

INTRODUCTION

Passed by large majorities in both the House and Senate, and signed by President Bill Clinton, the controversial 1996 Defense of Marriage Act defines marriage as the legal union of one man and one woman for purposes of federal and inter-state recognition. Under its provisions, no U.S. state or other political subdivision is required to recognize a same-sex marriage performed in another state.

The key provisions of the Act state:

Section 2. Powers reserved to the 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.

Section 3. Definition of marriage

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.

Despite passing by wide majorities in Congress, the Act drew strong criticism. The Clinton White House initially called it “gay baiting,” and a leading opponent, Senator Ted Kennedy, called it “a mean-spirited form of legislative gay-bashing designed to inflame the public four months before the November election.” President Clinton subsequently reversed his position on the Act, but the Republican Party leadership has continued to support the Act, with President George W. Bush proposing that its provisions be elevated to the status of a constitutional amendment.

When the Obama Administration announced in 2011 that it had determined that the Act's Section 3 was unconstitutional, and that it would no longer defend it in court, the decision that was harshly criticized by several leading Republican figures, including Newt Gingrich, who said, "The president is replacing the rule of law with the rule of Obama." House Speaker John Boehner subsequently announced that the House's Bipartisan Legal Advisory Group (BLAG) would defend the Act in selected cases.

There have been two unsuccessful efforts by congressional Democrats to repeal the Act. In 2009 and 2011, they introduced the Respect for Marriage Act, whose key provision stated:

(a) For the purposes of any Federal law in which marital status is a factor, an individual shall be considered married if that individual's marriage is valid in the State where the marriage was entered into or, in the case of a marriage entered into outside any State, if the marriage is valid in the place where entered into and the marriage could have been entered into in a State.

However, in both cases, the bills never reached the floor of Congress for a vote.

Opponents of the Act have placed their greatest hopes on court action. Here, they have been quite successful. Section 3 of the Act has been found unconstitutional by eight federal circuit courts of appeals, most notably in *Windsor v. United States*, 699 F.3d 169 (2d Cir. 2012). Here, a surviving same-sex spouse in New York sued because the inheritance from his spouse was subjected to taxation as if the couple had been unmarried. On appeal, the Second Circuit upheld the lower court determination that section 3 of the Act was unconstitutional. The Supreme Court has granted certiorari and oral arguments are scheduled for March 27, 2013.

This compilation includes the text of the Act, the reports and hearings that preceded passage, congressional debate, and various bill versions. It also includes the text of bills that would have amended or repealed it, along with hearings held subsequent to its passage.

*William H. Manz
St. John's University School of Law
Queens, N.Y.
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