the mechanisms and means to adopt. See *McCulloch v. Maryland*, 4 Wheat. 316, 421 (1819). Congress has the power both to ensure efficiency in the administration of its programs and to choose what larger goals and policies to pursue.

[...]

Though [other] examples [of precedent] establish the constitutionality of limited federal laws that regulate the meaning of marriage in order to further federal policy, DOMA has a far greater reach; for it enacts a directive applicable to over 1,000 federal statutes and the whole realm of federal regulations. And its operation is directed to a class of persons that the laws of New York, and of 11 other States, have sought to protect. [citations omitted]

In order to assess the validity of that intervention it is necessary to discuss the extent of the state power and authority over marriage as a matter of history and tradition. State laws defining and regulating marriage, of course, must respect the constitutional rights of persons, see, e.g., *Loving v. Virginia*, [388 U. S. 1](#) (1967) ; but, subject to those guarantees, “regulation of domestic relations” is “an area that has long been regarded as a virtually exclusive province of the States.” *Sosna v. Iowa*, [419 U. S. 393](#), 404 (1975) .

The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens. See *Williams v. North Carolina*, [317 U. S. 287](#), 298 (1942).<sup>2</sup> The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the “[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.” *Ibid.* “[T]he states, at the time of the adoption of the Constitution, possessed full power over the subject of marriage and divorce . . . [and] the Constitution delegated no authority to the Government of the United States on the subject of marriage and divorce.” *Haddock v. Haddock*, [201 U. S. 562](#), 575 (1906) ; see also *In re Burrus*, [136 U. S. 586](#)–594 (1890).<sup>3</sup>

Consistent with this allocation of authority, the Federal Government, through our history, has deferred to state-law policy decisions with respect to domestic relations. [...] In order to respect this principle, the federal courts, as a general rule, do not adjudicate issues of marital status even when there might otherwise be a basis for federal jurisdiction. See *Ankenbrandt v. Richards*, [504 U. S. 689](#), 703 (1992) . Federal courts will not hear divorce and custody cases even if they arise in diversity because of “the virtually exclusive primacy . . . of the States in the regulation of domestic relations.” [...]

The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for “when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.” *Ohio ex rel. Popovici v. Agler*, [280 U. S. 379](#)–384 (1930). Marriage laws vary in some respects from State to State. [...]

Against this background DOMA rejects the long-established precept that the incidents, benefits, and obligations of marriage are uniform for all married couples within each State, though they may vary, subject to constitutional guarantees, from one State to the next. Despite these considerations, it is unnecessary to decide whether this federal intrusion on state power is a violation of the Constitution because it disrupts the federal balance. The State’s power in defining the marital relation is of central relevance in this case quite apart from principles of federalism. Here the State’s decision to give this class of persons the right to marry conferred upon them a dignity and status of immense import. [...] DOMA, because of its reach and extent, departs from this history and tradition of reliance on state law to define marriage. “ ‘[D]iscriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision.’ ” *Romer v. Evans*, [517 U. S. 620](#), 633 (1996) (quoting *Louisville Gas & Elec. Co. v. Coleman*, [277 U. S. 32](#)–38 (1928)).

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<sup>2</sup> (“Each state as a sovereign has a rightful and legitimate concern in the marital status of persons domiciled within its borders”).

<sup>3</sup> (“The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States”).

The Federal Government uses this state-defined class for the opposite purpose—to impose restrictions and disabilities. That result requires this Court now to address whether the resulting injury and indignity is a deprivation of an essential part of the liberty protected by the [Fifth Amendment](#). What the State of New York treats as alike the federal law deems unlike by a law designed to injure the same class the State seeks to protect.

[...]

The States' interest in defining and regulating the marital relation, subject to constitutional guarantees, stems from the understanding that marriage is more than a routine classification for purposes of certain statutory benefits. Private, consensual sexual intimacy between two adult persons of the same sex may not be punished by the State, and it can form “but one element in a personal bond that is more enduring.” *Lawrence v. Texas*, [539 U. S. 558](#), 567 (2003) . By its recognition of the validity of same-sex marriages performed in other jurisdictions and then by authorizing same-sex unions and same-sex marriages, New York sought to give further protection and dignity to that bond. For same-sex couples who wished to be married, the State acted to give their lawful conduct a lawful status. This status is a far-reaching legal acknowledgment of the intimate relationship between two people, a relationship deemed by the State worthy of dignity in the community equal with all other marriages. It reflects both the community's considered perspective on the historical roots of the institution of marriage and its evolving understanding of the meaning of equality.

#### IV

DOMA seeks to injure the very class New York seeks to protect. By doing so it violates basic due process and equal protection principles applicable to the Federal Government. See U. S. Const., Amdt. 5; *Bolling v. Sharpe*, [347 U. S. 497](#) (1954) . The Constitution's guarantee of equality “must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot” justify disparate treatment of that group. *Department of Agriculture v. Moreno*, [413 U. S. 528–535](#) (1973). In determining whether a law is motivated by an improper animus or purpose, “ [d]iscriminations of an unusual character’ ” especially require careful consideration. *Supra*, at 19 (quoting *Romer*, *supra*, at 633). DOMA cannot survive under these principles. The responsibility of the States for the regulation of domestic relations is an important indicator of the substantial societal impact the State's classifications have in the daily lives and customs of its people. DOMA's unusual deviation from the usual tradition of recognizing and accepting state definitions of marriage here operates to deprive same-sex couples of the benefits and responsibilities that come with the federal recognition of their marriages. This is strong evidence of a law having the purpose and effect of disapproval of that class. The avowed purpose and practical effect of the law here in question are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States.

The history of DOMA's enactment and its own text demonstrate that interference with the equal dignity of same-sex marriages[.] It was its essence. The House Report announced its conclusion that “it is both appropriate and necessary for Congress to do what it can to defend the institution of traditional heterosexual marriage. . . . H. R. 3396 is appropriately entitled the ‘Defense of Marriage Act.’ The effort to redefine ‘marriage’ to extend to homosexual couples is a truly radical proposal that would fundamentally alter the institution of marriage.” [...] The House concluded that DOMA expresses “both moral disapproval of homosexuality, and a moral

conviction that heterosexuality better comports with traditional (especially Judeo-Christian) morality.” [...] The stated purpose of the law was to promote an “interest in protecting the traditional moral teachings reflected in heterosexual-only marriage laws.” *Ibid.* Were there any doubt of this far-reaching purpose, the title of the Act confirms it: The Defense of Marriage.

The arguments put forward by BLAG are just as candid about the congressional purpose to influence or interfere with state sovereign choices about who may be married[;] its purpose is to discourage enactment of state same-sex marriage laws and to restrict the freedom and choice of couples married under those laws if they are enacted. [...] The Act’s demonstrated purpose is to ensure that if any State decides to recognize same-sex marriages, those unions will be treated as second-class marriages for purposes of federal law. This raises a most serious question under the Constitution’s [Fifth Amendment](#).

[...] DOMA writes inequality into the entire United States Code. The particular case at hand concerns the estate tax, but DOMA is more than a simple determination of what should or should not be allowed as an estate tax refund. Among the over 1,000 statutes and numerous federal regulations that DOMA controls are laws pertaining to Social Security, housing, taxes, criminal sanctions, copyright, and veterans’ benefits.

DOMA’s principal effect is to identify a subset of state-sanctioned marriages and make them unequal. The principal purpose is to impose inequality, not for other reasons like governmental efficiency. Responsibilities, as well as rights, enhance the dignity and integrity of the person. And DOMA contrives to deprive some couples married under the laws of their State, but not other couples, of both rights and responsibilities. By creating two contradictory marriage regimes within the same State, DOMA forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of federal law, thus diminishing the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect. By this dynamic DOMA undermines both the public and private significance of state-sanctioned same-sex marriages; for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition. This places same-sex couples in an unstable position of being in a second-tier marriage. The differentiation demeans the couple, whose moral and sexual choices the Constitution protects, see *Lawrence*, [539 U. S. 558](#), and whose relationship the State has sought to dignify. And it humiliates tens of thousands of children now being raised by same-sex couples. The law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.

Under DOMA, same-sex married couples have their lives burdened, by reason of government decree, in visible and public ways. By its great reach, DOMA touches many aspects of married and family life, from the mundane to the profound. It prevents same-sex married couples from obtaining government healthcare benefits they would otherwise receive. [...] It deprives them of the Bankruptcy Code’s special protections for domestic-support obligations. [...] It forces them to follow a complicated procedure to file their state and federal taxes jointly. [...] It prohibits them from being buried together in veterans’ cemeteries. [...] DOMA also brings financial harm to children of same-sex couples. It raises the cost of health care for families by taxing health benefits provided by employers to their workers’ same-sex spouses. [...] And it denies or reduces benefits allowed to families upon the loss of a spouse and parent, benefits that are an integral part of family security. [...]

DOMA divests married same-sex couples of the duties and responsibilities that are an essential part of married life and that they in most cases would be honored to accept were DOMA not in force. For instance, because it is expected that spouses will support each other as they pursue educational opportunities, federal law takes into consideration a spouse's income in calculating a student's federal financial aid eligibility. [...] [Additionally, because of] DOMA[,] Government-integrity rules do not apply to same-sex spouses.

\* \* \*

The power the Constitution grants it also restrains. And though Congress has great authority to design laws to fit its own conception of sound national policy, it cannot deny the liberty protected by the Due Process Clause of the [Fifth Amendment](#).

What has been explained to this point should more than suffice to establish that the principal purpose and the necessary effect of this law are to demean those persons who are in a lawful same-sex marriage. This requires the Court to hold, as it now does, that DOMA is unconstitutional as a deprivation of the liberty of the person protected by the [Fifth Amendment](#) of the Constitution.

The liberty protected by the [Fifth Amendment](#)'s Due Process Clause contains within it the prohibition against denying to any person the equal protection of the laws. See *Bolling*, 347 U. S., at 499–500; *Adarand Constructors, Inc. v. Peña*, 515 U. S. 200–218 (1995). While the [Fifth Amendment](#) itself withdraws from Government the power to degrade or demean in the way this law does, the equal protection guarantee of the [Fourteenth Amendment](#) makes that [Fifth Amendment](#) right all the more specific and all the better understood and preserved.

The class to which DOMA directs its restrictions and restraints are those persons who are joined in same-sex marriages made lawful by the State. DOMA singles out a class of persons deemed by a State entitled to recognition and protection to enhance their own liberty. It imposes a disability on the class by refusing to acknowledge a status the State finds to be dignified and proper. [...] The federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity. By seeking to displace this protection and treating those persons as living in marriages less respected than others, the federal statute is in violation of the [Fifth Amendment](#). This opinion and its holding are confined to those lawful marriages.

The judgment of the Court of Appeals for the Second Circuit is affirmed.

It is so ordered.