

***\*Heads Up!!: All documents have line numbers in their original form, yet upon copying and pasting they were all messed up. If this lesson is ever used the line numbers can be easily added individually.***

***Does the Defense of Marriage Act promote the health, safety, morals, and general welfare of the public?***



Created by:

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# Extended Controversial Issue Discussion Lesson Plan

**Lesson Title:** *Does the Defense of Marriage Act promote the health, safety, morals, and general welfare of the public?*

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**Appropriate for Grade Level:** 11-12

**US History Standard(s)/Applicable CCSS(s):**

**H4.[9-12].6** Analyze how major sources of tension or conflict influenced the current political climate in the United States, i.e., September 11th, Patriot Act, and security issues.

**RH. 1** Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

**RH. 4** Determine the meaning of words and phrases as they are used in a text, including analyzing how an author uses and refines the meaning of a key term over the course of a text.

**RH. 9** Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

**Discussion Questions:** Students will discuss the question: Does the Defense of Marriage Act promote the health, safety, morals and general welfare of the public? The questions used for discussion are included with the primary source readings.

**Unit Grabber:** There are 2 grabbers for this Unit. The **first** includes viewing twenty minutes of the film, *Milk*, where students will watch homosexual characters conducting their everyday lives and witness how they are treated by the police in San Francisco. The second clip will show the beliefs of the opposition towards homosexual rights. **Clip 1 takes place from 08.00 min to 18.00. Clip 2 happens at 34.00 min to 44.00.** The purpose is to give the students a visual context to the essential question. The **second** grabber is an activity called “walk the line”. The room will be divided in half, one side agree, the other disagree. Students will be posed twelve opinion based questions and will move from one side of the other based upon their opinion to the statement. Talking and questions will be restricted during this activity.

**Engagement Strategy:** *Structured Academic Controversy.*

1. Students will read the primary source documents, and answer the textual based questions in groups.

2. Place the students into groups of 4. Then have 2 of the students be on Team A and 2 of the students be on Team B.

Team A will argue that the DOMA does promote the health, safety, etc.

Team B will argue that the DOMA does not promote the health safety, etc.

*Teams will use the graphic organizer (Organizing Evidence) to collect data for their side.*

3. Team A will present their evidence to Team B. Team B will repeat arguments back to Team A, until Team A is satisfied with their responses. (10 minutes)

4. Team B will present their evidence to Team A. Team A will repeat arguments back to Team B, until Team B is satisfied with their responses. (10 minutes)

5. The team will reach a consensus. (10 minutes)

6. The team will write their group consensus on the *Coming to Consensus* box. The team will need to include a claim, evidence and a counterclaim for their response.

7. If there is time, groups may share their responses to the class.

### **Student Readings**

Whole Class

The "Police Power"

14<sup>th</sup> Amendment to the Constitution

Equal Protection Clause

Defense of Marriage Act

U.S. District Court District of Massachusetts Justice Tauro opinion July 8<sup>th</sup>, 2010

Team A (For DOMA)

2008 Republican platform

Rick Santorum Opinion

Charles Donovan Congressional Testimony for Heritage Foundation

Baker v. Vermont court case Chief Justice Amestoy opinion December 20, 1999

Team B (Against DOMA)

Baker v. Vermont, Chief Justice Amestoy opinion December 20, 1999

Northern California District Court, Justice White opinion February 22, 2012

U.S. District Court District of Massachusetts, Justice Tauro opinion July 8, 2010

**Total Time Needed:** Two weeks with four 100 minute periods and two 55 minute periods

<b>Time Frame</b> (e.g. 15 minutes)	<b>What is the teacher doing?</b>	<b>What are students doing?</b>
Day #1 <i>Milk Clips</i> (20 Min)	The teacher introduces the film clips and explains the purpose. The teacher tells students if they are unable to handle to content being shown they can chat with an administrator	The students are watching the clips getting a visual context of the individuals they will be talking about
Day #1 Walk the line (20 min)	The teacher has the student push the desks to the side of the room and instructs students to remain quite during the activity. The teacher projects the statements on the elmo.	The students read each statement and move to the “agree” or “disagree” side of the room based upon their opinion to the statement.
Day #1 The “Police Power” document analysis (60 min)	The teacher has the students read the document quietly on their own. Then the teacher reads the text out loud to the students. The teacher directs the students into assigned groups of four and has them answer the text based questions. The teacher will then lead a whole class discussion	The students are reading the documents on their own first and are then listening to the instructor read it aloud after. The students will work in groups answering the text specific questions to the document. The students will share their answers in a whole class discussion.
Day #2 14 <sup>th</sup> Amendment and Equal protection Clause text questions. (50 min)	The teacher will direct students to read the 14 <sup>th</sup> Amendment and the Equal Protection Clause. The teacher will monitor around the room as the students work in their groups.	The students will be analyzing the text based questions based upon the documents provided. The will then share their findings with the group next to them.
Day #3 Review the Police Power, and 14 <sup>th</sup> Amendment (20 min)	The teacher will hold small group discussions about the purpose of police power and the 14 <sup>th</sup> Amendment. After 10 minutes the instructor will transition into a whole class discussion.	The students will be reviewing their knowledge about the purpose of police power and the rights defined in the 14 <sup>th</sup> Amendment.
Day #3 DOMA text questions (40 min)	The teacher will have the students read the DOMA quietly and then read it to them aloud. The teacher will monitor the room as they answer the text dependent questions.	The students will read the DOMA silently and read and listen as the instructor reads it to them. In their groups they will answer the text based questions.
Day #3	The teacher will directs	Students are reading the background

Justice Tauro Opinion (DOMA historical background)	students to the document and explain the Q.C.Q reading strategy. After the reading and completion of the documents the teacher will have the students share their questions, comments, and quotes in their groups.	information and are writing down questions, comments, and quotes which stem from the reading. Upon completing they will explain and discuss those components together as a group and then a whole class.
Day #4 A & B Packets (100 minutes)	The teacher will divide the class in half and create a separation in the room. The instructor will give each side their unique packet to support their opinion to the question. The teacher will monitor the room as the students read, discuss, and answer the text dependent questions.	Staying within their assigned groups the students will read, discuss, and answer the text dependent questions to their particular side's opinion to the question.
Day #5 SAC preparation (50 min)	The teacher will direct students to begin building a defense for their sides opinion based upon the documents they have been provided. For each reason they support of do not support the essential question they should have evidence from the sources to back up their assertions.	Students will be arranged in their groups and using all the resources available will begin to finalize their defense to the question. They will be using the SAC handout to organize their assertions and support those assertions with evidence from the documents.
Day #6 ("operation blood bath") SAC preparation (20 min)	The teacher will have the students join their particular sides and give them 20 minutes to finalize their defense and ensure all are on the same page.	Students will be reviewing their documents and making sure the claims are matched with specific evidence from the texts.
Day #6 ("operation blood bath") SAC activity (60 min...ish)	The teacher will set up the SAC and keep track of time while following the SAC procedures. During the discussion the teacher should be monitoring the room making sure students are only using text based information to fuel the discussion and are not being disrespectful.	Students are following the SAC guidelines as administered by the teacher. Students should be attentive and respectful during the entire discussion and following the procedures on their SAC handout.
Day #6 ("operation blood bath")	The teacher will direct students to quietly respond to the essential question in a one	With all the evidence unearthed, and opinions out in the open; students will answer the question using the texts to

Written reflection	page written reflection.	support their opinion.
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Walk the Line statements:

- 1) I believe homosexuality is immoral.
- 2) Marriage between homosexual partners ruins the traditional institution of marriage.
- 3) Homosexuals should not be afraid of being openly gay in public.
- 4) Children of same sex couples are at a disadvantage when compared to heterosexual couples.
- 5) Homosexual couples do not legally deserve marriage benefits of heterosexual couples.
- 6) Homosexuals can love their partner as much as heterosexual partners do.
- 7) Homosexual marriage will break down the Christian traditions of our country.
- 8) Homosexuality is genetic and determined at birth.
- 9) The Federal and State governments should be allowed to deny same-sex marriage.
- 10) Children raised in same sex homes will grow up to be homosexual.
- 11) Homosexuals deserve to have their rights limited because of their sexual preferences.
- 12) Being supportive of homosexuality is good for our communities.

**Entire Class Readings:**

# What Is the “Police Power”?

Pennsylvania Legislator’s Municipal Deskbook, Third Edition (2006)

Pennsylvania General Assembly \* Local Government Commission Page 87

Any examination of governmental powers necessarily involves a discussion of the term “police power.” It is considered one of the most essential of governmental powers and is subject to the least limitations. Attempts to define the term have been somewhat elusive and have included the following:

± The power of government to promote the public health, morals, or safety, and the general well-being of the community.

± The inherent power of government to enact and enforce laws for the promotion of the general welfare.

± The inherent power by which the state regulates private rights in the public interest.

± A power of government that extends to all the great public needs.

Admittedly, these definitions are sweeping, but the following list of some examples of governmental use of the police power may assist in understanding the extent of its practical application:

± Protection of property

± Use of property in general (zoning)

± Building regulations

± Regulation of billboards, signs, and other structures or devices for advertising purposes

± Prevention of and protection against fire

± Keeping and use of animals

± Prohibition of nuisances in general

± Restriction of smoke and offensive or noxious odors

± Removal and disposition of garbage, refuse, and filth

± Removal of dead animals

± Regulation of occupations and employment

The Commonwealth delegates limited police power to municipalities, and a local government's police power may be said to be subject to its enabling legislation or home rule charter. The municipal codes authorize municipalities to exercise their police power not only pursuant to specific grants of authority, but also pursuant to a general welfare clause or a general grant of powers clause. The delegation of the police power to municipalities through a general welfare clause does not mean that municipalities have unlimited police power or even the same degree of police power as the Commonwealth.

### **What Is the "Police Power"?**

Clearly there are limits on a municipality's ability to use its police power to control the persons and property of citizens. The general rule is that the means employed in the exercise of the police power can be neither arbitrary nor oppressive, and there must be a reasonable and substantial relationship between the means employed and the end to be attained.<sup>1</sup> Moreover, the end to be attained must be a public one, specifically the public health, public safety, or public morals, or some other facet of the "general welfare." Also, the exercise of delegated police power by a municipality is limited to its municipal functions. Municipal corporations have been granted limited police power over matters of local concern and interest, but the scope of such power does not extend to subjects inherently in need of uniform treatment or to matters of general public interest that necessarily require exclusive state policy. A government's exercise of its police power is presumed to be constitutional, and anyone challenging an exercise of the police power has the burden of establishing that the use of the police power was arbitrary and unreasonable and unrelated to the public health, safety, morals, or general welfare. Courts will not scrutinize the wisdom of the policy that impelled the government's decision to exercise its police power and will not substitute their judgment as to whether the best means of achieving the desired result were used. Thus, although the exercise of police power often causes tensions between the government and its citizens, if a challenge is raised, a court should examine only whether the statute, ordinance, or regulation was promulgated for a legitimate "police power" purpose, and whether it is carried out in an unreasonable and arbitrary manner.

Police Power Questions:

1) In your own words define the word essential and describe how it relates to governmental powers. \_\_\_\_\_

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2) Look at lines 11-12, define and give examples of *Public Health, Morals, Safety, and general well-being of the community*. \_\_\_\_\_

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3) Based upon lines 24-44 how can the government use its police power? \_\_\_\_\_

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4) How can the enforcement of laws which promote the general welfare limit an individual's right? \_\_\_\_\_

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5) What is the role of the courts if a government's police power is challenged? \_\_\_\_\_

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## **Fourteenth Amendment of the United States Constitution:**

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **Equal protection clause: an overview [www.law.cornell.edu/wex/Equal\\_protection](http://www.law.cornell.edu/wex/Equal_protection)**

The Equal Protection Clause of the 14th amendment of the U.S. Constitution prohibits states from denying any person within its jurisdiction the equal protection of the laws. In other words, the laws of a state must treat an individual in the same manner as others in similar conditions and circumstances. A violation would occur, for example, if a state prohibited an individual from entering into an employment contract because he or she was a member of a particular race. The equal protection clause is not intended to provide "equality" among individuals or classes but only "equal application" of the laws. The result, therefore, of a law is not relevant so long as there is no discrimination in its application. By denying states the ability to discriminate, the equal protection clause of the Constitution is crucial to the protection of civil rights.

Generally, the question of whether the equal protection clause has been violated arises when a state grants a particular class of individuals the right to engage in an activity yet denies other individuals the same right. There is no clear rule for deciding when a classification is unconstitutional. The Supreme Court has dictated the application of different tests depending on the type of classification and its effect on fundamental rights. Traditionally, the Court finds a state classification constitutional if it has "a rational basis" to a "legitimate state purpose."

Fourteenth Amendment Q's:

1) Line three and four states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;" what is meant by **abridge, privileges** and **immunities**? \_\_\_\_\_

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2) According to lines 3-6 how does the 14<sup>th</sup> Amendment protect US citizens? \_\_\_\_\_

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3) Using line five give examples of life, liberty, and property. \_\_\_\_\_

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Equal Protection Clause:

1) Explain how the Equal Protection Clause further defines the Fourteenth Amendment: \_\_\_\_\_

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2) How can a state violate the Equal Protection Clause?: \_\_\_\_\_

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3) In regards to a state finding a classification constitutional, what is meant by "rational basis" and "legitimate state purpose"?: \_\_\_\_\_

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H.R.3396

*One Hundred Fourth Congress  
of the  
United States of America  
AT THE SECOND SESSION*

Begun and held at the City of Washington on Wednesday, the third day of January, one thousand nine hundred and ninety-six An Act

To define and protect the institution of marriage.

**SECTION 1. SHORT TITLE.**

This Act may be cited as the `Defense of Marriage Act'.

**SEC. 2. POWERS RESERVED TO THE STATES.**

(a) IN GENERAL- Chapter 115 of title 28, United States Code, is amended by adding after section 1738B the following:

**`Sec. 1738C. Certain acts, records, and proceedings and the effect thereof**

`No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.'.

**SEC. 3. DEFINITION OF MARRIAGE.**

(a) IN GENERAL- Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

**`Sec. 7. Definition of `marriage' and `spouse'**

`In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word `marriage' means only a legal union between one man and one woman as husband and wife, and the word `spouse' refers only to a person of the opposite sex who is a husband or a wife.'.

(b) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by inserting after the item relating to section 6 the following new item:

`7. Definition of `marriage' and `spouse'.'.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

Defense of Marriage Act Questions:

- 1) Looking at line 8 explain what the words **define** and **protect** mean. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 2) What is meant by the word Act on line 10? \_\_\_\_\_  
\_\_\_\_\_
- 3) Read lines 15-19 and explain what it means in your own words. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 4) According to lines 24-30 how does the U.S. plan to define and protect the institution of marriage? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

July 8, 2010

Joseph L. Tauro

A. The Defense of Marriage Act

In 1996, Congress enacted, and President Clinton signed into law, the Defense of Marriage Act (“DOMA”).<sup>5</sup> At issue in this case is Section 3 of DOMA, which defines the terms “marriage” and “spouse,” for purposes of federal law, to include only the union of one man and one woman. In particular, it provides that: In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or wife.<sup>6</sup> In large part, the enactment of DOMA can be understood as a direct legislative response to *Baehr v. Lewin*,<sup>7</sup> a 1993 decision issued by the Hawaii Supreme Court, which indicated that same-sex couples might be entitled to marry under the state’s constitution.<sup>8</sup> That decision raised the possibility, for the first time, that same-sex couples could begin to obtain state-sanctioned marriage licenses.<sup>9</sup>

The House Judiciary Committee’s Report on DOMA (the “House Report”) referenced the *Baehr* decision as the beginning of an “orchestrated legal assault being waged against traditional heterosexual marriage,” and expressed concern that this development “threaten[ed] to have very real consequences . . . on federal law.”<sup>10</sup> Specifically, the Report warned that “a redefinition of marriage in Hawaii to include homosexual couples could make such couples eligible for a whole range of federal rights and benefits.”<sup>11</sup> And so, in response to the Hawaii Supreme Court’s decision, Congress sought a means to both “preserve[] each State’s ability to decide” what should constitute a marriage under its own laws and to “lay[] down clear rules” regarding what constitutes a marriage for purposes of federal law.<sup>12</sup>

The House Report further justified the enactment of DOMA as a means to “encourag[e] responsible procreation and child-rearing,” conserve scarce resources,<sup>19</sup> and reflect Congress’ “moral disapproval of homosexuality, and a moral conviction that heterosexuality better comports with traditional (especially Judeo-Christian) morality.”<sup>20</sup> In one unambiguous expression of these objectives, Representative Henry Hyde, then-Chairman of the House Judiciary Committee, stated that “[m]ost people do not approve of homosexual conduct . . . and they express their disapprobation through the law.”<sup>21</sup> In the floor debate, members of Congress repeatedly voiced their disapproval of homosexuality, calling it “immoral,” “depraved,” “unnatural,” “based on perversion” and “an attack upon God’s principles.”<sup>22</sup> They argued that marriage by gays and lesbians would “demean” and “trivialize” heterosexual marriage<sup>23</sup> and might indeed be “the final blow to the American family.”<sup>24</sup>



<b>Q – Questions you have that stem from the reading...</b>	<b>C – Comments you have about the reading - things you think about as you are reading (relation to history, current events, another subject area, your life)</b>	<b>Q – Quotes from the article that made you think, made you happy, made you mad, made you question. Include your analysis – the quote in your own words.</b>
1.	1.	1.
2.	2.	2.
3.	3.	3.

### Team A Documents:

*The Republican Party adopted this platform at its convention in Minnesota in September 2008. For the election of 2008, the party nominated Arizona senator John McCain as its presidential candidate and Alaska governor Sarah Palin as its vice presidential candidate. Below is the full text of the 2008 Republican Party Platform.*

#### Preserving Traditional Marriage

Because our children's future is best preserved within the traditional understanding of marriage, we call for a constitutional amendment that fully protects marriage as a union of a man and a woman, so that judges cannot make other arrangements equivalent to it. In the absence of a national amendment, we support the right of the people of the various states to affirm traditional marriage through state initiatives.

Republicans recognize the importance of having in the home a father and a mother who are married. The two-parent family still provides the best environment of stability, discipline, responsibility, and character. Children in homes without fathers are more likely to commit a crime, drop out of school, become violent, become teen parents, use illegal drugs, become mired in poverty, or have emotional or behavioral problems. We support the courageous efforts of single-parent families to provide a stable home for their children. Children are our nation's most precious resource. We also salute and support the efforts of foster and adoptive families.

Republicans have been at the forefront of protecting traditional marriage laws, both in the states and in Congress. A Republican Congress enacted the **Defense of Marriage Act**, affirming the right of states not to recognize same-sex "marriages" licensed in other states. Unbelievably, the Democratic Party has now pledged to repeal the Defense of Marriage Act, which would subject every state to the redefinition of marriage by a judge without ever allowing the people to vote on the matter. We also urge Congress to use its Article III, Section 2 power to prevent activist federal judges from imposing upon the rest of the nation the judicial activism in Massachusetts and California. We also encourage states to review their marriage and divorce laws in order to strengthen marriage.

As the family is our basic unit of society, we oppose initiatives to erode parental rights.

2008 Republican Platform

1) What is a *platform*? \_\_\_\_\_

\_\_\_\_\_

2) Looking at line 7 explain what *preserved* means. \_\_\_\_\_

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3) How does the two-parent family provide the best environment for a child? \_\_\_\_\_

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\_\_\_\_\_

4) In the sense of family, what do *stability, discipline, responsibility, and character* mean? \_\_\_\_\_

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5) What will happen to a child raised in a single parent home without a father? \_\_\_\_\_

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6) What is the goal of the Democrats and why are they dangerous to the institution of marriage? \_\_\_\_\_

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Rick Santorum on Marriage

### We Hold These Truths

Marriage is, and has always been through human history, a union of a man and woman – and for a reason. These unions are special because they are the ones we all depend on to make new life and to connect those new lives to their mom and dad.

A husband is a man who commits to a woman, to her and any children she may give him. He commits to his wife without any reservations, to share with her all his worldly goods and to exclude all others from this intimate communion of life. From this vow of marriage comes a wonderful and unique good: any children their union creates will have a mom and a dad united in love, in one family.

That's the special work of marriage in law – to connect things that otherwise fray and fragment: love, life, money, moms, and dads.

A man who does not seek to do this – who doesn't choose to give himself to a woman and any children they may have together in this unique and special way – may well be a very good man and have wonderful other kinds of relationships, but he isn't seeking to be a husband. We can't redefine reality to accommodate politically fashionable wishes. Words matter because they capture enduring and timeless truths about human nature and about the common good.

Lawyers cannot create life and did not create marriage. And lawyers (whether on the bench or in politics) have no business redefining either to suit the shifting winds of fashion, or worse, for political expediency.

I know so many single moms who work so hard and do such a great job raising children. We need to applaud every heroic parent working hard to raise good kids regardless of whether or not they are married; just as we need to protect all our children, born and unborn, those lucky enough to have the gift of a married mom and dad and those who do not.

We can do this without cravenly surrendering timeless truths about marriage and human life. We don't want liberal media-approved lawyers and politicians massaging the meaning of words, or judges implementing vast social changes without the consent of the governed, or, frankly, politicians like President Obama who cannot even tell you what marriage will be next week.

In positions of power, we need men and women of character, willing to stand up and defend what they think is right and to level with the American people. America is hungry for leadership. I have found everywhere I go across this great land that people appreciate it if they know you're the kind of man they can trust to tell the truth on important issues even if they do not agree with you on every issue.

Marriage is a society's life blood. Not everybody can or will marry, but all of us (married or not) depend on marriage in a unique way. Marriage is foundational: it creates and sustains not only children but civilization itself. This is an institution which protects our liberty.

A president who, after thousands of years of human history, a Harvard law degree, and four years in the White House, cannot tell us with certainty what he thinks marriage or life is, is not worthy of the trust of the American people or a second term in office. It is time for leadership in America. It is time again to stand for self-evident foundational truths.

Rick Santorum "We Hold These Truths"

- 1) How are unions between a man and a woman special? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 2) According to the first two paragraphs, what is Santorum's opinion of marriage? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 3) On line 33, what is meant by, *society's life blood*? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 4) Define *foundational*, found on line 34 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 5) Explain lines 33-35 in your own words. \_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Testimony before  
Subcommittee on the Constitution  
Committee on the Judiciary  
United States House of Representatives**

**April 15, 2011**

My name is Charles Donovan. I am Senior Research Fellow at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

**Conclusion: Marriage Uniquely Promotes Community and Intergenerational Goods**

All of the governmental interests embodied in the Defense of Marriage Act ultimately serve one overarching purpose: to create and foster conditions of public policy that reinforce the binding of men and women to one another and to the children they co-create. Study after study of the impact of marriage and the sustained presence of mothers and fathers in the home, striving together and nurturing their children, demonstrate the advantages of a married mother and father over every other family form that has been exhaustively studied to date.

A June 2002 report from Child Trends titled “Marriage from a Child’s Perspective” (Moore, Jekielek, and Emig) notes that the differences in child development outcomes are not simply related to differences between single-parent and two-parent households, but to “the presence of two biological parents.”<sup>[6]</sup> These advantages are statistically significant, consistent, and often dramatic. Studies to examine whether parenting by same-sex couples would represent a unique exception to this finding remain controversial and incomplete. The prudence of Congress in protecting and promoting the maximum attachment of children to their natural mother and father should be respected.

Even if some studies were to show effects less than might be expected from previous research on the breakdown of mother–father families, the claim of children to the care and attention of the persons of the two sexes that were necessary to create them can and should be taken into consideration in public policy.

Indeed, that concern is, if anything, more urgent today than ever. Today’s cultural shifts in cohabitation and out-of-wedlock childbearing, as well as persistent economic difficulties affecting Middle America, have combined to produce record numbers of children beginning life and being raised in single-parent households. In 2009, more than 1.7 million children—41 percent of all U.S. children who entered the world that year—were born to single mothers. The poverty rate among these children, if it holds with current patterns, will be nearly five times what it is for children with both a mother and a father in the home. Overall, nearly 70 percent of poor families with children are headed by single parents.<sup>[7]</sup>

The effects of family structure are not merely economic, and they are not therefore simply remedied by economic measures. The effects on children of being raised outside a biological family arrangement include greater risk of lower educational attainment, elevated rates of

delinquency, more unwed pregnancy and childbearing, and other consequences. These aggregate findings do not spell the future of every single child raised in less than ideal family structures, but for those for which they do, they are very real indeed and the proper object of government concern.

For all of these reasons and more, concerned citizens and legislators have reacted with justifiable caution and even resistance to proposals to change the definition of marriage. They have reasonably concluded that these proposals have more to do with private preferences than they do with the public interest in community and intergenerational goods. The Defense of Marriage Act of 1996 is best seen, therefore, not as a measure singularly focused on a cultural debate occasioned by a state court decision, but as a response embedded within a growing awareness of the compelling public policy rationale to promote traditional marriage and encourage strong and stable homes where children can thrive and reach their full potential.

Charles Donovan Testimony

- 1) Who is Mr. Donovan speaking to? \_\_\_\_\_  
\_\_\_\_\_
- 2) How does the second paragraph explain Donovan's opinion? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 3) Define cohabitation and out-of-wedlock childbearing found on line 29. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 4) According to paragraphs 5 and 6 how will allowing same-sex marriage affect American society? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 5) How does the last sentence support the essential question? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Baker V. Vermont (1999)

Excerpt: Reason to ban gay marriage.

As noted, the marriage statutes apply expressly to opposite-sex couples. Thus, the statutes exclude anyone who wishes to marry someone of the same sex. Next, we must identify the governmental purpose or purposes to be served by the statutory classification. The principal purpose the State advances in support of the excluding same-sex couples from the legal benefits of marriage is the government's interest in "furthering the link between procreation and child rearing." The State has a strong interest, it argues, in promoting a permanent commitment between couples who have children to ensure that their offspring are considered legitimate and receive ongoing parental support. The State contends, further, that the Legislature could reasonably believe that sanctioning same-sex unions "would diminish society's perception of the link between procreation and child rearing . . . [and] advance the notion that fathers or mothers . . . are mere surplusage to the functions of procreation and child rearing." The State argues that since same-sex couples cannot conceive a child on their own, state-sanctioned same-sex unions "could be seen by the Legislature to separate further the connection between procreation and parental responsibilities for raising children." Hence, the Legislature is justified, the State concludes, "in using the marriage statutes to send a public message that procreation and child rearing are intertwined."

Baker V. Vermont (1999) Defense for DOMA

1) How does the government support its reasons to ban gay marriage in lines 7-12? \_\_\_\_\_

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2) How does the document support the idea that same sex marriage would destroy the institution of marriage? \_\_\_\_\_

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3) In the excerpt, what is the purpose of marriage? \_\_\_\_\_

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4) How does this opinion support the Defense of Marriage Act? \_\_\_\_\_

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Team B Documents:

Baker V. The State of Vermont (1999) Opinion of Chief Justice Amestoy

Excerpt:

We conclude that under the Common Benefits Clause of the Vermont Constitution, which, in pertinent part, reads, "That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community", Vt. Const., ch. I, art 7., plaintiffs may not be deprived of the statutory benefits and protections afforded persons of the opposite sex who choose to marry. We hold that the State is constitutionally required to extend to same-sex couples the common benefits and protections that flow from marriage under Vermont law. Whether this ultimately takes the form of inclusion within the marriage laws themselves or a parallel "domestic partnership" system or some equivalent statutory alternative, rests with the Legislature. Whatever system is chosen, however, must conform with the constitutional imperative to afford all Vermonters the common benefit, protection, and security of the law.

Assuming that the marriage statutes preclude their eligibility for a marriage license, plaintiffs contend that the exclusion violates their right to the common benefit and protection of the law guaranteed by Chapter I, Article 7 of the Vermont Constitution. They note that in denying them access to a civil marriage license, the law effectively excludes them from a broad array of legal benefits and protections incident to the marital relation, including access to a spouse's medical, life, and disability insurance, hospital visitation and other medical decisionmaking privileges, spousal support, intestate succession, homestead protections, and many other statutory protections. They claim the trial court erred in upholding the law on the basis that it reasonably served the State's interest in promoting the "link between procreation and child rearing." They argue that the large number of married couples without children, and the increasing incidence of same-sex couples with children, undermines the State's rationale. They note that Vermont law affirmatively guarantees the right to adopt and raise children regardless of the sex of the parents, and challenge the logic of a legislative scheme that recognizes the rights of same-sex partners as parents, yet denies them -- and their children -- the same security as spouses.

While the laws relating to marriage have undergone many changes during the last century, largely toward the goal of equalizing the status of husbands and wives, the benefits of marriage have not diminished in value. On the contrary, the benefits and protections incident to a marriage license under Vermont law have never been greater. They include, for example, the right to receive a portion of the estate of a spouse who dies intestate and protection against disinheritance through elective share provisions; preference in being appointed as the personal representative of a spouse who dies intestate; the right to bring a lawsuit for the wrongful death of a spouse; the right to bring an action for loss of consortium; the right to workers' compensation survivor benefits; the right to spousal benefits statutorily guaranteed to public employees, including health, life, disability, and accident insurance; the opportunity to be covered as a spouse under group life insurance policies issued to an employee; the

opportunity to be covered as the insured's spouse under an individual health insurance policy; the right to claim an evidentiary privilege for marital communications; homestead rights and protections; the presumption of joint ownership of property and the concomitant right of survivorship; hospital visitation and other rights incident to the medical treatment of a family member; and the right to receive, and the obligation to provide, spousal support, maintenance, and property division in the event of separation or divorce.

While other statutes could be added to this list, the point is clear. The legal benefits and protections flowing from a marriage license are of such significance that any statutory exclusion must necessarily be grounded on public concerns of sufficient weight, cogency, and authority that the justice of the deprivation cannot seriously be questioned. Considered in light of the extreme logical disjunction between the classification and the stated purposes of the law -- protecting children and "furthering the link between procreation and child rearing" -- the exclusion falls substantially short of this standard. The laudable governmental goal of promoting a commitment between married couples to promote the security of their children and the community as a whole provides no reasonable basis for denying the legal benefits and protections of marriage to same-sex couples, who are no differently situated with respect to this goal than their opposite-sex counterparts. Promoting a link between procreation and childrearing similarly fails to support the exclusion. We turn, accordingly, to the remaining interests identified by the State in support of the statutory exclusion.

Thus, viewed in the light of history, logic, and experience, we conclude that none of the interests asserted by the State provides a reasonable and just basis for the continued exclusion of same-sex couples from the benefits incident to a civil marriage license under Vermont law. Accordingly, in the faith that a case beyond the imagining of the framers of our Constitution may, nevertheless, be safely anchored in the values that infused it, we find a constitutional obligation to extend to plaintiffs the common benefit, protection, and security that Vermont law provides opposite-sex married couples. It remains only to determine the appropriate means and scope of relief compelled by this constitutional mandate....

Baker V. Vermont against DOMA

- 1) How do lines 4-6 define the purpose of government? \_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_
- 2) Based upon the first paragraph, why does Chief Justice Amestoy support homosexual marriage? \_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 3) In line 15 what is meant by *common benefit and protection of the law*? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 4) What marriage privileges are same sex couples excluded from in paragraph three? \_\_\_\_\_  
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- 5) How do lines 24-27 show that denying same sex marriage hurts children adopted by same sex parents? \_\_\_\_\_  
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- 6) How do lines 44-55 show that the purpose of preventing same-sex marriage is hypocritical? \_\_\_\_\_  
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February 22, 2012

JEFFREY S. WHITE

UNITED STATES DISTRICT JUDGE

Excerpt:

**a. Responsible procreation and child-rearing.**

The first reason proffered by Congress when enacting DOMA was to encourage responsible procreation and child-rearing. Ms. Golinski presents evidence that it is “beyond scientific dispute” that same-sex parents are equally capable at parenting as opposite-sex parents. (*See* Declaration of Michael Lamb (“Lamb Decl.”) at ¶ 14.) The evidence presented by Professor Lamb demonstrates that parents’ genders are irrelevant to children’s developmental outcomes. (*See id.* at ¶¶ 28, 38; Reply Declaration of Michael Lamb (“Lamb Reply Decl.”) at ¶¶ 8, 19, 28.) More than thirty years of scholarship resulting in over fifty peer-reviewed empirical reports have overwhelmingly demonstrated that children raised by same-sex parents are as likely to be emotionally healthy, and educationally and socially successful as those raised by opposite-sex parents. (*See* Lamb Decl. at ¶¶ 29-32.) “There is ... no empirical support for the notion that the presence of both male and female role models in the home promotes children’s adjustment or well-being.” (*Id.* at ¶ 14.) “Since the enactment of DOMA, a consensus has developed among the medical, psychological and social welfare communities that children raised by gay and lesbian parents are just as likely to be well-adjusted as those raised by heterosexual parents.” *Gill*, 699 F. Supp. 2d at 388; *see also Perry*, 704 F. Supp. 2d at 1000 (“The evidence does not support a finding that California has an interest in preferring opposite-sex parents over same-sex parents. Indeed, the evidence shows beyond any doubt that parents’ genders are irrelevant to children’s developmental outcomes.”); *Varnum*, 763 N.W.2d at 899 n.26 (“The research appears to strongly support the conclusion that same-sex couples foster the same wholesome environment as opposite-sex couples and suggests that the traditional notion that children need a mother and a father to be raised into healthy, well-adjusted adults is based more on stereotype than anything else.”).....

Furthermore, to the extent Congress was interested merely in encouraging responsible procreation and child-rearing by opposite-sex married couples, a desire to encourage oppositesex couples to procreate and raise their own children well would not provide a legitimate reason for denying federal recognition of same-sex marriages. The denial of recognition and withholding of marital benefits to same-sex couples does nothing to support opposite-sex parenting, but rather merely serves to endanger children of same-sex parents by denying them “the immeasurable advantages that flow from the assurance of a stable family structure,’ when afforded equal recognition under federal law.” *Gill*, 699 F. Supp. 2d at 389 (quoting *Goodridge v. Department of Public Health*, 440 Mass. 309, 335 (2003)). It is undisputed that same-sex parents can and do have and adopt children. The denial of federal recognition of valid same-sex marriages under state law does not alter parental rights under state law. Rather, the passage of DOMA only serves to undermine providing a stable environment for children of same-sex married couples whose children would otherwise be raised in a household bestowed with all of the federal benefits of marriage, including financial support and social recognition. (*See* Lamb Decl. at ¶ 42.) Furthermore, an interest in promoting procreation within marriage cannot provide a legitimate reason to exclude same-sex marriages from federal recognition. The ability to procreate cannot and has never been a precondition to marriage. *See Lawrence*, 539 U.S. at 605 (Scalia, J., dissenting) (stating “what justification could there possibly be for denying the benefits of marriage to homosexual couples ... [s]urely not the encouragement of procreation,

since the sterile and the elderly are allowed to marry”). “While it is certainly true that many, perhaps most, married couples have children together (assisted or unassisted), it is the exclusive and permanent commitment of the marriage partners to one another, not the begetting of children, that is the sine qua non of civil marriage.” *Dragovich*, 764 F. Supp. 2d at 1190 (citing *Goodridge*, 440 Mass. at 332). The federal government has never considered withdrawing its recognition of marriage based on an ability or inability to procreate. *See id.*; *see also Gill*, 699 F. Supp. 2d at 389. Even if this could be considered a legitimate interest, denying federal recognition of and withholding federal benefits from legally married same-sex couples does nothing to encourage or discourage opposite-sex couples from having children within marriage. Accordingly, the Court finds that the first proffered reason for the passage of DOMA – to encourage responsible procreation and child-rearing – does not provide a justification that is substantially related to an important governmental objective.

Judge Jeffrey S. White Decision (9<sup>th</sup> District Court):

1) Explain what responsible procreation and child rearing means. \_\_\_\_\_

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2) How does the evidence presented by Golinski and Professor Lamb support same-sex marriage? \_

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3) Based upon lines 15-27 can children be raised by same sex parents? \_\_\_\_\_

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4) According to White, how does the Defense of Marriage Act hurt children? \_\_\_\_\_

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5) Looking at lines 42-44, why does White support same sex marriage? \_\_\_\_\_

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6) Based upon lines 47-50 what does White say the true meaning of marriage is? \_\_\_\_\_

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

July 8, 2010

Joseph L. Tauro United States District Judge

Excerpt:

This court can readily dispose of the notion that denying federal recognition to same-sex marriages might encourage responsible procreation, because the government concedes that this objective bears no rational relationship to the operation of DOMA.<sup>105</sup> Since the enactment of DOMA, a consensus has developed among the medical, psychological, and social welfare communities that children raised by gay and lesbian parents are just as likely to be well-adjusted as those raised by heterosexual parents.<sup>106</sup> But even if Congress believed at the time of DOMA's passage that children had the best chance at success if raised jointly by their biological mothers and fathers, a desire to encourage heterosexual couples to procreate and rear their own children more responsibly would not provide a rational basis for denying federal recognition to same-sex marriages. Such denial does nothing to promote stability in heterosexual parenting. Rather, it "prevent[s] children of same-sex couples from enjoying the immeasurable advantages that flow from the assurance of a stable family structure,"<sup>107</sup> when afforded equal recognition under federal law.

Moreover, an interest in encouraging responsible procreation plainly cannot provide a rational basis upon which to exclude same-sex marriages from federal recognition because, as Justice Scalia pointed out in his dissent to *Lawrence v. Texas*, the ability to procreate is not now, nor has it ever been, a precondition to marriage in any state in the country.<sup>108</sup> Indeed, "the sterile and the elderly" have never been denied the right to marry by any of the fifty states.<sup>109</sup> And the federal government has never considered denying recognition to marriage based on an ability or inability to procreate.

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

July 8, 2010

Joseph L. Tauro

1) Define consensus on line 10 \_\_\_\_\_

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\_\_\_\_\_

2) After analyzing lines 10-12, what is this consensus? \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_

3) What does rational mean on lines 12-16? \_\_\_\_\_

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4) According to White's opinion in paragraph one, how doesn't banning gay marriage promote stability for heterosexual marriage? \_\_\_\_\_

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\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

5) How is the DOMA hypocritical in the second paragraph when a goal of the law is encouraging responsible procreation? \_\_\_\_\_

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\_\_\_\_\_

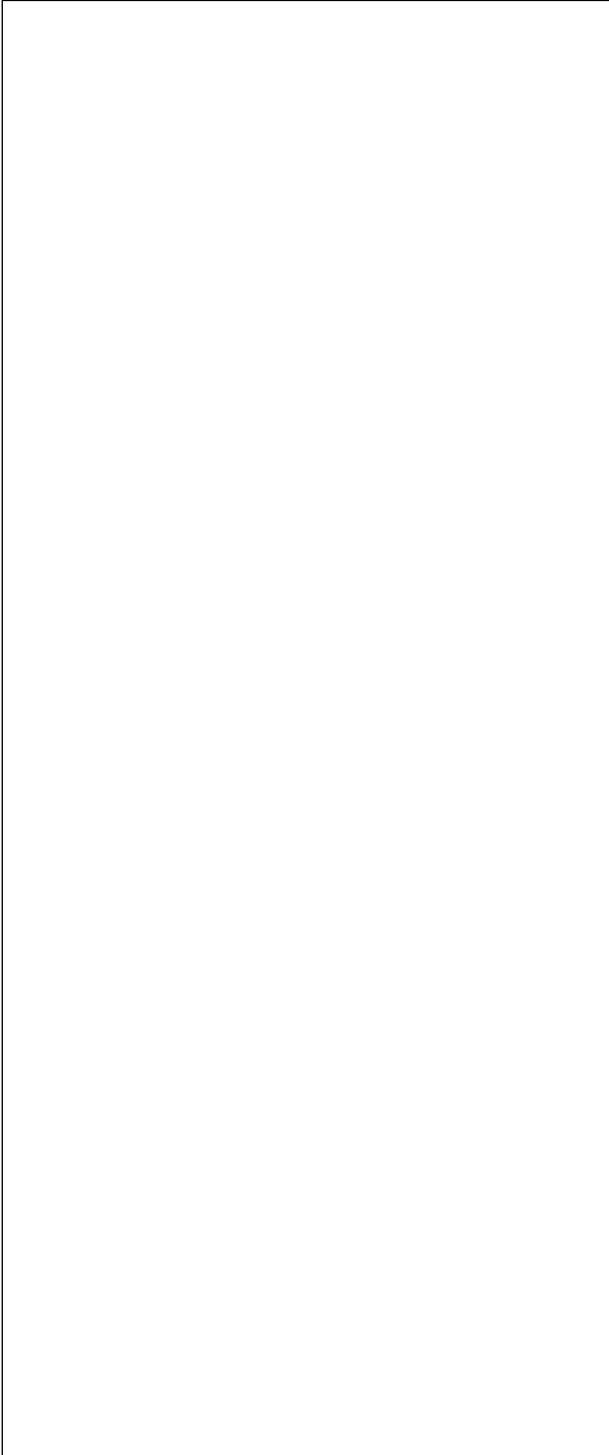
Structured Academic Controversy Handout:

STRUCTURED ACADEMIC CONTROVERSY

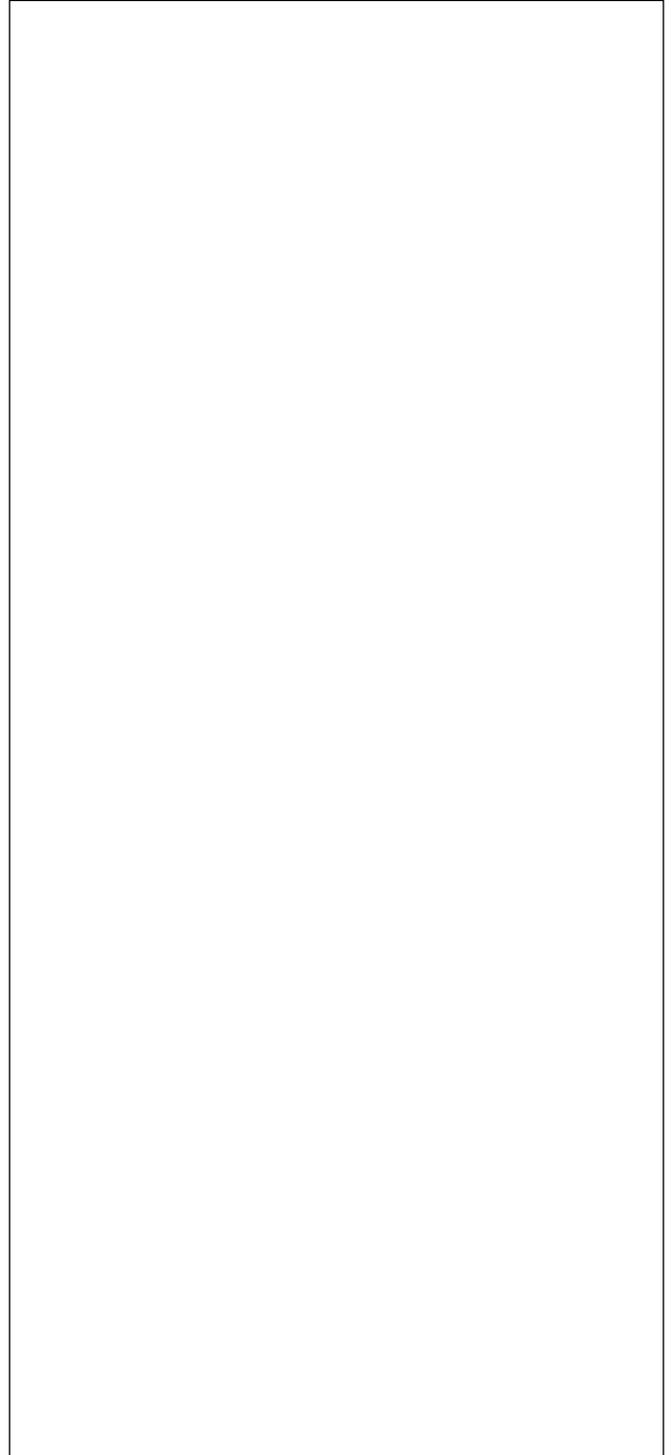
TOPIC: Does the **DOMA** promote the public health, safety, morals, and general welfare?

Preparing My Argument

My Claims and Reasons

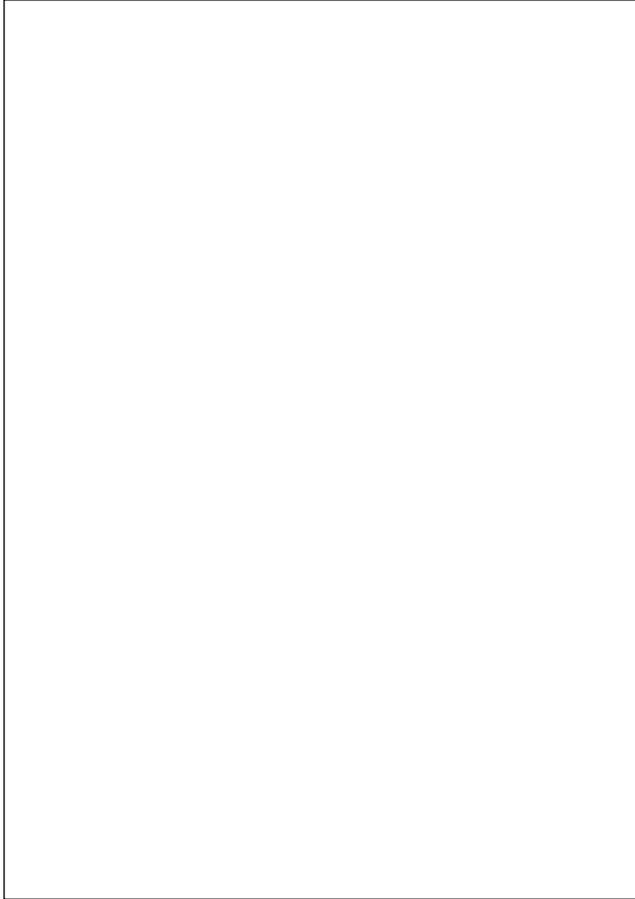


My Evidence and Examples

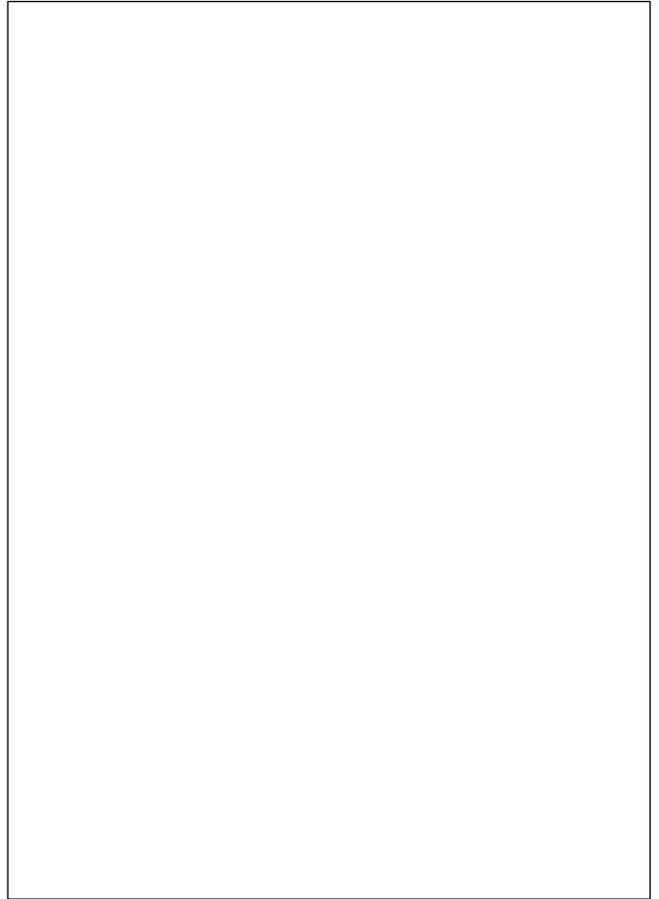


## The Other Side of the Issue

Opposing Claims and Reasons

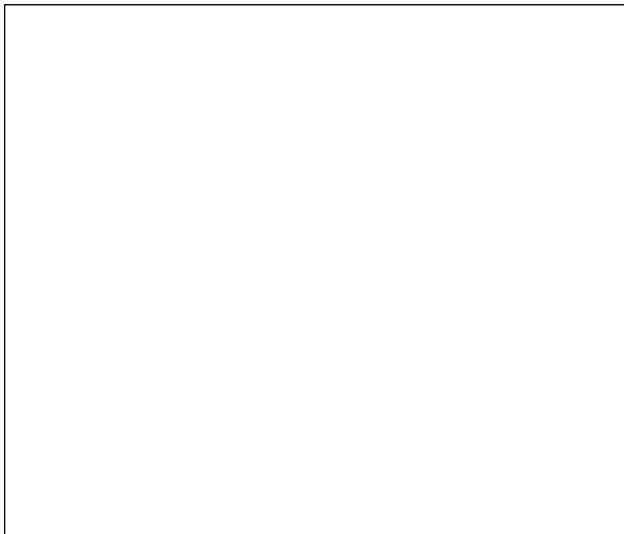


Opposing Evidence and Examples

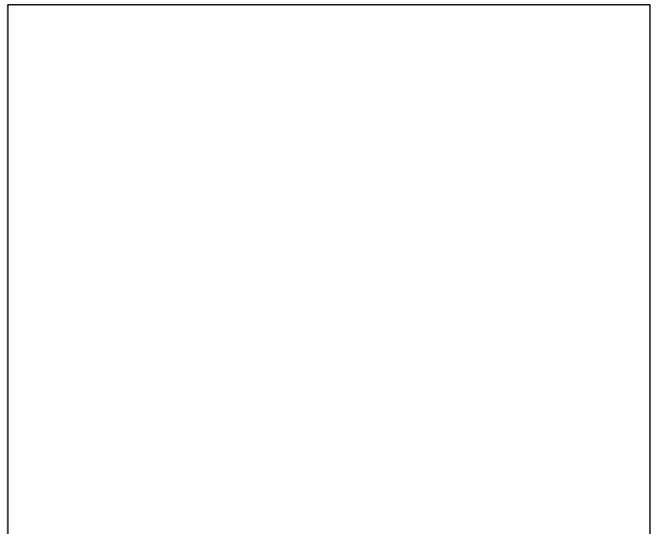


## Common Ground and Further Questions

We Agree That.....



We need further clarification on.....



**Description of Lesson Assessment:**

Upon the completion of the SAC and a full class discussion, the students will use the documents to write a two page, five paragraph, reflection based upon the essential question. The response should include their opinion to the question and provide at least three pieces of evidence from the documents to support their assertions. (Rubric on next page)

DOMA Essay Rubric

Rating

Elements

Exemplar

Proficient

Emerging

Missing **Introduction**

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Grabber

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Background (time, place, story)

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Restatements of the Question

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Definition of Key Terms

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Thesis with roadmap

**First Body Paragraph**

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Baby Thesis

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Evidence with citations

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Argument

**Second Body Paragraph**

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Baby Thesis

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Evidence with citations

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Argument

**Third Body Paragraph**

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Baby Thesis

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Evidence with citations

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Argument

**Conclusion**

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Restatement of thesis

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“Although” statement

\_\_\_\_\_

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Argument trumping “although” statement

**How will students reflect on the process and their learning?** They will reflect on the process in the reflection paper.

Does the Defense of Marriage Act promote the health, safety, morals, and the general welfare of the public?

Michael Lindberg

American democracy celebrates the ideas of ancient and modern thinkers such as Pericles, Locke, and Voltaire; fuses them together, and creates one of the greatest experiments in human interaction. As children we are taught about the revolutionary idea of freedom to all men as our creator endows us to it. As we grow and mature we learn other truths about this great experiment and unearth the numerous atrocities which have been endured by certain minority groups; whether blacks as slaves, women as secondary citizens without a voice, or children as expendable items to make money. As former President Jimmy Carter stated, "America did not invent human rights. In a very real sense... human rights invented America".<sup>1</sup> The positive out this hard truth is Americans fought to straighten out the inequalities and time after time reinvented itself. As we look at our history we examine groups who have had their freedoms limited, and we have been captivated to see how those injustices were corrected. This understanding of the past leads to the question, who's the next group?

One of the most recent populations who have had their liberties questioned are homosexuals. According to Gary Gates, a demographer-in-residence at the Williams Institute on Sexual Orientation Law and Public Policy, about 4 million Americans claim to be homosexual<sup>2</sup>. This makes up about 2% of the population. Although the act of sharing intimate relations with an individual of the same sex is not a new phenomenon, it is still considered a social taboo in our modern society. While homosexuality is never mentioned in the, *Bible*, many people use the interpretation of a passage such as Mark 10:6-9 to defend their definition of marriage; "But at the beginning of creation God 'made them male and female.' 'For this reason a man will leave his father and mother and be united to his wife, and the two will

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<sup>1</sup> <http://www.quotegarden.com/government.html> 1/24/2012 Accessed 10/24

<sup>2</sup> Crary, David, Tang, Terry. "Gay Population in U.S. Estimated at 4 Million, Gary Gates Says." [Huffington Post: Huffingtonpost.com](http://www.huffingtonpost.com/2011/04/07/gay-population-us-estimate_n_846348.html). 1/25/2012. [http://www.huffingtonpost.com/2011/04/07/gay-population-us-estimate\\_n\\_846348.html](http://www.huffingtonpost.com/2011/04/07/gay-population-us-estimate_n_846348.html).

become one flesh.' So they are no longer two, but one. Therefore what God has joined together, let man not separate."<sup>3</sup> Although this passage discusses divorce, it does hint towards marriage being a man becoming one with his wife. Due to the fact that this nation sees homosexuality as a filthy and immoral practice, in 1996 President Clinton signed into law the Defense of Marriage Act, which states, "In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife"<sup>4</sup>. The Defense of Marriage Act made it clear the United States would not support the degradation of one of the world's sacred institutions and would prevent homosexuals the right to legally marry. The question now remains; does the DOMA promote the health, safety, and general welfare of the American people?

As one begins to analyze the question an important place to start is with an understanding of what is the "police power". As stated by the Pennsylvania Legislator's Municipal Deskbook, police power is defined as, "The power of government to promote the public health, morals, or safety, and the general well-being of the community."<sup>5</sup> Another definition includes, "The inherent power of government to enact and enforce laws for the promotion of the general welfare."<sup>6</sup> In essence the purpose of government is to create laws, which are enforced by the police, to protect the overall health, safety, and well-being of the general population. Examples of these laws include the police power to restrict smoking and offensive or

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<sup>3</sup> Mark, John. "The Gospel of Mark." Life Application Bible, *New International Version*. Zondervan, 1997.

<sup>4</sup> H.R. 3396 "Defense of Marriage Act." One Hundred Fourth Congress of the United States of America, At the Second Session. 01/03/1996.

<sup>5</sup> Pennsylvania Legislator's Municipal Deskbook. "The Police Power," Pennsylvania General Assembly, Third Edition (2006).

<sup>6</sup> Pennsylvania Legislator's Municipal Deskbook. "The Police Power," Pennsylvania General Assembly, Third Edition (2006).

noxious odors, and keeping and use of animals<sup>7</sup>. As one can assume the police power of the government is important and is subject to little limitations, yet it does not mean the government can exploit its power.

The Fourteenth Amendment to the United States Constitution ensures states will not pass and enforce laws which shall reduce the rights and freedoms of citizens in the United States. If a state does pass a law it must do so where every person is given equal protection to law. As one digs deeper into an understanding of the Fourteenth Amendment they will come across the Equal Protection Clause. The Equal Protection Clause states, laws of a state must treat an individual in the same manner as others in similar conditions and circumstances.<sup>8</sup> This means a state cannot pass a law which grants privileges to one group while taking away or restricting privileges to another. Although this seems pretty cut and dry, the amendment leaves plenty of room for interpretation. As stated above, governments main purpose is to pass laws promoting the health, safety, and general well-being of a community. Take for example the laws to restrict smoking and offensive noxious odors. In many states it is illegal to smoke in restaurants, public places, and even a car accompanied by an infant. Although the rights of the people who enjoy smoking in those places have been restricted, the purpose of the law is to *protect the health and safety* of the public. It is important to understand laws will never make everyone happy. Traditionally, the court finds a state law legal if it has a clear and well thought out reason to enact it and it serves a legitimate state purpose.<sup>9</sup> Knowing states can pass laws which may limit rights in order to protect the interest of its citizens; the remaining pages will go into an analysis about the opposing sides to the question.

In 1996, The House of Representatives sent a bill through each chamber of Congress stating marriage is only between a man and a woman. It was later signed by President Clinton and affectively ended a homosexual's right to wed their partner. According to Justice Joseph L. Tauro of the District Court in Massachusetts, the purpose of the bill was as follows:

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<sup>7</sup> Pennsylvania Legislator's Municipal Deskbook. "The Police Power," Pennsylvania General Assembly Third Edition (2006).

<sup>8</sup> [www.law.cornell.edu/wex/Equal\\_protection](http://www.law.cornell.edu/wex/Equal_protection) Access 11/11

<sup>9</sup> [www.law.cornell.edu/wex/Equal\\_protection](http://www.law.cornell.edu/wex/Equal_protection) Accessed 11/11

“The House Report further justified the enactment of DOMA as a means to ‘encourage responsible procreation and child-rearing,’ conserve scarce resources, and reflect Congress’ moral disapproval of homosexuality, and a moral conviction that heterosexuality better comports with traditional (especially Judeo-Christian) morality.’ In one unambiguous expression of these objectives, Representative Henry Hyde, then-Chairman of the House Judiciary Committee, stated that ‘most people do not approve of homosexual conduct...and they express their disapprobation through the law.’ In the floor debate, members of Congress repeatedly voiced their disapproval of homosexuality, calling it ‘immoral,’ ‘depraved,’ ‘unnatural,’ ‘based on perversion’ and ‘an attack upon God’s principles.’ They argued that marriage by gays and lesbians would ‘demean’ and ‘trivialize’ heterosexual marriage and might indeed be ‘the final blow to the American family.’”<sup>10</sup>

It is apparent homosexuals were and still are seen as demons. Those in favor of keeping the Defense of Marriage Act alive in states who honor it revolve around two ideas; one, it will protect children and second, the traditional purpose of marriage is to have a man and a woman come together in marriage and procreate. The first assertion is supported by Charles Donovan, a senior research fellow at The Heritage Foundation, “A June 2002 report from Child Trends titled ‘Marriage from a Child’s Perspective’ notes that the differences in child development outcomes are not simply related to differences between single-parent and two-parent households, but to ‘the presence of two biological parents.’ These advantages are statistically significant, consistent, and often dramatic. Studies to examine whether parenting by same-sex couples would represent a unique exception to this finding remain controversial and incomplete. The prudence of Congress in protecting and promoting the maximum attachment of children to their natural mother and

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<sup>10</sup> Tauro, Joseph. United States District Court District of Massachusetts, July 8, 2010.

father should be respected.<sup>11</sup> The men and women who support a state's right to keep the DOMA as law within their state boundaries believe children will be offered the best chance to succeed and be productive citizens if they are raised in a biological household with a mother and a father. This idea was supported in the 2008 Republican Party platform, "Republicans recognize the importance of having in the home a father and a mother who are married. The two-parent family still provides the best environment of stability, discipline, responsibility, and character."<sup>12</sup> Whether two men or two women are capable of being parents together, the biological mother and father home is the healthiest and safest. The second assertion discusses the need to protect the traditional definition of marriage. According to Rick Santorum, former Republican Presidential hopeful, "Marriage is society's life blood. Not everybody can or will marry, but all of us (married or not) depend on marriage in a unique way. Marriage is foundational: it creates and sustains not only children but civilization itself."<sup>13</sup> Mr. Santorum is defending the DOMA's ability to deny homosexual marriage because he believes if the definition of marriage is changed to allow those unions then our society will collapse. Although many states agree with these assertions, a growing number of states are overturning the law.

As of March 30<sup>th</sup>, 2012, eight states allow homosexuals the right to marry. These include: Massachusetts, Vermont, New Hampshire, New York, Connecticut, Iowa, Washington, and beginning January 1<sup>st</sup> of 2013, Maryland.<sup>14</sup> These states have analyzed the purpose of Congress passing the DOMA and determined the intent does not justify the exclusion of homosexual marriage. Two massive claims brought out by those who disagree with the law mirror the main assertions made by the opposition. One, the DOMA does not protect the health and safety of

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<sup>11</sup> Donovan, Charles. "Defense of Marriage Act: A Measure for Children and Marriage." Testimony before Subcommittee on the Constitution Committee on the Judiciary, United States House of Representatives, April 15, 2011.

<sup>12</sup> <http://americangovernment.abcclio.com/Search/Display/1290784?terms=2008+Republican+Party+Platform>  
Accessed 01/12

<sup>13</sup> <http://www.ricksantorum.com/we-hold-these-truths> Accessed 02/12

<sup>14</sup> <http://gaymarriage.procon.org/> Accessed 4/26

children, and second, the purpose of marriage is not specifically for procreation. In 1999, Vermont became one of the first states to challenge the DOMA. In the case, Chief Justice Amestoy noted the hypocrisy of Congress's purpose to protect children. Since heterosexuals only enjoy the privilege of marriage, heterosexuals are the only couples to enjoy the benefits of marriage. These benefits include the right to receive a portion of the estate of a spouse who dies, public employee benefits to spouses such as, health, life, disability, and accident insurance, and the right to bring a lawsuit for the wrongful death of a spouse.<sup>15</sup> Amestoy challenges if Congress's purpose was to protect children, why prevent homosexuals who can legally adopt children the benefits of marriage:

“The legal benefits and protections flowing from a marriage license are of such significance that any statutory exclusion must necessarily be grounded on public concerns of sufficient weight, cogency, and authority that the justice of the deprivation cannot seriously be questioned. Considered in light of the extreme logical disjunction between the classification and state purposes of the law—protecting children and ‘furthering the link between procreation and child rearing.’—the exclusion falls substantially short of this standard. The laudable governmental goal of promoting a commitment between married couples to promote the security of their children and the community as a whole provides no reasonable basis for denying the legal benefits and protections of marriage to same-sex couples, who are no differently situated with respect to this goal than their opposite-sex counterparts. Promoting the link between procreation and childrearing similarly fails to support this exclusion.”<sup>16</sup>

If the purpose is to protect children, it appears to be in the best interest of children to allow their parents, heterosexual or homosexual, the benefits of marriage. A second claim by those against

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<sup>15</sup> Amestoy, Jeffrey. Supreme Court of Vermont, *Baker v. State* (98-032) December 20, 1999.

<sup>16</sup> Amestoy, Jeffrey. Supreme Court of Vermont, *Baker v. State* (98-032) December 20, 1999.

the DOMA argues the purpose of marriage. States in favor of the law believe the purpose of marriage is for procreation and responsible childrearing. Justice Joseph L. Tauro representing the District Court of Massachusetts states, "...the sterile and the elderly' have never been denied the right to marry by any of the fifty states. And the federal government has never considered denying recognition of marriage based on an ability or inability to procreate."<sup>17</sup> If the purpose is solely to procreate it appears quite hypocritical to allow heterosexual couples who cannot make children the right to marry, yet exclude homosexuals the same right.

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<sup>17</sup> Tauro, Joseph. United States District Court District of Massachusetts, July 8, 2010.