The IRS Moves Toward Income Tax Equality for Same-Sex Couples Despite DOMA

By Marisa Nelson*

Introduction

During the fourteen years since it was enacted, the federal Defense of Marriage Act1 ("DOMA") has been under attack from all angles. DOMA has been challenged in court with growing success on a variety of constitutional grounds, including the Full Faith and Credit Clause, the Tenth Amendment, and the Fourteenth Amendment’s Equal Protection and Due Process Clauses. It has also been renounced by several of its original key proponents, for reasons including states’ rights and DOMA’s failure to achieve its stated purpose.2 Furthermore, DOMA has created a variety of inefficiencies, inequalities, unexpected consequences, and contradictory policies in state and federal taxation.

Despite these effects on taxation, DOMA is not part of the tax code. It is simply worded, by legislative standards, and purports only to define marriage as between a man and a woman3 and to protect states from being forced to recognize same-sex marriages legalized in other states.4 Yet DOMA is so pervasive that it has had a profound effect on tax law, to the point that the Internal Revenue Service ("IRS") has had to circumvent DOMA’s inadvertent consequences.5

* J.D. Candidate 2011, University of San Francisco School of Law. I would like to express my gratitude to Professor Julie Nice for all of her help and support in developing and polishing this Comment, as well as the inspiration to write it. I would also like to thank Catherine Priestley, Wade Tregaskis, and Everett Monroe for their help and support throughout the process.

2. See discussion infra Part II.B.
In order to provide a greater understanding of DOMA and its impact, especially with respect to taxation, Part I of this Comment describes DOMA’s background and history and the context of its enactment. As part of this background, Part I outlines the constitutional law surrounding DOMA and same-sex relationships.

Part II discusses challenges to DOMA, including constitutional challenges in court, along with changing public and political opinions as well as state laws.

Part III examines one specific Private Letter Ruling released by the IRS on May 28, 2010. This ruling changes the way registered domestic partners in California report income on their federal income-tax returns. For the first time, the ruling applies California’s community property laws to same-sex couples for federal income-tax purposes by requiring registered domestic partners in California to each report half of their combined community income. Specifically, the two partners must now add their income together, divide it in half, and each report one half as their own. Previously, same-sex couples were treated by the IRS as two entirely separate individuals with no connection to each other, tax or otherwise. Part III explains the Private Letter Ruling and its likely impact in California and the rest of the country.

Part IV concludes with an analysis of the future of DOMA in light of the Private Letter Ruling. The Private Letter Ruling is significant, but it is only one aspect of a much more extensive mess created by DOMA. When Congress enacted DOMA, it did not fully consider the implications. Tax is a good example. Despite the inevitable (and seemingly obvious) entanglement with taxes, tax law was barely mentioned during the House and Senate hearings, and no tax experts were consulted. If the courts do not soon find DOMA unconstitutional, the only solution to the countless problems created by DOMA will be to repeal it. However, as the Private Letter Ruling demonstrates, progress can be made in subtle ways, such as changing administrative interpretations of the law. While not as clean or far-reaching

6. Id.
7. Id.
8. Id.
9. Id.
as actually overturning DOMA, improvements in tax equality do have a positive effect on many lives, can be implemented quickly, and will likely contribute to the eventual repeal of DOMA.

I. History and Background

A. DOMA: The Defense of Marriage Act

DOMA is a federal law enacted by Congress in 1996.\(^{13}\) DOMA defined marriage for federal purposes for the first time in U.S. history.\(^{14}\) Previously, marriage had been considered solely the domain of the states, not the federal government.\(^{15}\) DOMA is divided into three separate sections, two of which make substantive policy changes. Section two\(^{16}\) deals with the Full Faith and Credit Clause of the U.S. Constitution, which provides that “[f]ull faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.”\(^{17}\) In contrast, section two of DOMA 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.\(^{18}\)

Section two means that unlike marriages between one man and one woman, same-sex marriages recognized by one jurisdiction do not have to be acknowledged by any other jurisdiction. As a result, no state has to extend to couples in same-sex marriages any of the rights or privileges it extends to couples in heterosexual marriages.

Section three of DOMA provides:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bu-


\(^{15}\) E.g., Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 12 (2004) (quoting In re Burrus, 136 U.S. 586, 593–94 (1980)) (“Previously we observed that ‘[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.’”).

\(^{16}\) Section one is not addressed here because it merely states the name of the Act. Defense of Marriage Act § 1.

\(^{17}\) U.S. CONST. art IV, § 1; see discussion infra Part II.B.1.

reas 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 wife.19

The meaning of this section is apparent. Under any federal law, the words "marriage" and "spouse" can only refer to a heterosexual relationship. DOMA precludes the federal government from recognizing any relationship between two people of the same sex, no matter the status of the relationship under state law.20 The IRS is one of the many branches of the federal government DOMA prohibits from recognizing same-sex marriages.

B. The History of DOMA

DOMA was a federal legislative reaction to the fear that recognition of gay marriage might soon be forced upon the people of Hawaii, and shortly thereafter, the rest of the country.21 In 2003, the Supreme Court of Hawaii declared that Hawaii’s ban on same-sex marriage was unconstitutional unless the state could prove that a compelling interest justified the sex-based classifications and that the law was drawn narrowly enough “to avoid unnecessary abridgements of constitutional rights.”22 The state court set a trial date on the issue for the fall of 1996.23 In February of 1996 the Republican presidential caucuses in Iowa made same-sex marriage a central issue,24 and on May 7, 1996 Congressman Bob Barr (R-GA) introduced DOMA in the House of Representatives as H.R. 3396.25 President Clinton signed it into law only four and a half months later, on September 21, 1996.26

20. Id.
23. Id. On December 3, 1996, Judge Chang ruled in favor of same-sex marriage but the next day stayed his own ruling until the Supreme Court of Hawaii could hear the case on appeal. By the time the Court heard the appeal, the voters of Hawaii had passed Amendment II, an amendment to the state constitution of Hawaii which stated that “[t]he legislature shall have the power to reserve marriage to opposite-sex couples.” Haw. Const. art. I, § 23. As a result, the Hawaii Supreme Court reversed Judge Chang’s ruling and remanded for judgment in favor of the state. Baehr v. Miike, 994 P.2d 566 (Haw. 1999).
26. Id.
On May 15, 2006, only a week after Rep. Barr introduced the bill, the House subcommittee held hearings to discuss the bill. Most of the testimony focused on section two of DOMA—the full faith and credit provision. The subcommittee glossed over possible violations of the Equal Protection Clause, though it did mention the possible constitutional problems that might arise if the Supreme Court ruled against the state of Colorado in Romer v. Evans. Indeed, the Court did so shortly after the House hearings concluded and, as noted below, equal protection issues have become one of the larger points of contention surrounding the constitutionality of DOMA.

C. The Erosion of DOMA’s Constitutional Underpinnings

The following cases present the constitutional issues surrounding DOMA and seriously undermine its legality. The Court laid the groundwork for these cases as early as 1967 with Loving v. Virginia, which held that the fundamental right to marry is protected by the Fourteenth Amendment’s Equal Protection Clause and Due Process Clause. In 1992, the Supreme Court ruled in Planned Parenthood of Southeastern Pennsylvania v. Casey that an individual’s rights under the Due Process Clause include a right to privacy in personal, intimate decisions regarding marriage, procreation, contraception, family relationships, and child rearing.

Four years later, in Romer v. Evans, the Court invalidated Colorado’s Amendment II, which eliminated all legal protections for homosexuals. And in 2003, the Court in Lawrence v. Texas

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28. Id.
29. Id.
30. U.S. CONST. amend V.
32. See discussion infra Part I.C.2.
33. See, e.g., Gill v. Office of Pers. Mgmt., 699 F. Supp. 2d 574, 386–87 (D. Mass. 2010) (DOMA violates core principles of equal protection); Lawrence v. Texas, 539 U.S. 558, 574–75 (The majority mentioned equal protection as a possible reason for invalidating the Texas sodomy statute, although its decision was based on the Due Process Clause instead. Justice O’Connor, in a concurring opinion, would have invalidated the statute based on equal protection grounds.).
34. 388 U.S. 1, 12 (1967).
turned the highly discriminatory \textit{Bowers v. Hardwick}\textsuperscript{37} ruling only seventeen years after it was issued, stating that the right to privacy embodied in the Fourteenth Amendment’s Due Process Clause protects a right to engage in private, consensual homosexual activity.\textsuperscript{38} These cases and their implications for DOMA are detailed below.


In 1986, the Supreme Court held in \textit{Bowers} that the constitutional right to privacy did not include the right to engage in homosexual activity and accordingly upheld Georgia’s anti-sodomy statute, ruling that it did not violate any fundamental rights.\textsuperscript{39} The Court phrased the issue as “whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal and have done so for a very long time” and answered the question in the negative.\textsuperscript{40} The Court’s reasoning was based largely on what it said was the nation’s long history of traditional marriage between a man and a woman, as well as the presence of state laws banning sodomy in all fifty states until 1961.\textsuperscript{41}


Ten years after \textit{Bowers}, the tide was already changing. In \textit{Romer}—decided just after the House of Representatives concluded hearings on DOMA—the Court found Colorado’s Amendment II\textsuperscript{42} unconstitutional as a violation of the Equal Protection Clause.\textsuperscript{43} The Equal Protection Clause declares that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”\textsuperscript{44} The Colorado Amendment segregated homosexuals, lesbians, and bisexuals and denied them protection from discrimination.\textsuperscript{45} Essentially, any law prohibiting discrimination against this group of citizens would have been unconstitutional in Colorado, and any existing gay rights laws within the state would have been nullified. Supporters of the

\begin{itemize}
  \item \textsuperscript{37} Bowers v. Hardwick, 478 U.S. 186 (1986).
  \item \textsuperscript{38} Lawrence v. Texas, 539 U.S. 558, 574 (2003).
  \item \textsuperscript{39} Bowers, 478 U.S. 186.
  \item \textsuperscript{40} \textit{Id.} at 190–91.
  \item \textsuperscript{41} \textit{Id.} at 192–94.
  \item \textsuperscript{43} Romer, 517 U.S. 620.
  \item \textsuperscript{44} \textit{U.S. Const.} amend. XIV, § 1.
\end{itemize}
amendment said that it merely prevented gays from receiving “special rights,” but the Court disagreed: “To the contrary, the amendment imposes a special disability upon those persons alone. Homosexuals are forbidden the safeguards that others enjoy or may seek without constraint.”


In 2003, only seventeen years after *Bowers*, the Court in *Lawrence* overruled *Bowers*. The *Lawrence* Court stated that the Fourteenth Amendment’s Due Process Clause protects a right to engage in private, consensual homosexual activity. The Court noted that the historical synopsis of the law in *Bowers* was not entirely accurate: “[I]t should be noted that there is no longstanding history in this country of laws directed at homosexual conduct as a distinct matter.” Rather, the laws were directed more broadly at all nonprocreative sexual activity, especially in situations where one party couldn’t or didn’t consent. Further, the ruling pointed out that laws specifically targeting same-sex couples are far from rooted in history—they didn’t even develop until the latter third of the twentieth century.

Of the twenty-five states with relevant laws in force when *Bowers* was decided, only thirteen remained by the time *Lawrence* was written, only four of which enforced the laws solely against homosexual conduct. Several of the other states, including Texas, had not been enforcing the antisodomy statutes where the participants were consenting adults acting in private. Growing changes to state laws and their indication of public opinion threw doubt on the reasoning relied on in *Bowers*, as did the more recent decisions in *Romer* and *Casey*, which the *Lawrence* Court cited as confirmation that the due process rights to liberty and privacy afforded “constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education . . . .

47. *Id.*
49. *Id.* at 574.
50. *Id.* at 568.
51. *Id.* at 569.
52. *Id.* at 570.
53. *Id.* at 573.
54. *Id.*
Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.\textsuperscript{55} The \textit{Lawrence} Court considered invalidating the Texas statute based on equal protection principles, since the statute singled out sodomy between individuals of the same sex;\textsuperscript{56} however, Justice Kennedy stated that this would be insufficient because “[\textit{Bowers’s}] continuance as precedent demeans the lives of homosexual persons.”\textsuperscript{57} Of the many reasons for overturning \textit{Bowers}, Justice Kennedy noted that Arkansas, Georgia, Montana, Tennessee, and Kentucky declined to follow \textit{Bowers} when interpreting their own state constitutions;\textsuperscript{58} decisions by the European Union, the United Kingdom, Ireland, and others that rejected \textit{Bowers};\textsuperscript{59} and the petitioners’ entitlement to respect for their privacy.\textsuperscript{60} The \textit{Lawrence} Court concluded that “[the petitioners’] right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government.”\textsuperscript{61} Justice Kennedy made an important point when he stated that “[this Court’s] obligation is to define the liberty of all, not to mandate its own moral code.”\textsuperscript{62}

\section*{II. Destabilizing DOMA}

These key Supreme Court decisions have played an important role in legal challenges to DOMA. Also, in both \textit{Bowers} and \textit{Lawrence} the Court mentioned the influence of public opinion and state law.\textsuperscript{63} While not necessarily determinative in any court decision, public opinion and state law are often relevant and persuasive.\textsuperscript{64} Some of the recent changes in both areas are summarized below.

\begin{footnotesize}
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  \item \textsuperscript{55} \textit{Lawrence}, 539 U.S. at 574 (citing Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 850 (1992)).
  \item \textsuperscript{56} \textit{Id.} at 574–75.
  \item \textsuperscript{57} \textit{Id.} at 575.
  \item \textsuperscript{58} \textit{Id.} at 576.
  \item \textsuperscript{59} \textit{Id.}
  \item \textsuperscript{60} \textit{Id.} at 578.
  \item \textsuperscript{61} \textit{Id.}
  \item \textsuperscript{62} \textit{Id.} at 571 (citing Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 851 (1992)).
  \item \textsuperscript{63} \textit{Id.} at 573 (noting that only four of the thirteen states that still had antisodomy laws on the books after \textit{Bowers} enforced those laws only against homosexuals and the pattern of non-enforcement in the states); \textit{Bowers v. Hardwick}, 478 U.S. 186, 192–94 (1986) (describing the roots of antisodomy laws in the states during the ratification of the Bill of Rights and the Fourteenth Amendment).
  \item \textsuperscript{64} See, e.g., \textit{Lawrence}, 539 U.S. at 573, 576.
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\end{footnotesize}
A. Changing Public Opinion, Politics, and State Laws

In the seventeen years between *Bowers* and *Lawrence*, public opinion on same-sex marriage made a parallel progression. While there were many strong voices speaking out in 1996 in favor of DOMA and in favor of protecting states from being required to recognize same-sex marriage, public opinion has since turned. Many of those once supportive voices, along with a large part of the country’s population, have begun calling for DOMA’s repeal, recognizing that rather than allowing state freedom to decide the issue of same-sex marriage independently, DOMA limits this freedom.

1. Representative Bob Barr—Original Sponsor of DOMA

Representative Bob Barr, DOMA’s original sponsor, has publicly stated that he no longer supports the law. He believes that DOMA has not served the purposes for which it was intended. According to Barr, DOMA was supposed to preserve states’ power to define marriage. Instead, it has resulted in “one-way federalism,” protecting some states from having to recognize same-sex marriages performed in other states, while interfering with the ability of other states to confer on same-sex couples all of the rights and responsibilities of marriage. Barr now agrees with then-Senator Barack Obama’s 1996 statement that “[d]ecisions about marriage should be left to the states.”

2. President Bill Clinton—Signed DOMA into Law

Former President Bill Clinton, who signed DOMA into law in 1996, has also changed his mind about the bill. During his presidency Bill Clinton opposed same-sex marriage. But he has recently come out against DOMA, stating that he does not believe that same-sex mar-

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65. See discussion infra Part II.A.1–5.
66. See discussion infra Part II.A.1–5.
68. Id.
69. Id.
70. Id.
riage is a federal matter, and he does not believe same-sex couples should be prevented from marrying.\textsuperscript{72}

Moreover, when President Clinton signed DOMA, he issued a statement that read, in part:

The act confirms the right of each State to determine its own policy with respect to same-gender marriage . . . . This legislation does not reach beyond those two provisions. It has no effect on any current Federal, State, or local antidiscrimination law and does not constrain the right of Congress or any State or locality to enact antidiscrimination laws.\textsuperscript{73}

It has since become clear that DOMA severely limits a state’s ability to determine its own policy with respect to same-sex marriage and the many factors and programs affected by any such policy, as noted above by Rep. Barr and litigated in Massachusetts v. U.S. Department of Health and Human Services.\textsuperscript{74}

3. Current President Barack Obama

President Barack Obama stated repeatedly during his campaign and since taking office that he supports the repeal of DOMA.\textsuperscript{75} Some people have questioned his commitment to doing so because of his administration’s insistence on fighting challenges to DOMA in court.\textsuperscript{76} In response, the Obama administration stated that refusing to appeal a ruling due to its own belief that the ruling is correct and that the law is flawed would set a dangerous precedent.\textsuperscript{77} However, on February 22, 2011, President Obama announced that the Justice Department had determined that DOMA is unconstitutional and would no longer defend it in court.\textsuperscript{78} His official stance on the issue may have already begun to have an impact in small but concrete ways; as noted


\textsuperscript{73} Presidential Statement on Signing Same Gender Marriage Ban, 2 PUB. PAPERS 1635 (Sept. 20, 1996).


\textsuperscript{75} David Chalian, \textit{Obama Works to Address Concerns Among Gay Supporters}, ABC NEWS (June 29, 2009), http://abcnews.go.com/Politics/story?id=7956893.


below, although the statue has not yet changed, government interpretation of certain related provisions may have shifted.\(^7\)

4. Corporations and the Private Sector

Further evidence of increasing acceptance of same-sex couples in the private sector is provided by the growing number of employers offering domestic-partner benefits to employees. According to the Human Rights Campaign, fifty-nine percent of Fortune 500 companies offered domestic partner benefits in 2009 and eighty-three percent of Fortune 100 companies offered them, up from forty percent and sixty-four percent, respectively, in 2003.\(^8\) This increase is despite DOMA and the greater cost it creates for employers, who can deduct the cost of such benefits offered to heterosexual employees but not those in same-sex relationships.\(^9\) U.S. employers collectively pay fifty-seven million dollars more per year in payroll income taxes than they would if domestic partner benefits were taxed in the same manner as heterosexual spousal benefits.\(^10\)

5. Changes to State Laws

According to the National Conference for State Legislatures, eighteen states and the District of Columbia now offer domestic partner health benefits to their employees.\(^11\) Further, since Baehr v. Lewin\(^12\) raised the possibility that Hawaii might “force” gay marriage on the rest of the country, which was one of the original motivations for DOMA,\(^13\) several states, beginning with Massachusetts in 2003,\(^14\) have begun allowing same-sex marriages. Five states—Massachusetts, Connecticut, Iowa, Vermont, and New Hampshire, plus the District of Co-

\(^7\) See discussion infra Part III.D.
\(^12\) 852 P.2d 44, 48 (Haw. 1993).
lumbia—have legalized same-sex marriage. Three more—Maryland, Rhode Island, and New York—recognize same-sex marriages from other states and pledge nondiscrimination, though they don’t perform same-sex marriages. Other states offer broad protections that fall short of marriage, including civil unions in New Jersey and domestic partnerships in Oregon, Washington, Nevada, and California. Hawaii, Maryland, Maine, Colorado, and Wisconsin offer lesser protections.

California allowed same-sex marriage for a short period in 2008 after the Supreme Court of California held that limiting marriage to heterosexual couples violated the California Constitution. Same-sex marriage in the state was stopped short by Proposition 8, which amended the California Constitution to ban gay marriage. A federal lawsuit challenging Proposition 8 was filed shortly thereafter, and on August 4, 2010, Chief Judge Vaughn Walker ruled that Proposition 8 violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

B. Direct Legal Challenges

Some of the most significant challenges to DOMA have been court cases arguing that DOMA violates the U.S. Constitution. These cases rest on various grounds, most notably the Full Faith and Credit Clause, the Due Process Clause, the Tenth Amendment, and the Equal Protection Clause. The Full Faith and Credit Clause has proved the least successful of the four.

The cases summarized above in Part II.C did not deal specifically with DOMA; in fact, most of them were decided before DOMA was enacted. However, they provide an important foundation for later cases directly challenging DOMA. These challenges depend on the reasoning and precedent set in foundational cases such as Lawrence and Romer for their key arguments and interpretation of the Constitu-

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88. Id.
89. Id.
90. Id.
92. CAL. CONST. art. I, § 7.5.
93. Perry v. Schwarzenegger, 704 F. Supp. 2d 921 (N.D. Cal. 2010). This case has since been appealed to the Ninth Circuit Court of Appeals, which, at the time of publication, has yet to issue an opinion.
tion. Recent key cases employing these constitutional arguments are summarized below.


DOMA purports to prevent each state from having to recognize any same-sex marriages performed in another state, despite the Full Faith and Credit Clause of the U.S. Constitution, which reads: “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.”

In *Wilson v. Ake*, the district court upheld section two of DOMA, ruling that it does not violate the Full Faith and Credit Clause because:

Congress’ actions in adopting DOMA are exactly what the Framers envisioned when they created the Full Faith and Credit Clause. DOMA is an example of Congress exercising its powers under the Full Faith and Credit Clause to determine the effect that “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” has on the other States. Congress’ actions are an appropriate exercise of its power to regulate conflicts between the laws of two different States, in this case, conflicts over the validity of same-sex marriages.

According to Patricia Cain, a Professor at the University of Santa Clara School of Law who has published multiple articles on DOMA and tax law, some academics have concluded that regardless of whether section two of DOMA is constitutional, it is unnecessary because the Full Faith and Credit Clause does not actually require any state to recognize marriages performed in another state. Andrew Koppelman, a professor at Northwestern University School of Law who has written extensively on the topic, believes that “[f]ull faith and credit does not require other states to recognize same-sex marriages” from another state.

However, other scholars disagree. For example, Jolynn Schlichting has argued that DOMA violates the Full Faith and Credit Clause.

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94. U.S. CONST. art. IV, § 1.
98. KOPPELMAN, DIFFERENT STATES, supra note 97, at 118.
The problem is that DOMA “grants states the latitude to deny full faith and credit to same-sex marriages performed under the laws of another state,” despite the fact that “[t]he Effects Clause of the United States Constitution . . . prohibits this type of amendment.”99 Further, the general rule is that the law of the state where the marriage took place determines the validity of the marriage.100 Schlichting believes that Congress has the constitutional authority to “create laws to carry out the constitutional guarantee of full faith and credit, but not the power to regulate when or if states may apply full faith and credit.”101 Further, before one state can disregard the marriage laws in the state where the marriage took place, case precedent has generally required a “justifiable policy rationale for denying full faith and credit to marriage relationships,” which DOMA bypasses.102


Brad Levenson, a deputy federal public defender in Los Angeles, California married his husband, Tony Sears, during the brief period in 2008 when same-sex marriage was legal in California.103 When the Federal Public Defender for the Central District of California refused to add Levenson’s husband to his federal health benefits because of DOMA, Levenson filed a complaint alleging that such denial violates the U.S. Constitution and the Ninth Circuit’s Employment Dispute Resolution Plan for Federal Public Defenders and Staff, which prohibits discrimination based on sex and sexual orientation.104 Circuit Judge Stephen Reinhardt ruled in Levenson’s favor and said that “[b]ecause there is no rational basis for denying benefits to the same-sex spouses of FPD employees while granting them to the opposite-sex spouses of FPD employees, I conclude that the application of DOMA to the [Federal Employee Health Benefits Program] so as to reach that result is unconstitutional.”105 Specifically, the decision stated that

100. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 283 (1971).
102. *id.* at 1666. See also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 283 cmt. j (1971) (“[A] marriage has been held invalid in such circumstances only when it violated a strong policy of a state where at least one of the spouses was domiciled at the time of the marriage and where both spouses made their home immediately after.”).
103. *In re Levenson*, 560 F.3d 1145 (9th Cir. 2009).
104. *id.* at 1145–46.
105. *id.* at 1149.
the refusal of benefits violated the Due Process Clause of the Fifth Amendment.\textsuperscript{106}

In a similar case, Karen Golinski, staff attorney at the Ninth Circuit headquarters, was also denied health benefits for her wife because of DOMA.\textsuperscript{107} She too challenged the denial, and Chief Judge Kozinski ruled that the denial violated the terms of the Ninth Circuit’s Employment Dispute Resolution Plan, which prohibits discrimination based on sex and sexual orientation.\textsuperscript{108} Chief Judge Kozinski, however, avoided the constitutional issue, finding that the Federal Employee Health Benefits Act could be read in such a way as to permit the coverage of same-sex spouses, DOMA notwithstanding.\textsuperscript{109}

Neither case establishes binding precedent as to DOMA or the Federal Employee Health Benefits Act, because Judges Reinhardt and Kozinski handled the two cases in their administrative capacity as dispute resolution officials within the federal judiciary.\textsuperscript{110} However, they are evidence of other instances where DOMA has resulted in constitutional violations and unintended yet far-reaching consequences contrary to the law’s stated purpose.


In 2003, the Supreme Judicial Court of Massachusetts held that preventing same-sex couples from marrying violated the Massachusetts Constitution.\textsuperscript{111} Between May 17, 2004 and February 12, 2010, Massachusetts issued 15,214 marriage licenses to same-sex couples.\textsuperscript{112} However, because DOMA prevents federal recognition of these marriages, problems have arisen in the operation of several state programs, including the state cemetery grants program, MassHealth (the state’s Medicaid program), and Medicare Tax.\textsuperscript{113}

DOMA’s interference with these state programs led U.S. District Court Judge Joseph Tauro to rule on July 8, 2010 that DOMA is un-

\begin{itemize}
  \item \textsuperscript{106} Id.
  \item \textsuperscript{107} In re Golinski, 587 F.3d 901 (9th Cir. 2009).
  \item \textsuperscript{108} Id. at 902.
  \item \textsuperscript{109} Id. at 904.
  \item \textsuperscript{111} Goodridge v. Dep’t of Pub. Health, 798 N.E.2d 941 (Mass. 2003).
  \item \textsuperscript{112} Massachusetts v. U.S. Dep’t of Health & Human Servs., 698 F. Supp. 2d 234, 239 (D. Mass. 2010).
  \item \textsuperscript{113} Id. at 239–44.
\end{itemize}
constitutional because it violates the Tenth Amendment by exceeding the scope of federal power and intruding on areas of exclusive state authority. Judge Tauro also held that DOMA violates the Spending Clause by forcing the state to discriminate against its own citizens as a condition of receiving and retaining federal funding and violating multiple Dole requirements. Specifically, the case challenged section three of DOMA, which defines marriage as between one man and one woman. The ruling provides an informative and thorough discussion of the history of marriage and its regulation in the United States and notes that several issues relevant to the formation and dissolution of marriages have served historically as the subject of controversy, including common law marriage, divorce, and restrictions regarding race, “hygiene,” and age at marriage. Despite contentious debate on all of these subjects, however, the federal government consistently deferred to state marital status determinations.

DOMA was thus a significant change in a long history of federal deference to state marriage laws.

While the ruling that DOMA is unconstitutional applies only in Massachusetts, it could lead to similar suits in other states. The ruling could also help build momentum for a bill pending in Congress, the Respect for Marriage Act of 2009, which has not garnered much publicity thus far. The bill would amend DOMA by repealing section two, which says that no state is required to recognize a marriage performed in another state between two people of the same sex, and changing the definition of marriage in section three, which currently includes only legal unions between a man and a woman, to include any marriage valid in the state where it was performed.

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114. Id. at 248.
115. Id. at 246–47.
116. Id. at 249–51.
121. Id. at 236.
122. Id. at 237–38 (citing Aff. of Nancy Cott, ¶¶ 20–52). “Nancy F. Cott, Ph.D., the Jonathan Trumbull Professor of American History at Harvard University, submitted an affidavit on the history of the regulation of marriage in the United States, on which this court heavily relies.” Massachusetts, 698 F. Supp. 2d at 236–37 n.9.
124. Id.
On October 12, 2010, the Department of Justice (“DOJ”) filed a notice of appeal with the District Court of Massachusetts announcing the DOJ’s intention to appeal the Massachusetts ruling\textsuperscript{125} to the First Circuit Court of Appeals. If the First Circuit decision is also appealed, the case could reach the U.S. Supreme Court. A Supreme Court ruling would determine the fate of DOMA for the entire country. The future of this case is unclear, however, due to President Obama’s recent announcement that the DOJ will no longer defend DOMA in court.\textsuperscript{126}


In \textit{Gill v. Office of Personnel Management}, the plaintiffs alleged that by complying with DOMA, the federal government was violating equal protection principles embodied in the Due Process Clause of the Fifth Amendment.\textsuperscript{127} The plaintiffs were seven same-sex couples and three survivors of same-sex spouses, all married in Massachusetts.\textsuperscript{128} All ten couples claimed they were denied some federal benefit based on marital status, which under DOMA is available only to heterosexual couples.\textsuperscript{129} These benefits include health, vision, and dental benefits based on federal employment; social security benefits, both for survivors and at retirement; and tax filing status under the Internal Revenue Code.\textsuperscript{130} The district court agreed with the plaintiffs’ claims and granted summary judgment as to all but one claim, for which the plaintiffs did not have standing.\textsuperscript{131} Judge Tauro cited the principle that “the Constitution neither knows nor tolerates classes among its...
citizens,”"132 and noted that “legislative provisions which arbitrarily or irrationally create discrete classes cannot withstand constitutional scrutiny.”133 The court then went on to summarize the varying levels of scrutiny under equal protection, but determined that a more in-depth discussion was unnecessary because

DOMA fails to pass constitutional muster even under the highly deferential rational basis test . . . this court is convinced that “there exists no fairly conceivable set of facts that could ground a rational relationship” between DOMA and a legitimate government objective. DOMA, therefore, violates core constitutional principles of equal protection.134

This case has been appealed as well. As with Massachusetts v. U.S. Department of Health and Human Services, Gill will head to the First Circuit Court of Appeals, and may eventually be heard by the U.S. Supreme Court. However, the future of this case is uncertain as well, due to President Obama’s recent announcement that the DOJ will no longer defend DOMA in court.135

III. The Private Letter Ruling and Community Property for Registered Domestic Partners in California

In addition to the various legal challenges to DOMA and the many changes in public opinion and state law, the federal government is making adjustments in areas affected by DOMA. The recent Private Letter Ruling (“PLR”) is an example of such an adjustment.136 While DOMA is not itself a tax provision, it has a significant effect on the tax code because so many of the code provisions rely on the applicable definition of marriage.137 The PLR discussed below provides the IRS’s current interpretation of California state law and the accompanying adjustment required by DOMA, which will have very real financial consequences for registered domestic partners and same-sex married couples in California and beyond.

132. Id. at 386 (quoting Romer v. Evans, 517 U.S. 620, 623 (1996)).
133. Id.
134. Id. at 387 (quoting Medeiros v. Vincent, 431 F.3d 25, 29 (1st Cir. 2005)).
135. Savage & Stolberg, supra note 78.
136. PLR 48, supra note 5.
A. What Is a Private Letter Ruling?

A PLR is a letter issued by the IRS in response to a specific tax question submitted by a taxpayer, in this case Mr. Eric Rey and his partner.138 In the case considered below, the question submitted to the IRS was whether registered domestic partners139 in California should report their income as community property or separate property. The IRS’s response, in the form of a PLR, “interprets and applies tax laws to the taxpayer’s specific set of facts.”140 A PLR is based on information provided by the taxpayer, and is only binding on the IRS if “the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described.”141 It is directed only to that taxpayer, and the IRS is not bound to follow its ruling with regard to other taxpayers; PLRs may not be used or cited as precedent.142 Accordingly, while a PLR does indicate the IRS’s current stance on a particular issue under particular facts and should be followed until it is changed or overruled, a policy set forth in a PLR may be changed at any time.143

B. Introduction to the Recent Private Letter Ruling in California

Private Letter Ruling number 201021048 ("PLR 48"), issued on May 28, 2010, has changed the way registered domestic partners in California must report their income for federal income tax purposes.144 Previously, the IRS did not treat the earned income of registered domestic partners in California as community property.145 However, under PLR 48 a registered domestic partner in California not only may but must report one-half of the couple’s combined income from personal services (i.e. wages or salary) or property on his


139. Under California law, domestic partners are two adults who have filed a Declaration of Domestic Partnership with the Secretary of State of California and meet several requirements, one of which is that either both partners must be of the same sex, or at least one partner must be over the age of sixty-two. Heterosexual partners not older than age sixty-two cannot register as domestic partners in California. CAL. FAM. CODE §§ 297–297.5 (West 2004 & Supp. 2011).


141. Id.


143. Id.

144. PLR 48, supra note 5.

separate federal income-tax return. Despite this new requirement, same-sex couples—married or not—must still file their federal income taxes as "single" individuals.

C. Relevant California Community Property Law

Community property, as opposed to separate property, means that property acquired during a marriage is considered under state law to be owned jointly by both spouses. From the moment one spouse earns a paycheck, that paycheck is community property, and is considered as belonging one-half to the spouse who earned it and one-half to the other spouse. California is one of nine community property states in the United States. Under state law, all property acquired by a spouse while married and domiciled in California is community property. However, until recently, community property laws applied only in the context of marriage, and same-sex marriage was not part of the legal landscape.

State law, including what a state treats as community property and what it treats as separate property, determines a person’s property rights. Federal tax law depends on state property-law determinations to establish federal tax liability. So if California treats spouse A’s income as half belonging to spouse A and half belonging to spouse B, the federal government will tax spouse A on the half that California says belongs to A. Thus, while federal tax law is the same for the entire country, an individual’s actual federal tax liability may vary depending on his or her state’s property laws.

In 1930, the Supreme Court held in Poe v. Seaborn that under Washington state community property law each spouse owns an “undivided one-half interest” in the income earned by the other spouse, and must report half of all community income on his or her federal income tax return. While Poe was a Washington case, the following year the Supreme Court applied the same rule to California’s commu-

146. PLR 48, supra note 5.
148. IRS PUBLICATION 555, supra note 147, at 2.
149. Id.
150. Id.
151. CAL. FAM. CODE § 760 (West 2004).
152. C.C.A. 38, supra note 10.
153. IRS PUBLICATION 555, supra note 147, at 3.
154. Id.
nity property laws in *United States v. Malcolm.* The Poe ruling resulted in greater inequality between married couples in states with community-property laws and those in states without such laws. The joint return was created to reduce the inequality between states by diminishing the impact of differing state property laws on federal tax liability.

In 1999, California began granting limited property rights to registered domestic partners. Effective January 1, 2005, the California Domestic Partner Rights and Responsibilities Act of 2003 ("AB 205") expanded those rights, granting many of the same rights and responsibilities enjoyed by opposite-sex married couples to registered domestic partners. However, one exception to the new rights under AB 205 was the treatment of community property. While income earned by registered domestic partners was considered community property for property-law purposes, AB 205 specifically excluded it from community property for state income-tax purposes.

While AB 205 was in effect the IRS issued Chief Counsel Advice 200608038 ("CCA 38"). A CCA is a written determination, similar to a PLR, issued by the IRS and made available to the public. Unlike a PLR, which is issued directly to one specific taxpayer, a CCA is a written determination prepared by the national office of Chief Counsel and issued to IRS employees. Both PLRs and CCAs are published and made available to the public.

Under CCA 38, which was consistent with AB 205, a registered domestic partner in California had to report his own separate earned income. Thus, for both federal and state income-tax purposes, earned income from personal services performed by each partner in a same-sex couple was treated as separate property, not community property.

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156. 282 U.S. 792 (1931).
162. C.C.A. 38, supra note 10.
164. Id. § 6110(i)(1)(A).
165. C.C.A. 38, supra note 10.
166. Id.
On January 1, 2007, SB 1827 took effect, repealing the community property exception under AB 205. As a result, California law now treats the earned income of both registered domestic partners and heterosexual married couples as community property for state income-tax purposes as well as state property-law purposes. Although Mr. Rey and his partner (the couple to whom PLR 48 was issued) sought an earlier PLR based on SB 1827 in 2007, at that time the IRS “declined to offer guidance either way.” After President Obama took office, the couple’s tax attorney, Don Read, noted that the White House’s official policy had changed to support “equal federal rights for gay and lesbian couples,” and suggested that Mr. Rey and his partner try again. This time they were successful. Mr. Rey asserts that the new administration’s policy change was the only significant difference between the 2007 and 2010 attempts—the argument was the same in both cases—yet the outcome changed.

D. What This Private Letter Ruling Says

PLR 48, released nearly three and a half years after SB 1827 took effect, is based on the changes to California law made by SB 1827 in 2007. Under the new ruling, the IRS followed California law and applied Poe and Malcolm to same-sex couples by treating income earned by California registered domestic partners as community property for federal income-tax purposes. The Wall Street Journal cites this ruling as the first time the IRS has considered gay couples as a unit. Under DOMA, same-sex couples have been treated as two single individuals, strangers to each other in the eyes of the Internal Revenue Code. While same-sex couples, whether united by civil union, registered domestic partnership, or marriage under state law, must

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168. Meckler, supra note 138.
169. Id.
170. Id.
171. Id.
172. Id.
173. PLR 48, supra note 5.
174. Id.
175. 282 U.S. 101 (1930).
176. 282 U.S. 792 (1931).
177. PLR 48, supra note 5. PLR 48 also states that each partner is entitled to one half of the credits allowable for the tax withheld at the source with respect to such wages, and that this application of community property law to registered domestic partners does not result in a gift for gift tax purposes. Id.
178. Meckler, supra note 138.
still file federal taxes with the IRS as two single and separate individuals rather than as “married filing jointly” or “married filing separately,” they must now each declare half of their combined income.\footnote{179} Essentially, same-sex couples now combine their income and then each report half of it under community property law.\footnote{180} But since they are ineligible to file as “married” under federal law, they may actually get a better income tax result under the graduated tax rate system than a married heterosexual couple would with the same income.\footnote{181}

This ruling is a step towards equality since it acknowledges the reality that registered domestic partners are an economic unit. However, the same inequality now exists for registered domestic partners that existed for married couples after Poe and Malcolm but before the joint return was created; couples in community property states pay different federal taxes than couples in separate property states. In addition, as of December 31, 2003, a total of 1,138 federal statutory provisions in the U.S. Code include marital status as a factor in determining or receiving benefits, rights, or privileges.\footnote{182} As long as DOMA remains law, these provisions result in unequal tax treatment on everything from gifts to health insurance for same-sex couples who, no matter their status in their home state, are still treated as single individuals by the federal government. One hundred ninety-eight of these provisions are federal taxation provisions, 179 of which were listed in the General Accounting Office’s 1997 report,\footnote{183} and an additional nineteen of which were added between 1997 and 2003.\footnote{184}

While PLR 48 notes that “[f]ederal tax law generally respects state property law characterizations and definitions,”\footnote{185} the IRS declined to do so in 2007, when Mr. Rey, his partner, and his tax attorney, Don Read, requested a PLR from the IRS based on the then-new law in California, SB 1827.\footnote{186} It wasn’t until three and a half years after the law changed—and only shortly after the presidential administration

\footnotesize{179. PLR 48, supra note 5; IRS Publication 555, supra note 147, at 2. 
180. Id. 
185. PLR 48, supra note 5. 
186. Meckler, supra note 138.}
changed—that the IRS moved to follow this particular state property-law characterization.

1. Chief Counsel Advice Accompanying the Private Letter Ruling

Along with PLR 48, the Office of Chief Counsel of the IRS released CCA 201021049 (“CCA 49”), and CCA 201021050 (“CCA 50”).

a. CCA 49: IRS Can Consider Domestic Partner’s Assets When Considering Taxpayer’s Offer in Compromise

CCA 49 determined that the IRS can consider the assets of a taxpayer’s registered domestic partner in California when determining the reasonable collection potential of a taxpayer’s Offer in Compromise (“OIC”) under Internal Revenue Code section 7122. An OIC is “an agreement between a taxpayer and the IRS that settles the taxpayer’s liabilities for less than the full amount owed.” In community property states like California, the assets of both spouses are considered in the OIC when determining whether to accept the amount offered. Under PLR 48, the IRS concludes that it can consider the assets of the taxpayer’s registered domestic partner in California when determining whether to accept the taxpayer’s OIC.

b. CCA 50: The Taxpayer May Amend Prior Returns to Comply with the New Private Letter Ruling

CCA 50 addresses the fact that under the old IRS policy, a registered domestic partner in California had to report all of his individual earned income on his federal returns, but under PLR 48, a domestic partner instead must report half of the community income on his federal tax return. CCA 50 answers the question of whether those who filed returns in compliance with the old policy must amend those returns. For tax years beginning before June 1, 2010, registered domestic partners in California who filed federal returns under the old

187. Id.
190. C.C.A. 49, supra note 188.
191. Id.
192. Id.
193. Id.
195. PLR 48, supra note 5.
policy may, but are not required to, amend their returns to comply with the new community property recognition under PLR 48.196

E. What the Private Letter Ruling Means for Registered Domestic Partners in California

Couples reporting income under the new law, especially those where one partner earns significantly more than the other, may realize significant tax savings due to the graduated tax rates. An example provided in an article in the Wall Street Journal demonstrates the huge financial consequences PLR 48 will have on some registered domestic partners.197 Consider three pairs of registered domestic partners. Couple A earns individual incomes of $300,000 and $0. Couple B earns $200,000 and $100,000. Couple C earns $150,000 and $150,000. Each couple earns a total of $300,000 per year, but the earnings of each are divided differently. Under the old rule, based on wages alone (not accounting for tax deductions, tax credits, etc.), Couple A was liable for $81,459 + $0 in taxes; Couple B was liable for $48,470 + $19,109 = $67,579 in taxes; and Couple C was liable for $33,102 + $33,102 = $66,204 in taxes.198 Under the new rule, also based on wages alone, each couple is liable for $66,204 in taxes, as if both individuals earned the same amount.199 For Couple C, whose income actually is divided equally between the two individuals, this doesn’t result in any change to their tax liability; but Couple A saves $15,255 and Couple B saves $1,375 in taxes. As this example illustrates, PLR 48 will have a big impact on some taxpayers.

The size of the impact on any particular pair of registered domestic partners in California will depend on the income of one individual in relation to the other, as well as the tax bracket that each falls under. As the example shows, if each individual makes an approximately equivalent amount, the change in IRS policy will likely have very little impact on the couple’s taxes. However, if there is a large disparity in income between the two individuals, the new policy will significantly reduce the couple’s joint taxes. If averaging the two incomes places either individual in a different tax bracket than he had been in prior to the application of community property rules, the impact will be magnified, due to the graduated tax rate system.

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196. C.C.A. 50, supra note 189.
197. Meckler, supra note 138.
198. id.
199. id.
While this is only one small area of tax law of the many that include marital status as a factor, the change is a big step toward equal taxation of same-sex and heterosexual couples.

F. Implications for Other Community Property States

Outside of California, the states most likely to be influenced by PLR 48 are those that recognize community property. Although the PLR was directed to a California couple, the IRS has already expanded the ruling to apply to Washington and Nevada.\textsuperscript{200} As mentioned above, nine states recognize community property law: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin (plus Alaska, which is an opt-in community property state).\textsuperscript{201} Of these nine states, none currently allow same-sex marriage.\textsuperscript{202} However, like California, Washington and Nevada recognize domestic partnerships.\textsuperscript{203} Because Washington and Nevada have a combination of domestic partnership and community property laws similar to that of California, the reasoning behind PLR 48 was easily expanded to include them, resulting in greater consistency in the application of federal tax policy to the states.

1. Nevada

In 2009, the state of Nevada passed SB 283, which established a domestic partnership registry.\textsuperscript{204} The bill, titled the Nevada Domestic Partnership Act, states that: “Domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon spouses.”\textsuperscript{205} This includes community property law.\textsuperscript{206}

Because the Nevada Domestic Partnership Act subjects domestic partners to all of the same laws as spouses, including property law, and as such, closely emulates the laws of California on which PLR 48 is

\begin{footnotesize}
\begin{enumerate}
\item [\textsuperscript{201}] IRS Publication 555, \textit{supra note} 147, at 1–2.
\item [\textsuperscript{202}] States, \textit{Freedom to Marry}, \textit{supra note} 87 (although California did allow same-sex marriage briefly in 2008, \textit{see discussion supra Part II.A.5}).
\item [\textsuperscript{203}] Id.
\item [\textsuperscript{204}] S.B. 283, 2009 Leg., 75th. Sess. (Nev. 2009).
\item [\textsuperscript{205}] Id. § 7(1)(a).
\item [\textsuperscript{206}] Id. § 7(1)(i)(1).
\end{enumerate}
\end{footnotesize}
based, it makes sense that the IRS has applied the same policy in Nevada as in California.

2. Washington

Like California and Nevada, Washington is a community property state. Moreover, Washington’s community-property laws apply to domestic partners.207 SB 5688, which expanded the rights and responsibilities of Washington domestic partners in 2009, reads in part: “It is the intent of the legislature that for all purposes under state law, state registered domestic partners shall be treated the same as married spouses.”208 Under this bill, and because of the similarities to California and Nevada law, the IRS’s adoption of a comparable policy on domestic partners in Washington was inevitable.

3. The Other Forty-Seven States

While it is only a small step toward dealing with the bigger problem, PLR 48 brings federal taxation of same-sex couples in California, Washington, and Nevada a little closer to equality with taxation of heterosexual couples, by acknowledging registered domestic partners as a unit, at least to a certain extent. However, just as the joint tax return was necessary to remedy the inequality between community property and separate property states after Poe v. Seaborn and United States v. Malcolm, the joint return must now be made applicable to same-sex couples to prevent a regression to taxation inequality between states. Because same-sex couples must, under the current system, file their federal taxes as single individuals and are ineligible to file a joint return under federal tax law (as well as in most states), greater tax inequality again exists between couples in different states. Yet as long as DOMA remains law, it is unlikely that same-sex couples will be allowed to file joint returns due to DOMA’s limited definition of the words “marriage” and “spouse.”209 While it might be possible to get around DOMA by continuing to create small changes to the Internal Revenue Code, the only real solution is to eliminate DOMA.

Conclusion

DOMA is crumbling. Supreme Court decisions before and after DOMA’s enactment provide the constitutional background to invali-
date it. Recent and ongoing legal battles, including *Perry v. Schwarzenegger*,210 *In re Levenson*,211 and *In re Golinski*212 in California, and *Gill v. Office of Personnel Management*213 and *Massachusetts v. U.S. Department of Health & Human Services*214 in Massachusetts, demonstrate DOMA’s weaknesses. It is only a matter of time before one of these cases makes it to the Supreme Court, and the opportunity arises for the Court to invalidate DOMA once and for all.

In the meantime, small changes through tax law are making strides toward greater equality. With 198 federal income-tax provisions215 related to marital status, this is no small feat. While PLRs may not be a direct route to invalidating DOMA as a whole, PLR 48 will certainly make a significant financial difference in the interim to many couples in California, Washington, and Nevada.

PLR 48 is also one more piece of evidence that DOMA—and the inequalities it creates and magnifies—cannot be sustained. It cannot be long until PLR 48 is obsolete; once DOMA is repealed or struck down and the IRS—along with the many other agencies affected—is once again permitted to respect state law classifications as to marriage and property law, PLR 48 will be unnecessary. True equality in taxation cannot exist until same-sex couples are allowed to file their taxes under the same rules as heterosexual couples. In the meantime, PLR 48 is one small step in the right direction.

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211. 560 F.3d 1145 (9th Cir. 2009).
212. 587 F.3d 901 (9th Cir. 2009).
215. Shaw Letter, supra note 182.