

The Respect for Marriage Act of 2009:

What is it and what will it do?

October, 31 2010

WHAT IS THE RESPECT FOR MARRIAGE ACT AND WHAT WILL IT DO?

The “Respect for Marriage Act” (RMA) is a bill introduced into the U.S. House of Representatives on September 15, 2009 by Representative Jerrold Nadler, Representatives Tammy Baldwin and Jared Polis, and over 100 other Members of Congress who believe in equal treatment of all married Americans, regardless of sexual orientation. The Act will repeal the so-called “Defense of Marriage Act” (DOMA) and return the country to the longstanding earlier rule that states decide who can marry, and the federal government treats all married people the same no matter where they got married or where they live now.

WHAT IS THE DEFENSE OF MARRIAGE ACT (DOMA)?

DOMA is a federal law that was passed in 1996, before any American states allowed same-sex couples to marry but while Lambda Legal was winning our marriage trial in Hawai‘i. The law has two parts. It says only people in heterosexual marriages will be treated as married under federal law, such as for Social Security survivor benefits, Family Medical Leave protections, federal tax purposes, and many, many others. DOMA also says states do not have to treat married gay people as married if the state does not permit same-sex couples to marry in the state, even though all states automatically respect heterosexual couples’ valid marriages from elsewhere.

IF WE ARE LEGALLY MARRIED, WHAT SHOULD FEDERAL RECOGNITION AND RESPECT FOR OUR MARRIAGE MEAN FOR US?

Federal law treats people differently based on whether or not they are married in a great many ways. Here are just a few examples.

- *Social Security:* Workers who make mandatory payroll contributions from every paycheck have the security of knowing their spouse will receive a Social Security pension if the worker dies first. But married lesbian and gay workers are denied that security just because of their sexual orientation.

- *Fair federal taxation:* The laws imposing federal taxes on income and inheritance treat people differently depending on whether they are married or not. For starters, the basic rule that married couples can file their income tax returns jointly means that most heterosexual married couples file their state and

federal returns jointly and the state and federal rules work together smoothly. But same-sex married couples have to prepare their income tax returns different ways if their home state respects their marriage but the federal government disregards it. That’s complicated, confusing and usually more expensive.

- *Federal taxes on spousal health insurance:* For workers with a same-sex spouse, the value of health insurance benefits provided by the employer is counted as extra taxable income to the employee, even though married heterosexual workers receive this important benefit with no extra federal income taxation.

- *Federal employment protections for family members:* The Family Medical Leave Act allows workers to take sick leave to care for a sick spouse, child, or spouse’s child, knowing their job is secure. Married lesbian and gay workers do not have that humane federal job protection. Likewise, when an employee leaves a job, the federal COBRA law guarantees that the worker and his or her spouse can keep their health insurance coverage for 18 months. Married gay workers do not have that basic protection either.

- *Safe harbor protections for debtors:* The federal bankruptcy rules, Medicaid rules, and other federal laws that help those in serious financial distress often have “safe harbor” provisions that secure some resources and the family home when debts of one spouse threaten to leave both financially responsible spouses destitute. When a lesbian or gay spouse incurs crushing costs for nursing home care, for example, the other spouse should have the same minimal financial safety that heterosexual spouses receive under these federal laws.

WILL PASSAGE OF THIS LAW MEAN THAT ALL STATES WILL HAVE TO TREAT MARRIED LESBIAN AND GAY COUPLES THE SAME AS MARRIED HETEROSEXUAL COUPLES?

No. The Respect for Marriage Act repeals the part of DOMA that tried to change the effect of the “Full Faith and Credit” clause of the U.S. Constitution and other settled rules so as to allow states to disregard same-sex couples’ valid marriages. DOMA tried to create an antigay exception to the usual rule that states reliably respect heterosexual couples’ marriages when they cross state lines, whether or not a particular state would allow a particular couple to marry, because couples need to know with certainty that they are securely married and legally protected.

Scholars disagree about whether the “Full Faith and Credit” clause actually requires states to respect each others’ marriages when their own marriage laws are different. But most scholars agree that whatever the “Full Faith and Credit” clause will be up to the courts to decide and that, whatever the answer to that question, Congress cannot change it simply by passing a law.

By repealing this part of DOMA that many experts believe has had no legal effect anyway, the Respect for Marriage Act takes the federal government back to a neutral position that respects all married couples equally and predictably for federal law purposes regardless of where they got married, without telling states which out-of-state marriages they must respect.

The Respect for Marriage Act is consistent with the position of President Obama and many other national leaders that the federal government should treat everyone fairly and equally – gay and straight alike – even though some states limit marriage to heterosexual couples only, and some offer lesbian and gay couples no legal protections at all.

IF WE ARE IN A CIVIL UNION OR REGISTERED DOMESTIC PARTNERSHIP, WOULD THE RESPECT FOR MARRIAGE ACT MAKE ANY DIFFERENCE TO US?

This law will not require federal benefits and protections based on a nonmarital relationship status that does not exist in federal law, such as civil unions and domestic partnerships. But if same-sex couple has entered into a civil union or domestic partnership and also has gotten married in another state or country, this law would require the federal government to treat the couple equally – as married – despite the fact that their home state respects only the domestic partnership or civil union.

NOW THAT THE RESPECT FOR MARRIAGE ACT HAS BEEN INTRODUCED INTO THE HOUSE OF REPRESENTATIVES, WHAT HAPPENS NEXT?

Any important bill requires lots of public education and organizing of support before Congress will pass it on to the President’s desk. Support for the Respect for Marriage Act will grow, and eventually will snowball, as we all take responsibility for explaining to people in our lives why this federal discrimination must end. It is especially important to talk with Members of Congress and ask them to join the vanguard on this issue. More than one hundred early co-sponsors is a bold and impressive beginning. And many more are needed. We need YOU to help build support and momentum by calling on your Representative in Congress, your U.S. Senators, and President Obama to be part of the solution to this unjust treatment of American families.

Lambda Legal will continue to fight for marriage equality nationwide, including in many states at once, and will provide legal expertise and broad education to augment public understanding and help prepare Congress to pass this essential law as quickly and as smoothly as reasonably feasible.

Lambda Legal is the oldest and largest nonprofit legal organization advocating nationally for full recognition of the civil rights of lesbian, gay, bisexual and transgender (“LGBT”) people and those living with HIV through groundbreaking litigation, education and public policy work. Since 1973, Lambda Legal has appeared as counsel or friend-of-the-court in hundreds of cases in state and federal courts on behalf of LGBT people who have suffered discrimination because of their sexual orientation or gender identity, including a great many cases seeking to protect and find remedies for same-sex couples and their children who have suffered severe, needless harms because their family relationships are not respected as heterosexual couples’ relationships are. www.lambdalegal.org