WISCONSIN MARRIAGE

WI. STATS. 765.001. Title, intent and construction of chs. 765 to 768.

(1) TITLE.

Chapters 765 to 768 may be cited as "The Family Code".

(2) INTENT.

It is the intent of chs. 765 to 768 to promote the stability and best interests of marriage and the family. It is the intent of the legislature to recognize the valuable contributions of both spouses during the marriage and at termination of the marriage by dissolution or death. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned. Under the laws of this state, marriage is a legal relationship between 2 equal persons, a husband and wife, who owe to each other mutual responsibility and support. Each spouse has an equal obligation in accordance with his or her ability to contribute money or services or both which are necessary for the adequate support and maintenance of his or her minor children and of the other spouse. No spouse may be presumed primarily liable for support expenses under this subsection.

(3) CONSTRUCTION.

Chapters 765 to 768 shall be liberally construed to effect the objectives of sub. (2)

WI. STATS. 765.01. A civil contract.

Marriage, so far as its validity at law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of husband and wife.
DOMA's operation in practice confirms this purpose. When New York adopted a law to permit same-sex marriage, it sought to eliminate inequality; but DOMA frustrates that objective through a system-wide enactment with no identified connection to any particular area of federal law. DOMA writes inequality into the entire United States Code. The particular case at hand concerns the estate tax, but DOMA is more than a simple determination of what should or should not be allowed as an estate tax refund. 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.

DOMA's principal effect is to identify a subset of state-sanctioned marriages and make them unequal. The principal purpose is to impose inequality, not for other reasons like governmental efficiency. Responsibilities, as well as rights, enhance the dignity and integrity of the person. And DOMA contrives to deprive some couples married under the laws of their State, but not other couples, of both rights and responsibilities. By creating two contradictory marriage regimes within the same State, DOMA forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of federal law, thus diminishing the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect. By this dynamic DOMA undermines both the public and private significance of state-sanctioned same-sex marriages; for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition. This places same-sex couples in an unstable position of being in a second-tier marriage. The differentiation deems the couple, whose moral and sexual choices the Constitution protects, see Lawrence, 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508, 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.


For certain married couples, DOMA's unequal effects are even more serious. The federal penal code makes it a crime to "assaul[t], kidna[p], or murde[r] . . . a member of the immediate
family" of "a United States official, a United States judge, [or] a Federal law enforcement officer," 18 U.S.C. §115(a)(1)(A), with the intent to influence or retaliate against that official, §115(a)(1). Although a "spouse" qualifies as a member of the officer's "immediate family," §115(c)(2), DOMA makes this protection inapplicable to same-sex spouses.


DOMA divests married same-sex couples of the duties and responsibilities that are an essential part of married life and that they in most cases would be honored to accept were DOMA not in force. For instance, because it is expected that spouses will support each other as they pursue educational opportunities, federal law takes into consideration a spouse's income in calculating a student's federal financial aid eligibility. See 20 U.S.C. §1087nn(b). Same-sex married couples are exempt from this requirement. The same is true with respect to federal ethics rules. Federal executive and agency officials are prohibited from "participat[ing] personally and substantially" in matters as to which they or their spouses have a financial interest. 18 U.S.C. §208(a). A similar statute prohibits Senators, Senate employees, and their spouses from accepting high-value gifts from certain sources, see 2 U.S.C. §31-2(a)(1), and another mandates detailed financial disclosures by numerous high-ranking officials and their spouses. See 5 U.S.C. App. §§102(a), (e). Under DOMA, however, these Government-integrity rules do not apply to same-sex spouses.


Court of Appeals of Wisconsin
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Opinion by: HIGGINBOTHAM

Wendy M. and Helen (Liz) K. had been in a close, committed relationship for seven years before they decided to adopt two children from Guatemala, Olivia and Sofia. Wendy and Liz could not file a joint petition to adopt the children because they were unmarried, see Wis. Stat. § 48.82, and they could not marry because they are a same-sex couple. See Wis. Stat. § 765.001(2). It was decided that Liz would be the adoptive parent of both children because she had a good job as an attorney, and the children could be added to her employer's health insurance plan. For the next five years, Liz was the family's breadwinner, and Wendy stayed at home with the children.

Wendy ended her romantic relationship with Liz in 2008. Seeking some form of legal recognition of her rights to the children, Wendy filed petitions for guardianship. At first, Liz consented to the petitions. But, following an incident that occurred while the children were under Wendy's care, Liz withdrew her consent to the guardianships. Nonetheless, it is undisputed that Liz