

NY Federal Court Rules DOMA Unconstitutional

In a blow to **pro-family** advocates, a federal appeals court ruled on Thursday that the Defense of Marriage Act, or DOMA, is unconstitutional because it discriminates against same-sex marriage.

A U.S. panel of the Second Circuit Court of Appeals in Manhattan upheld a district court decision on Windsor v. US, which concerns the 1996 law that defines marriage as between one man and one woman for federal purposes, including benefits. This is the same case that is currently pending before the Supreme Court, awaiting a decision of whether the court will take the case.

Here's the backstory: Edith Schlain Windsor, the surviving "spouse" of a same-sex couple "married" in Canada, sued after she was denied the benefit of the spousal deduction for federal estate taxes. The 2-1 majority ruled that Section 3 of DOMA, which defines the term "marriage" for all purposes under federal law as "only a legal union between one man and one woman as husband and wife," deprives **same-sex couples** who are lawfully married under the laws of their states (such as New York) of the equal protection of the laws, as guaranteed by the Fifth Amendment to the U.S. Constitution of the United States.

While the court struck down Section 3 of DOMA, the court did not address Section 2. Section 2 is the Full Faith and Credit Clause portion, which states that one state does not have to recognize another state's **same-sex marriage**.

In dissent, Judge Chester Straub chastised the majority for judicial activism, writing that if the traditional understanding of marriage is to be changed, "it is for the

American people to do so," not two unelected federal judges. He also warned that a Supreme Court decision affirming this judgment "would likely doom the laws of the 41 states which exclude same-sex couples from civil marriage." There are actually more than 41 states that have either constitutional amendments and/or statutes.

"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," says Mat Staver, founder and Chairman of Liberty Counsel. "When you weaken the family, you weaken society. Children fare best when raised with a mom and a dad. Redefining marriage is not in the best interest of children or society."