



## BENEFIT NEWS BRIEFS

### *DOMA Falls in Second Circuit*

The Second Circuit Court of Appeals has joined the First Circuit Court in holding that the *Defense of Marriage Act* ("DOMA") is unconstitutional. The Second Circuit includes Connecticut, New York and Vermont. The case is: *Windsor v. U.S.*, --- F.3d ----, 2012 WL 4937310 (2nd Cir.(N.Y.) Oct 18, 2012) (NO. 12-2335-CV L, 12-2435). The opinion is available by "[clicking here.](#)"

Plaintiff Edith Windsor sued the federal government as surviving spouse of a same-sex couple that was married in Canada in 2007 and resided in New York at the time of her spouse's death in 2009. Windsor was denied the benefit of the spousal deduction for federal estate taxes under 26 U.S.C. Section 2056(A) solely because Section 3 of the *Defense of Marriage Act* ("DOMA"), defines the words "marriage" and "spouse" in federal law in a way that bars the IRS from recognizing Windsor as a spouse or the couple as married.

At issue was Windsor's claim for a refund in the amount of \$363,053, which turns on the constitutionality of that section of federal law. The Court found DOMA unconstitutional. The Second Circuit's decision is long and its analysis not as important to the average reader as the bottom line – *DOMA* is unconstitutional. Fans of Constitutional analysis can read the opinion for their own amusement.

Unlike the decision in the First Circuit reported in [Research Memo 2012-32](#), the Second Circuit's decision was not "stayed" pending any appeal, yet. As a matter of fact the time to file an appeal has not yet run and no appeals have been filed. If an appeal is filed, (as is expected) then it would seem prudent for the Second Circuit to stay its opinion pending resolution on appeal by the U.S. Supreme Court.

See [Research Memo 2012-32](#), [Benefit News Briefs 2004-51](#) and [61](#) for earlier reports on decisive *DOMA* cases. It seems like that day is drawing near for the U.S. Supreme Court to decide the constitutionality of *DOMA*. According to news reports, the U.S. Supreme Court will meet on November 20 to decide if it will address the *DOMA* issue. Its decision on whether to review the *DOMA* cases is expected to be released November 26.

\* \* \*