

## BASIC FACTS ABOUT THE DEFENSE OF MARRIAGE ACT (“DOMA”)

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Before the Constitutional Convention in 1787, relations between the States were not ideal. To reduce tensions, the new Constitution contained a provision, the “Full Faith and Credit Clause,” which states:

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. (Article IV, sec. 1)

In 1790, Congress acted to put the provision into effect by enacting the “Full Faith and Credit Statute.” Amended most recently in 1948, it provides, in part, that properly authenticated “... Acts, records and judicial proceedings or copies thereof ... shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.” 28 U.S.C. § 1738.

In 1996, to help defend one-man, one-woman marriage from efforts to redefine it, the U.S. Congress overwhelmingly passed - and President Bill Clinton signed - the “Defense of Marriage Act.” It 1) defined marriage in *federal law*; and, 2) enabled states - even in the face of claims made pursuant to the Full Faith and Credit Clause - to decline to recognize same-sex marriages from other states.

DOMA defined marriage in federal law 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.



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The Defense of Marriage Act also affirms the power of each state to make its own decision as to whether it will accept or reject same-sex marriages created in other jurisdictions. The Full Faith and Credit Statute was amended to include this provision:

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. 28 U.S.C. § 1738C.

Any attempt to repeal either of the two DoMA sections will have significant implications. Repeal of the first section would eliminate (1 U.S.C. § 7) the uniform definition of marriage across federal statutes and programs. Repeal of the second component (28 U.S.C. § 1738C) would make it much more difficult for a State to refuse to recognize same-sex marriages from other States. All efforts – either by legislative or judicial body – to repeal or nullify DOMA should be rejected as being hostile to the preservation of marriage in the United States.