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Written Testimony Submitted to the
Committee on the Judiciary
U.S. Senate

On S. 598 (Respect for Marriage Act)

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By
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We thank Chairman Leahy and the Committee for this opportunity to provide testimony on the Respect for Marriage Act, S.598. On behalf of the National Gay and Lesbian Task Force Action Fund — the oldest national organization advocating for the rights of lesbian, gay, bisexual, and transgender (LGBT) people — we urge you to repeal section 3 of the Defense of Marriage Act (DOMA) by passing the Respect for Marriage Act.

DOMA is one of the most discriminatory and farthest-reaching laws ever to emerge against our community. The law is grossly unjust and places significant harm on far too many families in our country. It is shocking that in 2011, legally married couples in the United States are being singled out and selectively denied fundamental rights by their own federal government. Too many have been hurt for too long because of DOMA, and its repeal is long overdue.

DOMA Causes Financial Hardships and Dignitary Harms

Same-sex couples whose relationships are legally recognized by their states are denied the 1,138 federal benefits, rights, and privileges available to married opposite-sex couples. The denial of these benefits, rights, and privileges harms our families' economic security and dignity.

For example, the Family Medical Leave Act (FMLA) requires employers to allow married couples to take unpaid leave to care for their sick spouses. Because of DOMA, same-sex married couples are not eligible to take FMLA leave to care for each other when they are sick.

Because of DOMA, the IRS must interpret the tax code in a way that denies federal tax benefits to same-sex couples that other married couples receive. Same-sex couples cannot file joint tax returns, which would accurately and honestly reflect their relationships and families. Further, when one member of an opposite-sex married couple provides benefits to the other — such as adding him or her to an employer's health insurance plan — those benefits are excluded from the taxpayer's gross income (or deducted from taxable income). Because of DOMA, however, same-sex spouses do not qualify for that exclusion. Ineligibility for federal tax benefits takes on a further dimension of harm at the end of life. Because of DOMA, when one member of a same-sex couple dies, any assets left to his or her spouse are subject to a federal estate tax. Other married couples' bequests are not taxed under the federal estate laws.

Because of DOMA, same-sex couples are excluded from the vast array of Social Security benefits that flow from marriage. These benefits include the upward adjustment in benefits a surviving spouse receives when a spouse with more generous benefits dies, as well as mothers' and fathers' Social Security benefits. Children of a same-sex couple may also be affected: if they live in a state that does not allow second-parent adoption and a nonbiological parent dies, they cannot receive surviving child benefits. These benefits are crucial to individuals', couples', and families' economic security. Like all working Americans, LGBT people have paid for these benefits throughout their working lives. But because of DOMA, same-sex couples — and, often, their children — cannot receive these benefits.

Federal employees experience further significant harms as a result of DOMA. The following is a message from Ralph Cherry, a retired federal employee:

I am a sixty-five-year-old federal retiree in a same-sex domestic partnership of thirty-two years. Because of DOMA, my partner is not eligible for any survivor benefits from me, and I cannot add him to my health insurance. In order to ensure that he is looked after if I should die first, I have been forced by this situation to take out a life insurance policy. As to health benefits: he has a chronic health issue which we must cover in the individual insurance market at exorbitant rates; in fact, as I write, he is in severe pain which we cannot treat because on the individual market he cannot get coverage for the condition for a year. Members of Congress: I am on the exact same Federal Employees Health Benefits Plan as you; imagine yourselves in this ridiculous position to know my frustration. The federal government is shooting itself in the foot with this outdated law, discouraging talented potential civil servants from applying for employment because they happen to be gay and can get humane treatment for their family members in the private sector. For heaven's sake, drag yourselves into the twenty-first century.

The harmful effects of DOMA compound the other obstacles to economic security that LGBT couples and families face. LGBT people are generally poorer than the general population, and poverty rates are especially high for LGBT couples within communities of color. Moreover, children of gay and lesbian partners are twice as likely to be poor as are children of married same-sex couples, a pattern that is consistent across race and ethnicity.

DOMA Harms People Across the United States

Although national data are not yet available from the 2010 census, the 2000 census counted 594,000 same-sex unmarried-partner households in the United States. Analysis of the data by the Williams Institute reveals that more than 250,000 children in the United States are being raised by same-sex parents.

Six states and the District of Columbia have full marriage equality, and nine more states have broad relationship recognition laws. Because of DOMA, however, same-sex couples whose relationships are legally recognized in their states are nevertheless denied all the federal benefits, rights, and privileges available to married opposite-sex couples.

Most Americans Support the Provision of Benefits to Same-Sex Married Couples

A 2008 survey by Newsweek/Princeton Research reported that sizeable majorities of Americans were in favor of same-sex couples' having inheritance rights (74%), Social Security benefits (67%), health insurance and other employment benefits (73%), and hospital visitation rights (86%). A 2010 survey by the Human Rights Campaign revealed that a majority of Americans supported the repeal of DOMA. This year, polls by Gallup, CNN, and ABC News/Washington Post all have shown that majorities of Americans favor same-sex marriage.

Conclusion

The stories of hardship under this law are heartbreaking. With the passage of the Respect for Marriage Act, Congress would begin to close this ugly chapter in our nation's history. It would

end an egregious injustice against thousands of loving, committed couples who simply want the protections, rights, and responsibilities already afforded other married couples.

We thank the many Senators who support the Respect for Marriage Act and full, swift repeal of DOMA.

We at the National Gay and Lesbian Task Force Action Fund, along with people all across the country — from every town and every background — recognize that our entire country benefits when everyone is allowed to contribute their talents and skills, free from discrimination. That's why we urge the passage of the Respect for Marriage Act.

Thank you.