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**US SUPREME COURT FINDS THE DEFENSE
OF MARRIAGE ACT UNCONSTITUTIONAL**

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In a 5-4 opinion issued today, the Supreme Court of the United States found section 3 of the federal Defense of Marriage Act (“DOMA”) violative of the Fifth Amendment of the US Constitution. This opinion has far reaching implications in several areas of the law, including trust and estate planning, tax, and healthcare.

The case arose within an estate tax context. Upon the death of one partner of the same-sex couple, whose Canadian marriage was legal in New York, the surviving partner was required to pay federal estate tax. Under DOMA, the federal government did not recognize their marriage because of the definition of “marriage” and “spouse” under section 3 of DOMA included only a legal union between one man and one woman. 1 U.S.C. §7. Thus, the marital deduction that is available to heterosexual married couples to avoid a federal tax when assets pass to a surviving spouse was not available.

Writing for the majority, Justice Kennedy noted that the definition and regulation of marriage had long been controlled by state law. The Court found that DOMA works to injure a class that the states recognizing same-sex marriage seek to protect.

The avowed purpose and practical effect of the law here in question are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States.

Slip. Op. at 21, 570 U.S. ____ (2013).

The Court recognized that a federal definition of marriage excluding same-sex couples has effects more far reaching than in the estate tax realm. “Among the over 1,000 statutes and numerous federal regulations that DOMA controls are laws pertaining to Social Security, housing, taxes, criminal sanctions, copyright, and veterans’ benefits.” *Id.* at 22. Ultimately, the Court found that Section 3 of DOMA was unconstitutional because it denied the liberty protected by the Due Process Clause of the Fifth Amendment.

New Jersey law does not recognize same-sex marriages, but does allow same-sex couples to enter into a civil union.

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