

## **Case Summary**

### **United States v Windsor, Executor of the estate of Spyer, et al.**

**Case Reference: No. 12-307**

#### **1. Reference Details**

Jurisdiction: Supreme Court of the United States

Date of Decision: 26 June 2013

Case Status: Final decision – judgment of the Court of Appeals for the Second Circuit affirmed

Link to full case: [http://www.supremecourt.gov/opinions/12pdf/12-307\\_6j37.pdf](http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf)

#### **2. Facts of the Case**

Two women, Edith Windsor and Thea Spyer, married in Canada in 2007 and the State of New York recognised their marriage. At the time of their marriage, they were resident in New York and they had registered as domestic partners when New York City gave that right to same-sex couples in 1993. Spyer died in 2009, leaving her entire estate to Windsor. Windsor attempted to claim the federal estate tax exemption for surviving spouses, but was prevented from doing so under section 3 of the Defense of Marriage Act (DOMA). DOMA is a federal act which amends the Dictionary Act to define “marriage” and “spouse” as excluding same-sex couples. Windsor paid the estate taxes but requested a refund from the Inland Revenue Service, which was denied. Windsor brought a refund suit in the District Court, claiming that DOMA violated the Fifth Amendment equal protection principles. While the case was pending, the Department of Justice decided not to defend the constitutionality of section 3 of DOMA and the Bipartisan Legal Advisory Group of the House of Representatives (BLAG) intervened in the litigation to do so.

The District Court ruled against the United States, finding section 3 of DOMA to be unconstitutional and ordering the Treasury to refund Windsor’s tax with interest. An appeal was filed and the District Court’s decision was affirmed by the Court of Appeals of the Second Circuit. Although the US government did not seek to defend the constitutionality of DOMA, they refused to pay the refund to Windsor.

A petition for writ of certiorari was filed on 11 September 2012. The case was argued before the Supreme Court on 27 March 2013.

#### **3. Law**

- The Defense of Marriage Act (DOMA), section 3
- The Fifth Amendment to the Constitution of the United States

#### **4. Decision**

The Court held that section 3 of DOMA is unconstitutional as it amounts to a deprivation of the equal liberty of persons that is protected by the Fifth Amendment.

The first question that the Court addressed was whether it had jurisdiction to consider the merits of the case. All parties agreed that the Court had jurisdiction to hear the case, but the court appointed an *amicus curiae* to argue the opposite position. She argued that once the District Court ordered a refund, the case should have ended and the appeal should have been dismissed, as the parties were no longer adverse. However, the Court decided that because the US government had refused to pay the tax refund, this, combined with the fact that BLAG had intervened to defend the constitutionality of section 3 of DOMA with a “substantial adversarial argument”, was a controversy which was sufficient for the Court to have jurisdiction in this case.

The Court considered that historically, and by tradition, the definition and regulation of marriage had been treated as being within the realm of the separate states. It stated that DOMA, which controlled over 1,000 statutes and many federal regulations, had a much greater reach than any previous legislation enacted by Congress to regulate the meaning of marriage.

The Court held that DOMA meant to injure the very class of people that New York sought to recognise and protect by giving them the right to marry. In doing so, DOMA violated “basic due process and equal protection principles applicable to the Federal Government”. The Court held that “interference with the equal dignity of same-sex marriages was the “essence” of DOMA, which identified and made unequal a “subset of state-sanctioned marriages”. It stated that DOMA sought to, and did in fact, provide a disadvantage, separate status and stigma on those who entered into same-sex marriages. Furthermore, the Court said: “[DOMA] frustrates New York’s objective of eliminating equality by writing inequality into the entire United States Code (...) creating two contradictory marriage regimes within the same State”.

The Court went on to state that DOMA:

“[P]laces same-sex couples in an unstable position of being in a second-tier marriage. The differentiation demeans the couple, whose moral and sexual choices the Constitution protects (...) and whose relationship the State has sought to dignify. And it humiliates tens of thousands of children now being raised by same-sex couples. The law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.”

Because the Court found that the principle purpose and effect of DOMA was to “demean those persons who are in a lawful same-sex marriage”, it held that “DOMA is unconstitutional as a deprivation of the liberty of the person protected by the Fifth Amendment of the Constitution”. It therefore affirmed the judgment of the Court of Appeals for the Second Circuit.

Of the nine Justices presiding over this case, five were of the majority opinion, with the remaining four dissenting. The dissenting Justices did not all agree with each other in their opinions, but broadly considered that the Court did not have jurisdiction to hear the case and, on the merits, that DOMA was not unconstitutional. Justice Alito, in his dissenting opinion, stated that:

“[S]ame-sex marriage presents a highly emotional and important question of public policy – but not a difficult question of constitutional law. The constitution does not

guarantee the right to enter into a same-sex marriage. Indeed, no provision of the Constitution speaks to the issue.”

Justice Scalia gave a scathing dissenting opinion, in which he stated that “[b]y formally declaring anyone opposed to same-sex marriage an enemy of human decency, the majority arms well any challenger to a state law restricting marriage to its traditional definition.”