

12-2335-cv(L)

12-2435 (Con)

United States Court of Appeals
For the Second Circuit

EDITH SCHLAIN WINDSOR, IN HER CAPACITY AS EXECUTOR OF THE ESTATE OF
THEA CLARA SPYER,

Plaintiff-Appellee,

-v.-

UNITED STATES OF AMERICA,

Defendant-Appellant,

AND

THE BIPARTISAN LEGAL ADVISORY GROUP OF THE U.S. HOUSE OF
REPRESENTATIVES,

Intervenor-Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF OF THE CITY OF NEW YORK, THE COUNCIL OF THE CITY OF
NEW YORK, MICHAEL R. BLOOMBERG, IN HIS OFFICIAL CAPACITY
AS MAYOR OF THE CITY OF NEW YORK, AND CHRISTINE C. QUINN,
IN HER OFFICIAL CAPACITY AS SPEAKER OF THE COUNCIL OF THE
CITY OF NEW YORK,
AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE**

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PRELIMINARY STATEMENT

Defendant-appellant United States of America and intervenor-defendant-appellant Bipartisan Legal Advisory Group of the United States House of Representatives ("BLAG") appeal from the June 7, 2012 judgment of the United States District Court for the Southern District of New York (Jones, J.) holding that Section 3 of the Defense of Marriage Act ("DOMA") violates the United States Constitution's guarantee of equal protection of the laws.

Section 3 of DOMA, 1 U.S.C. § 7, denies to same-sex couples legally married under state law significant federal benefits that are available to opposite-sex couples lawfully married under state law. Because of DOMA, Edith Windsor, the plaintiff-appellee in this case, was required to pay \$363,053.00 in taxes on the estate of her late spouse Thea Spyer that she otherwise would not have had to pay if her marriage was recognized under federal law. As the District Court properly concluded, such discriminatory treatment bears no rational relationship to any legitimate governmental objective. See Windsor v. United States, 833 F. Supp. 2d 394 (S.D.N.Y. 2012).

As set forth in the Brief of Plaintiff-Appellee, Section 3 of DOMA violates the guarantee of equal protection secured by the United States Constitution and should be struck

down. Rather than reiterating the arguments presented in the plaintiff-appellee's brief, the City will instead describe how this unconstitutional law undermines the City's sustained efforts to treat same-sex couples and opposite-sex couples equally in all respects under the law and requires the City of New York to be the agent of this unlawful discrimination.

INTEREST OF AMICI CURIAE

Amici are the City of New York, the Council of the City of New York, Michael R. Bloomberg, in his official capacity as Mayor of the City of New York, and Christine C. Quinn, in her official capacity as Speaker of the Council of the City of New York (hereinafter collectively referred to as "the City").¹

Over the past quarter century, the City of New York has been adopting policies and laws to prohibit discrimination based on sexual orientation and to extend to same-sex couples the same rights and benefits afforded to opposite-sex couples to the maximum extent allowed by law. The recent passage of New York State's Marriage Equality Act has expanded even further the City's ability to do this in important ways. Nonetheless, DOMA undermines the City's efforts because it excludes married same-

¹ Pursuant to Fed.R.App.P. 29(a), *amici* have obtained the consent of all parties to the filing of this brief. Pursuant to Local Rule 29.1, *amici* certify that no counsel for a party authored this brief in whole or in part and no counsel or party, other than the City of New York, made a monetary contribution to fund the preparation or submission of the brief.

sex couples from recognition for purposes of more than 1000 federal statutes and programs whose administration turns in part on individuals' marital status.²

The City's residents and employees come from all fifty states and from countries around the world and are diverse in a myriad of ways, including race, color, creed, age, national origin, gender, sexual orientation, disability, marital status, and partnership status. The City embraces this diversity with strong anti-discrimination laws and policies promoting the equal treatment of its residents and employees.

Census 2010 found that there were nearly 49,000 same-sex couples in New York state and 10,000 of them are legally married.³ Conservatively, it has been estimated that more than 8,000 same-sex couples have legally married in New York State in the past year.⁴ Approximately 55% of New York's same-sex couples

² See U.S. Gen. Accounting Office, Report No. GAO-04-353R, Defense of Marriage Act: Update to Prior Report 1 (2004), <http://www.gao.gov/new.items/d04353r.pdf> (GAO Report) (identifying 1138 federal laws that are contingent on marital status or in which marital status is a factor).

³ The Williams Institute, UCLA School of Law, New York Census Snapshot: 2010, <http://williamsinstitute.law.ucla.edu/census-snapshots/new-york/>.

⁴ See Joseph Spector, A Year Later, New York Reflects on Same-Sex Marriage Law, USA Today, (June 24, 2012) <http://www.usatoday.com/news/nation/story/2012-06-24/new-york-same-sex-marriage/55783432/1>; Sean Dobbin, New York's Same-Sex Marriage Law Celebrates First Anniversary, Democrat and Chron. (June 24, 2012),

live in New York City.⁵ The City of New York has enacted laws and has issued policy directives in an effort to protect these same-sex couples from discrimination. DOMA, however, creates a substantial impediment to the City's efforts in this regard.

The City of New York has a particular interest in the outcome of this case because DOMA deprives married same-sex couples living in New York City of equal recognition of their lawful marriages. This forces the City to be the unwilling agent of federally-required disparate treatment of legally married City employees, thus undermining the City's marriage recognition and anti-discrimination policies. The City's interests are aligned with those of the plaintiff-appellee in establishing that, by depriving legally married same-sex couples of many substantial benefits available to married opposite-sex couples, DOMA violates the United States Constitution's guarantee of equal protection of the laws.

STATEMENT OF FACTS

The City adopts and incorporates by reference the Counterstatement of Facts set forth in the Brief of Plaintiff-Appellee.

http://www.democratandchronicle.com/article/20120624/NEWS01/306240001?nclick_check=1.

⁵ The Williams Institute, UCLA School of Law, New York Census Snapshot: 2010, <http://williamsinstitute.law.ucla.edu/census-snapshots/new-york/> at page 6.

ARGUMENT

SECTION 3 OF DOMA VIOLATES EQUAL PROTECTION, SUBVERTS THE CITY'S LONGSTANDING EFFORTS TO ACCORD EQUAL TREATMENT TO SAME-SEX COUPLES, AND FORCES THE CITY OF NEW YORK TO UNLAWFULLY DISCRIMINATE BETWEEN ITS LEGALLY-MARRIED EMPLOYEES.

It is undisputed that Section 3 of DOMA denies to legally married same-sex couples significant federal benefits that are available to married opposite-sex couples.⁶ Besides impacting the payment of federal estate taxes, DOMA also affects, among other things, the filing of joint tax returns,⁷ pension benefits, access to health insurance, and social security benefits. See Massachusetts v. U.S. Dep't. of Health & Human Servs., 682 F.3d 1 (1st Cir. 2012), Golinski v. U.S. Office of Personnel Management, 824 F.Supp.2d 968 (N.D. Cal. 2012), Pedersen v. Office of Personnel Management, 2012 U.S. Dist. LEXIS 106713 (D. Conn. July 31, 2012). The President has instructed Executive agencies to continue to comply with Section

⁶ See Note 2, supra.

⁷ Same-sex married couples must file New York personal income tax returns as married, even though their marital status is not recognized for federal tax purposes. This means they must file their New York income tax returns using a married filing status (e.g., married filing jointly, married filing separately), even though they may have used a filing status of single or head of household on their federal returns. In addition, to compute their New York tax, they must recompute their federal income tax (e.g., their federal income, deductions, and credits) as if they were married for federal purposes.

3 of DOMA, "unless and until Congress repeals Section 3 or the judicial branch renders a definitive verdict against the law's constitutionality."⁸ As a result, the federal government continues to deny federal benefits to tens of thousands of same-sex married couples.⁹

New York is the largest state in the nation that currently authorizes civil marriage between same-sex couples. In the first year of marriage equality in New York, it has been estimated that over 10,000 same-sex couples have married in New York State. Indeed, reports maintained by the New York State Department of Health indicated that between July 24, 2011 (when New York's marriage statute became effective) and July 23, 2012, 3,468 couples self-identified as same-sex on their marriage license applications in New York State (excluding New York County). Reports maintained by New York City's Department of Information Technology and Telecommunications indicate that between July 24, 2011 and July 16, 2012, 7,184 couples self-identified as same-sex on their marriage license applications in

⁸ Letter from Eric H. Holder Jr., Attorney General, to John A. Boehner, Speaker, U.S. House of Representatives (Feb. 23, 2011), <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>.

⁹ As of 2010, an estimated 50,000 same-sex couples have legally married. M.V. Lee Badgett and Jody L. Herman, *Patterns of Relationship Recognition by Same-Sex Couples in the United States*, pages 1, 5-6 (Williams Institute, Nov. 2011), <http://williamsinstitute.law.ucla.edu/headlines/latest-data-married-registered-same-sex-couples>.

New York City. In New York City alone, the number of such marriages represents more than 9% of the total number of marriages performed (75,129). But even the Statewide total of 10,652 same-sex couples who have married in New York likely underreports the actual number since New York does not require couples to report their sex on their application in order to obtain a marriage license and more than 10% do not so report.

As an increasing number of New York City residents enter into same-sex marriages, the adverse impact of Section 3 of DOMA affects an expanding population of New York City residents in same-sex marriages who, like Edith Windsor, are being unconstitutionally deprived of federal recognition of their legal marriages.

POINT I

THE DISPARATE TREATMENT OF LEGALLY MARRIED COUPLES REQUIRED BY DOMA UNDERMINES THE CITY'S NON-DISCRIMINATION LAWS.

Prior to the enactment of DOMA in 1996, the federal government uniformly respected any marriage that was lawfully recognized under state law. Pursuant to Section 3 of DOMA, however, the federal non-recognition of marriage for same-sex couples has created two tiers of legally-married couples. Historically, the City of New York has enacted laws, issued policy directives, and created "workarounds" in employee

benefits (employer-created benefit structures attempting to eliminate discrimination in employee benefits) in an effort to mitigate or eliminate the effects of the unavailability of marriage for same-sex couples. Even though same-sex marriage is now legal in several jurisdictions including New York, and thus married same-sex couples enjoy greater protections and benefits under State law, the existence of DOMA subverts the City's substantial efforts to eliminate obstacles to full legal recognition for its residents who have lawfully entered into committed same-sex relationships.

The City's policy of recognizing the rights of same-sex partners who have entered into lawful marriages is part of the City's commitment to prohibiting discrimination based on sexual orientation and to recognizing the rights of same-sex partners. Pursuant to Local Law No. 2 of 1986 (the "Gay Rights Law"), the City Council amended the City's Human Rights Law, New York City Administrative Code §§ 8-101, et seq., to prohibit discrimination based on sexual orientation. Mayors Koch and Dinkins adopted orders conferring benefits on domestic partners, which were ratified by Mayors Giuliani and Bloomberg.¹⁰ In

¹⁰ Executive Order No. 123 (August 7, 1989), signed by Mayor Koch; Executive Orders Nos. 48 & 49 (January 7, 1993), signed by Mayor Dinkins; Executive Order No. 72 (October 6, 2005), signed by Mayor Bloomberg.

addition, the City has permitted its employees to obtain health coverage for their domestic partners since 1994.

In 1998, pursuant to Local Law No. 27 of 1998, the City codified a domestic partner registration program and amended the Charter and Administrative Code to provide equal treatment in a number of areas for domestic partners registered pursuant to the City's program. In 2002, the City enacted Local Law No. 24 to extend the rights and benefits provided to domestic partners registered in the City to parties to lawful same-sex marriages and civil unions, as well as to domestic partners registered in other jurisdictions. In the "Declaration of legislative intent and findings" accompanying Local Law No. 24 of 2002, the City Council explicitly recognized that same-sex couples have faced many obstacles to full legal recognition of their relationships and that the Federal Government, as well as many other states, have passed laws expressly prohibiting the recognition of same-sex marriages.¹¹ In response, the Council amended the City's Administrative Code to ensure that same-sex couples who have lawfully married in other jurisdictions can, at least, enjoy all rights and benefits currently available to domestic partners registered in New York City.¹²

¹¹ See Local Law No. 24 of 2002, Section 1.

¹² New York City Administrative Code §§ 3-240, 3-245.

The City also voluntarily extended certain employment benefits to same-sex spouses. The City's Guidelines on the Family and Medical Leave Act of 1993 (FMLA) extended benefits equivalent to FMLA benefits to eligible employees who seek to take leave to care for a "spouse", which includes "a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides", if such person has a serious health condition.¹³ Likewise, the City extended the protections offered by the Federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to same-sex spouses, allowing them the opportunity to continue benefit fund coverage in certain instances when the coverage would otherwise terminate.¹⁴ Thus, even though the federal government does not recognize a same-sex spouse as a spouse for purposes of FMLA and COBRA, the City extended protections equivalent to those offered under these federal programs to an eligible employee's different-sex spouse to an eligible employee's same-sex spouse as well.

¹³ Guidelines on the Family And Medical Leave Act, Personnel Services Bulletin 440-8R (April 17, 2000), http://www.nyc.gov/html/dcas/html/resources/440_8r.shtml.

¹⁴ City of New York Office of Labor Relations, Health Benefits Program, Notice of Rights, When Your Health Benefits Terminate, <http://nyc.gov/html/olr/downloads/pdf/healthb/cobra.pdf> at pages 2-3.

In addition, in 2004, the City's five pension systems adopted resolutions recognizing the same-sex marriages of members lawfully entered into in other jurisdictions "for the purpose of determining all the rights, responsibilities and benefits afforded to the 'spouse,' 'surviving spouse,' 'widow' or 'widower' of a member."¹⁵ Because some benefits in the New York City retirement plans, including accidental death benefits, are payable only to a surviving "spouse" or to a spouse, child or parent, but not to any other person and some rights may only be exercised by a "spouse" or "widow/widower," including the right to take an elective share of the estate of a deceased member, same-sex spouses were previously excluded from such benefits.¹⁶

The New York courts have similarly recognized the marriages of same-sex couples whose marriages were solemnized under the laws of other States or nations as valid marriages under New York Law. Every New York appellate court to have

¹⁵ New York City Employees' Retirement System Cal. No. R-38 (adopted December 9, 2004); New York City Police Pension Fund resolution (signed February 9, 2005); Board of Education Retirement System resolution (approved December 3, 2004); 2004-121604, Teachers' Retirement System resolution (adopted December 16, 2004); Fire Department Pension Fund resolution (adopted December 22, 2004).

¹⁶ See, e.g., New York City Administrative Code §§ 13-149 (NYCERS), 13-244 (Police Pension Fund) (accidental death benefits); New York Estates, Powers and Trusts Law § 5-1.1-A (right to take elective share of spouse's estate).

addressed the issue has recognized marriages of same sex couples validly performed in another state or country. See Matter of Ranftle, 81 A.D.3d 566 (1st Dept. 2011) (recognizing same-sex marriage performed in Canada for probate purposes); Lewis v. State Dept. of Civil Serv., 60 A.D.3d 216 (3d Dept. 2009), aff'd on other grounds sub nom. Godfrey v. Spano, 13 N.Y.3d 358 (2009) (recognizing same-sex marriages valid in jurisdiction where solemnized for purposes of state health insurance program); Martinez v. County of Monroe, 50 A.D.3d 189 (4th Dept. 2008) (recognizing same-sex marriage performed in Canada for purposes of spousal health care benefits).

Ultimately, the New York State Legislature legalized marriage between same-sex couples in New York by the passage of New York State's Marriage Equality Act, which was signed into law by Governor Andrew Cuomo on June 24, 2011.¹⁷ The Marriage Equality Act was intended to abolish all legal distinctions between same-sex and different-sex marriages.¹⁸ The Legislative Intent articulated in the Marriage Equality Act is fully

¹⁷ 2011 New York Session Laws Ch. 95 (McKinney).

¹⁸ See New York Domestic Relations Law § 10-a(2) ("Marriage Equality Act") ("No government treatment or legal status, effect, right, benefit, privilege, protection or responsibility relating to marriage, whether deriving from statute, administrative or court rule, public policy, common law or any other source of law, shall differ based on the parties to the marriage being or having been of the same sex rather than a different sex.").

consistent with the City's endorsement of equal treatment for same-sex couples:

Marriage is a fundamental human right. Same-sex couples should have the same access as others to the protections, responsibilities, rights, obligations, and benefits of civil marriage. Stable family relationships help build a strong society. For the welfare of the community and in fairness to all New Yorkers, this act formally recognizes otherwise-valid marriages without regard to whether the parties are of the same or different sex. It is the intent of the legislature that the marriages of same-sex and different-sex couples be treated equally in all respects under the law.

DOMA is the last remaining obstacle to achieving legal equality between the City's married couples. Solely because of DOMA, Edith Windsor was required to pay more than \$363,000 in federal estate tax on her legal spouse's estate. If Ms. Windsor's spouse had been a man, the marital exemption provided by federal law would have applied and she would not have owed any federal estate taxes at all.¹⁹

¹⁹ See 26 U.S.C. § 2056(a).

POINT II

DOMA FORCES THE CITY TO BE THE UNWILLING AGENT OF FEDERALLY- REQUIRED DISPARATE TREATMENT OF LEGALLY-MARRIED EMPLOYEES.

The City of New York administers health plans and welfare funds for its employees.²⁰ DOMA imposes on the City of New York the burden of compliance and the costs associated with the discriminatory tax treatment of spousal health care and welfare fund benefits required by DOMA and forces the City to be the face of DOMA's discrimination. As an employer, the City must identify the gender of the spouses of its lawfully-married employees and then single out those employees with a same-sex spouse for the discriminatory treatment mandated by DOMA. DOMA requires the City to treat one married employee less favorably than another even though each is as lawfully married as the other. DOMA requires the City to do this notwithstanding the fact that the City's own laws and policies prohibit workplace

²⁰ The City of New York, in addition to paying salaries and traditional fringe benefits for municipal employees, makes annual payments to municipal union welfare funds. These funds are created by individual unions to provide additional benefits to their members (both active and retired) - typically prescription drugs, dental care, optical services and other care over and above what is provided by the City's health insurance coverage.

discrimination on the basis of sexual orientation and demand equal treatment of all married individuals.²¹

Recognizing the benefits created by workplace equality for recruitment, retention, and morale, the City offers the same health and welfare fund benefits for employees' same-sex spouses as they do for employees' different-sex spouses.²² However, though the benefits received by opposite-sex spouses are tax exempt, the federal government taxes the benefits received by same-sex spouses. Under the Internal Revenue Code, the fair market value of health care benefits for a qualified employee's spouse who is not otherwise a dependent of the qualified employee is not subject to federal income tax, but DOMA forces both the employer and employee to treat that value as taxable income when the qualified employee's spouse is a same-sex spouse.²³

²¹ See New York Executive Law § 296(a) (prohibiting workplace discrimination based on sexual orientation); New York City Administrative Code § 8-107 (same).

²² See Circular Letter No. 27 (2008), http://www.dfs.ny.gov/insurance/circltr/2008/cl08_27.htm, stating that "[W]here an employer offers group health insurance to employees and their spouses, the same-sex spouse of a New York employee who enters into a marriage legally performed outside the State is entitled to health insurance coverage to the same extent as any opposite-sex spouse."

²³ See e.g., 26 U.S.C. §§ 105, 106(a), 152; Treas. Reg. § 1.106-1 (excluding from gross income "contributions which his employer makes to an accident or health plan for compensation to the employee for personal injuries or sickness incurred by him,

For City employees, the taxable value of the City's contribution for health benefits provided to a same-sex spouse has several components. For all employees receiving health care benefits for a same-sex spouse, the City must determine the fair market value of the basic health care coverage for the employee's same-sex spouse and impute the value of that plan as income to the employee. Additionally, for those employees enrolled in a plan that requires payroll deductions to be taken on a pre-tax basis, the City must calculate the difference between the payroll deductions for a family contract and the payroll deductions for an individual contract, and add that amount to the taxable income of the employee.²⁴ Moreover, the fair market value of union welfare fund coverage for an employee's same-sex spouse is taxable income imputed to the employee as well. Finally, while the City offers its employees the opportunity to use flexible spending accounts to pay for

[or] his spouse . . ."); I.R.S. Info. Ltr. 2011-0066, 2011 WL 4626122 (Jul. 27, 2011); I.R.S. Priv. Ltr. Rul. 200524016, 2005 PLR LEXIS 278 at *23-24 (Mar. 17, 2005); I.R.S. Priv. Ltr. Rul. 200339001, 2003 PLR LEXIS 879 at *9-11 (Jun. 13, 2003); I.R.S. Priv. Ltr. Rul. 9850011, 1998 PLR LEXIS 1650 at *10-12 (Sep. 10, 1998); I.R.S. Priv. Ltr. Rul. 9717018, 1997 PLR LEXIS 85 at *11-12 (Jan. 22, 1997).

²⁴ See City of New York Office of Labor Relations, Employee Benefits Program, New York State Marriage Equality Act, Frequently Asked Questions, Health Benefits for your Spouse, http://www.nyc.gov/html/olr/downloads/pdf/healthb/marriage_equality_act.pdf, at Q. 5 (explaining tax consequences of enrolling same-sex spouse in Medical Spending Conversion Program).

qualified medical expenses with pre-tax income pursuant to Internal Revenue Code § 125, federal law does not permit the amounts deposited into these accounts to be used for the medical expenses of an employee's same-sex spouse. It does, however, allow these amounts to be used to pay for the qualified medical expenses of an opposite-sex spouse.

Plainly, the economic impact of this discriminatory tax treatment on employees receiving health care benefits for their same-sex spouse is substantial. In 2011, the additional imputed income for a full year of benefits for a City employee's same-sex spouse ranged from \$5,148.39 to \$5,795.92. For employees on plans that require employee contributions, the portion of the contribution attributable to the same-sex spouse - which, because of Section 3 of DOMA, cannot be paid from pre-tax income - can be as much as \$16,466.84 for the most expensive plan.²⁵ In addition, FICA taxes (both the employee's and employer's share) must be paid on these imputed amounts. Thus, the City is responsible for paying the employer's share of the FICA taxes on the income imputed to an employee for benefits to

²⁵ The New York City Office of Labor Relations reports that, for 2011, the additional imputed income for a same-sex spouse for the full year for GHI CBP Basic was \$5,148.39, for all other plans the base amount (without any rider) was \$5,795.92. For the other health plans offered by the City, the employee contribution varies widely and can be as high as an additional \$16,466.84 for Aetna QPOS.

the employee's same-sex spouse. While the City voluntarily pays the employee's share of the FICA taxes on the imputed income in order to help lessen the additional discriminatory financial burden DOMA places on the employee, the amount of FICA taxes paid by the City is taxable income to the employee.²⁶

A 2007 national study found that an employee with a same-sex spouse pays \$1,069 more in taxes per year than an employee receiving the same health benefits for a different-sex spouse.²⁷ This results in these employees paying 11% more in taxes than they would pay if the federal government recognized their lawful marriages.²⁸ In New York City, where residents pay not only federal and state taxes but City taxes as well, this increased tax burden is particularly onerous.²⁹

²⁶ See City of New York Office of Labor Relations, Employee Benefits Program, New York State Marriage Equality Act, Frequently Asked Questions, Health Benefits for your Spouse, http://www.nyc.gov/html/olr/downloads/pdf/healthb/marriage_equality_act.pdf, at Q.8 (explaining that City pays Social Security and Medicare taxes on the value of a same-sex spouse's health benefits and employee's taxable wage amounts are increased accordingly).

²⁷ M.V. Lee Badgett, Unequal Taxation of Domestic Partner Benefits (2007), http://www.americanprogress.org/issues/2007/12/domestic_partners.html.

²⁸ Id. at 7.

²⁹ See New York Tax Law § 1301 (authorizing certain cities to impose taxes), New York City Administrative Code § 11-1701 (establishing New York City income tax).

The fact that DOMA requires the City, as an employer, to impute the value of an employee's same-sex spouse's healthcare benefits to its employees' detriment for federal tax purposes imposes both an administrative and financial burden on the City. Administratively, the City must intrude on the privacy of its married employees who receive spousal healthcare benefits by investigating the gender of their spouses, must determine the fair market value of the healthcare benefits provided by the particular plan in which each such employee is enrolled, must determine the employee's share of FICA taxes that the City pays on the imputed income for the value of these benefits, and then must impute the value of the healthcare benefits and the amount of the FICA taxes paid on the employee's behalf to the employee for federal tax purposes but not for the purpose of state taxes. Financially, in addition to the human resources costs associated with implementing this requirement, the increased income of employees with same-sex spouses on their health plans increases the City's share of federal employment taxes (FICA-HI taxes) as well as the City's Metropolitan Commuter Transportation Mobility Tax (MCTMT) payment, which is calculated based on the size of the City's payroll.³⁰

³⁰ The metropolitan commuter transportation mobility tax (MCTMT) is a tax imposed on certain employers and self-employed individuals engaging in business within the metropolitan

As a result of DOMA, thousands of legally married same-sex couples in New York City are being subjected to disparate treatment because their legal marriages are not recognized under federal law. They are disadvantaged by DOMA in a wide variety of ways, including in federal income tax treatment, federal employee and retiree workplace benefits, and Social Security benefits. Every day, Section 3 of DOMA adversely affects the lives of thousands of same-sex married couples in New York City. Section 3 of DOMA violates the equal protection guarantee of the United States Constitution and should be struck down.

commuter transportation district (MCTD). New York Tax Law § 800.

CONCLUSION

For all of the reasons set forth above, the City respectfully requests that this Court affirm the judgment of the District Court.

Dated: New York, New York
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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 5,419 words, including the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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