

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

Hearing on S.598,

“The Respect for Marriage Act: Assessing the Impact of DOMA on American Families”

Wednesday, July 20, 2011
Dirksen Senate office Building, Room 226
10:00 am

STATEMENT OF SUSAN M. MURRAY
of
Ferrisburgh, Vermont

Chairman Leahy, Ranking Member Grassley, and all the members of the Committee: On behalf of all the same-sex couples in Vermont who are legally married under our state’s laws, and on behalf of their families, I want to thank you for holding this hearing today. And thank you, also, for allowing me to testify about the real harms which same-sex couples suffer because Section 3 of DOMA, the “Defense of Marriage Act,” distinguishes between different types of married couples, and treats married gay and lesbian couples differently from all other married couples with respect to all federal laws and programs in which marital status is a factor.

I’d like to tell you some stories to illustrate the harm DOMA imposes – beginning with my own story.

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I’m the oldest of seven children; I grew up in a good Catholic family. I was blessed with a happy childhood: my four sisters and two brothers and I had everything we needed in terms of material things, but we were also lucky to have had two wonderful parents, Paul and Barbara Murray. My parents taught us right from wrong; they taught us to treat others with kindness; and they taught us to be fair, and to speak up for what’s right. My parents were devoted to their kids, and to helping us become successful, well-adjusted adults. They were married for 51 years before my dad died, six years ago.

That was *my* model for a successful marriage, and growing up, that was the kind of marriage I aspired to have in my own life. So when I realized, as a young adult, that I was gay, I despaired of ever having a life, and a love, like that of my parents.

But then I met a woman named Karen Hibbard – and I count myself blessed to have found love in my life. She’s a Physician Assistant who works in emergency walk-in care at our local hospital, stitching people up and fixing their broken bones and generally helping them get the

care they need. She loves to swim; I prefer to hike. She loves to paint watercolors; I like to garden. She can talk endlessly about biology; my passions are politics, and the Red Sox. Given our different interests, our friends didn't think we would last, but we've been together for over 25 years now. We've worked hard to care for and preserve our old farmhouse. Karen has spent time caring for animals, and has also served as our town's health officer. I've served on various community boards over the years, and, as an attorney, I've volunteered to represent folks who can't afford to pay lawyers but who need legal help in the civil and family courts. I've also worked over the years to help secure equal marriage rights for same-sex couples in Vermont.

Karen and I have built a life together, and are as committed to one another as my parents were to each another. And thanks to the legislature of the State of Vermont, we're now officially, legally married. Unfortunately, because of DOMA, the federal government doesn't recognize our legal marriage, so Karen and I don't have access to the same federal protections that my parents had.

Taxes

Karen and I can't file a joint federal income tax return as the married couple we are; instead, we have to file two separate returns as "single" persons. For our Vermont state tax, we file jointly, because Vermont recognizes our marriage. But since Vermont's state income tax is essentially a percentage of the federal income tax, we have to prepare a "ghost" or "recomputed" joint federal return, showing what our taxes *would have been* if the federal government recognized our union. We then have to attach that ghost return to our state return.

This makes calculating our taxes more complicated than for a similarly situated husband-and-wife couple in Vermont – which means we pay about \$200 more a year to our accountant to prepare a joint federal return which we never file with the IRS, and two single federal returns we *do* file. Moreover, having to file two single returns forces us to disentangle and allocate assets and expenses that are essentially joint; a joint federal tax return would capture that economic partnership, but DOMA forces us to divide what is joint.

In preparing this Statement for the Committee, I asked our accountant to calculate the difference between the amount of federal taxes Karen and I paid in 2010, and the amount we would have paid if the federal government recognized our marriage. Our accountant determined that we paid \$792 more in taxes last year, because of DOMA.

Ironically, as I was talking with my accountant, he told me that he has represented multiple same-sex couples who have paid significantly *less* in federal taxes because of DOMA. One of these couples had household income that was significantly more than Karen's and mine, but because most of that income was earned by one of the spouses and the other spouse earned very little, and because they had minor children, the lower-earning spouse was entitled to the Earned Income Tax Credit; the result was that this couple ended up paying about \$2000 a year *less* in taxes, in each of the last two years, just because the federal government doesn't recognize their marriage. While taxes have to be assessed based on the circumstances of each couple, by ignoring this couple's marriage, the federal government has left money on the table, so to speak.

Health Insurance

One of the reasons Karen and I pay more in taxes under DOMA is because of our health insurance. We are lucky that Karen's employer, Fletcher Allen Health Care, offers health insurance coverage for spouses of employees, including same-sex spouses, and I am covered under Karen's plan through her work.

When an employee whose marriage is recognized by the federal government receives employer-provided health insurance, the value of that health insurance (for the employee as well as for his or her spouse) is not considered income, so no tax is owed on the value of that benefit.

However, because of DOMA, I am not considered Karen's spouse, so the value of that health insurance coverage for me (\$6,200 a year) is considered taxable income to Karen. She therefore has to pay income tax, as well as FICA and Medicare tax, on that "phantom" income – unlike her other married colleagues.

Health Care Expenses

Pursuant to federal law, Karen's employer allows employees to contribute pre-tax wages to a "flexible spending account," which they can then use to pay certain health care expenses. The federal government allows spouses of employees to use the money in these accounts – but because Karen's and my marriage isn't recognized under DOMA, I cannot use the account to help pay my health bills. That means that I have to pay my co-payments and deductibles and uncovered health expenses with after-tax dollars; it therefore costs us more for my health care than for the spouse of a couple whose marriage is recognized by the government.

Social Security Survivor and Death Benefits

Karen and I met when she was 30 and I was 28 years old; now she's 55 and I'm 53. We're starting to feel our aches and pains, and we've begun to look toward a future -- some day -- when we can slow down a bit at work, and eventually retire. But because of DOMA, we won't have the same financial security as other couples.

Karen and I have both contributed steadily into the social security system over the years, and according to the last Social Security Statements we've each received, she can expect to receive about \$2000 a month when she reaches full retirement age, and I can expect about \$2500 a month.

If I were married to a man and I died before my husband, my widower would be entitled to receive my higher social security benefits after my death. But because of DOMA, if I die first Karen will not be entitled to receive my higher social security benefit. That's a loss of \$500 a month, or \$6,000 a year. That's not a huge amount of money, but for Karen, it may be the difference between being able to stay in our home and having to sell it, since that's about the amount of our property taxes.

There's another social security-related benefit we're not eligible for. A surviving spouse is entitled to a one-time lump sum death benefit upon the death of a spouse – but because of DOMA, neither Karen nor I will receive this benefit upon the death of the first of us.

Retirement Accounts

We are not counting on social security alone for our retirement years. Karen and I both have IRAs, and we both have employer-sponsored retirement accounts to which we've each been contributing for almost two decades. We've named each other as the beneficiary of these accounts. If Karen predeceases me, I will have to start withdrawing money from her retirement accounts immediately, and paying taxes on the withdrawals, even if I haven't reached age 70½. If our marriage were recognized like other marriages, I would be able to hold off on beginning those withdrawals until age 70½ -- when I will presumably be retired and in a lower tax bracket, so the tax on the withdrawals will be less.

None of the financial hardships Karen and I face are overwhelming; they're nothing like the devastating financial hardships my fellow witnesses Andrew Sorbo and Rob Wallen have endured. But these extra taxes and payments add up, and will become more of a burden when we're on fixed incomes. These examples illustrate the ways in which Karen and I -- and other married couples who are of the same-sex -- pay extra amounts, large and small, every day, because of DOMA. It adds up over time – and that affects our overall economic security.

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Beyond my own story, as a practicing attorney I've seen myriad other examples of the unfairness that results when the government does not recognize same-sex unions.

Social Security spousal benefits

For instance, my clients June and Libby (not their real names; I have changed my clients' names in this Statement, for confidentiality reasons) are legally married in Vermont. Libby makes significantly more money than June, which doesn't matter so much while they are alive, because what is one belongs to the other and they support each other in every way they can; they are financially interdependent in every way. But because of DOMA, the Social Security Administration will ignore their many years together and will treat them as individuals. I worry that once they reach retirement age, June's social security benefits are likely to be less than half of Libby's, and if it weren't for DOMA, June would be able to increase her social security benefits to up to half of Libby's benefit – just like my mother did, when my father retired (my father was the main breadwinner in our family; my mother worked part-time and never paid much into the social security system). DOMA prevents June from receiving the same benefit that other married spouses receive – those that have been married a mere year, those who have been divorced, but not married couples like June and Libby who have been together for many years.

Estate planning

My clients Jessica and Eileen recently came to see me about estate planning issues because they are concerned about being able to care for and support one another through the inevitable ups and downs over what they hope will be a long life together. While Eileen had virtually no assets in her name, her wife Jessica had just inherited a very large amount of money. As any other married couple, the two women feel responsible for one another, both financially and in every other way. The women came to me because they wanted me to set up an estate plan which would provide financial security for Eileen, in the event Jessica died first. They also wanted to try to protect as much of Jessica's inherited wealth as possible from federal estate taxation. If this were an opposite-sex married couple, this would have been straightforward and they could transfer unlimited assets from Jessica's name to Eileen's name, and taken maximum advantage of the unified credit amount that can be passed to third parties upon one's death without tax consequences. Not knowing what their older years will bring, they want me to protect their assets the way I can for any other married couple. But I can't, and they can't, because DOMA prevents such unlimited transfers for married same-sex couples. Instead, Jessica can transfer just \$13,000 a year to Eileen; anything above that amount would have gift tax implications. The result is that these two women, who love one another and are legally married to one another, cannot provide for one another financially as easily as other married couples can.

Moreover, married couples can postpone the federal estate tax until after the second spouse dies – but this deferment is not available to same-sex married couples.

Family Medical Leave Act

There is one Vermont couple who are not my clients, but I know about the hardships they've faced because the federal government does not recognize their valid Vermont marriage. Their names are Raquel and Lynda, and they have been together for more than 30 years. Raquel suffers from degenerative arthritis in her neck, which requires her to get painful injections in her neck every three months. She can't drive after the injections, so Lynda needs to drive her the more than 2½ hours it takes to go to and from the hospital. Raquel has also had two surgeries in the past year, and has needed Lynda to help her as she recuperated. Lynda works for the U.S. Postal Service, and if her marriage were respected like that of her co-workers, she would be entitled to get time off under the Family Medical Leave Act (FMLA) so she could care for Raquel. But FMLA's protections don't apply to her, because of DOMA. So, during the past year Lynda has had to use 64 hours of vacation time to care for her spouse, rather than use sick time or unpaid leave time, as FMLA permits other married spouses to do.

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All of the above stories concern couples who are legally married under Vermont law. But same-sex couples in Vermont have only been allowed to marry for fewer than two years now – before that, we had civil unions. While civil union couples were denied federal benefits because they were not married (and not because of DOMA), I know that the same issues these couples faced will arise as these couples get married. So, I'd like to share some of their stories with you:

ERISA and Health Insurance

I represented one couple, Carey and Erin. Erin had two children from a prior marriage, and she and Carey were raising the children together. Carey worked at a big box store, and had health insurance through her employment there. Erin did not have health insurance at her job. Carey tried to add Erin and the children to her health insurance plan at work. However, her employer, a large “self-insured” company, rejected Carey’s request; a company representative told Carey that the federal government did not *require* it to provide health insurance coverage to same-sex partners, so it had decided not to do so – even though it provided such coverage to the spouses of other employees. So, while Carey had health insurance, her partner and children did not – and this family’s financial situation was much more precarious than it otherwise might have been.

Social Security Surviving Parent Benefits:

If a couple has a minor child and one parent dies during his or her working years, the surviving spouse/parent may be entitled to certain social security benefits. A few years ago I represented a woman named Cheryl, who was raising her infant son with her partner Jane. They didn’t have a lot of money, but they wanted Cheryl to be a stay-at-home parent and have Jane be working full time to support the family. One morning, Jane got up as usual, spent some time playing with the baby, and hugged her partner Cheryl, before heading out to work. On the way there, she was tragically killed in a car accident, leaving Cheryl both grief-stricken and financially destitute. If she were a heterosexual, married spouse in the same situation, Cheryl would have been entitled to “parents” benefits under social security – a federal safety net designed to help families cope with the loss of their primary wage earner. DOMA, however, prevents payment of such “parents” benefits to surviving same-sex spouses, even though the wage earner pays taxes so he or she can have this safety net for his or her family. The absence of this kind of safety net, this lack of financial security, is exactly what married same-sex couples worry about for themselves as a couple and for their children. Unable to support herself and her young son, Cheryl was forced to sell the house she and Jane had purchased, and she had to move in with her parents to survive.

Pensions

My client Lani and her partner Jan have been together for many years; they live in rural Vermont, in a bungalow Lani designed and helped to build. Lani recently retired from her nursing job after many years. She’s collecting her pension; but if she dies, her pension will stop, and her partner, Jan, will not receive any survivor benefits from the pension. If the federal government recognized their union, Lani would have been able to elect survivor benefits when she retired, so her partner Jan would have continued to receive income from the pension after Lani’s death. (This election of survivor pension benefits is even available to ex-spouses, so long as they are heterosexual.) Lani’s pension is an important part of these women’s income, and Jan isn’t sure how she will be able to cope financially if Lani dies before her.

Real Estate

My client Meg wanted to put her partner Molly's name on the deed to her house – owning the home together was, for them, a symbol of their union. Unfortunately, if Meg did this her bank could require her to pay off the entire mortgage all at once, under its “due on sale” clause in her mortgage. Federal law prevents banks from exercising such “due on sale” clauses when a person adds his or her spouse to the deed -- but this protection isn't available to same-sex married couples. Even if her bank did not exercise the due on sale clause, Meg would have had to file a gift tax return if the value being transferred was more than the annual gift tax amount – something that is not required of legally-recognized married spouses. So even the simple act of owning a house together is made difficult for same-sex couples; their desire to commit to one another emotionally and financially is a universal emotion, but the law makes it harder for them to do so.

Divorce

I do a lot of family law, including divorce. I'm happy to report that I have not had any same-sex divorces yet. But it would be unrealistic to think that I never will. Because of DOMA, same-sex divorcing spouses face significant financial problems that other divorcing couples don't face.

For example, in order to achieve an equitable division of property, in many divorce cases the court has to order the transfer of some or all of one spouse's property to the other spouse. Under federal law, property transfers between spouses pursuant to a divorce are not taxable, which is essential in preserving the couple's economic resources and achieving a fair resolution. But because of DOMA, in most cases this exemption doesn't apply to same-sex divorces. As a consequence it can be much harder for family courts to divide assets in such a way as to protect the more financially vulnerable spouse from economic hardship.

This inequity is most acute when money from one party's retirement account is being transferred to the other spouse. Such a transfer between divorcing spouses is not subject to tax or early withdrawal penalties under federal law. But DOMA prevents such tax-free transfers of retirement money between same-sex divorcing couples – which means that both the income tax *and* an early distribution penalty (if the account holder is under the minimum age for withdrawals) must be paid on the transfer.

Another DOMA-related problem in the divorce context relates to spousal support or alimony. Alimony is ordinarily deductible by the person paying it and income to the person receiving it, and ordinarily an obligation that is not dischargeable in bankruptcy. But because of DOMA, these provisions don't apply to same-sex divorcing spouses, thereby limiting the ability of the family court to protect the financially vulnerable spouse.

COBRA

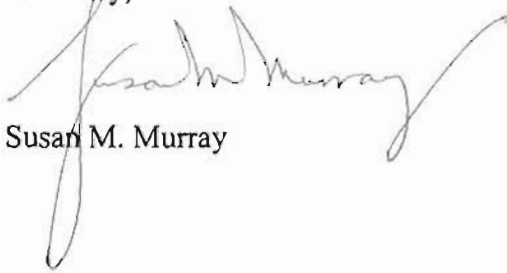
Federal law requires certain private employers to offer continued health insurance coverage for a defined period of time to the spouses of employees who die or whose job is terminated; this law even applies to spouses who are divorcing the employee. However, because of DOMA, employers aren't required to provide such continued coverage for same-sex spouses.

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I've seen and experienced the myriad ways in which DOMA's discriminatory provisions have denied legally married same-sex couples and our families the same benefits and protections that the federal government provides to other families. I thank you for holding this hearing on S.598, The Respect for Marriage Act. I hope Congress will take action to alleviate these real harms suffered by hard-working American families, and to recognize and treat our marriages just like it does all other valid marriages in this country.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan M. Murray". The signature is written in a cursive style with a long, sweeping tail that extends to the right and then loops back down.

Susan M. Murray