



# Lesbian Gay Bisexual and Transgender Rights Section Newsletter

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## Chair's Corner

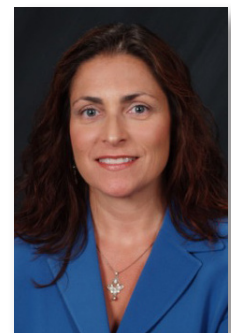
by Nina C. Remson

As you are undoubtedly now aware, the section has undergone a name change to show solidarity with our sister organizations by recognizing the more frequently used acronym LGBT, and acknowledging the historical disenfranchisement of lesbian, bisexual and transgender women. Notably, it was two men who proposed the change, founding member Daniel Weiss, who made the motion, and another great section leader, William Singer, who seconded the motion! The motion passed by an overwhelming majority of 71.8 percent. This may be our biggest section news for the term, but it's not the only news.

Our immediate past chair, Nancy Del Pizzo, gave us the framework to make our membership more diverse in its practice areas. I am building on that by reaching out to other sections for co-sponsorship opportunities to raise our visibility in the bar. This summer, we held a summer social/membership drive with the Solo and Small Firm Section, which was attended by about 40 people. We presented the LGBTQ Homeless Youth Symposium, which was co-sponsored by the Child Welfare Section, Criminal Law Section, Diversity Committee, Family Law Section, Minorities in the Profession Section and Women in the Profession Section.

The LGBTQ Homeless Youth Symposium, envisioned by William Singer and orchestrated by Robyn Gigl, was a program like no other this section has done before. The symposium was presented in an effort to shed light on the plight of these kids, who have no voice of their own, and to discuss how to implement ways to change the deeply entrenched discriminatory customs and policies now present in order to help these LGBT children. It was very well attended, by about 90 attorneys and non-lawyer professionals, and made it to the front page of *The Star Ledger*!

The state bar association is working to be a more inclusive organization. To that end, I hope we can reach out to our LGBT colleagues and straight allies to continue building bridges, and invite their membership in and further participation with this section. Leadership by women and people of color is still limited, even within our own organization. The first step in changing this and progressing forward is to recognize that it's occurring. The Diversity



Summit, being presented by the Diversity Committee and co-sponsored by various sections including ours, is a roundtable discussion format designed to open the conversation. It will be held at the New Jersey Law Center in New Brunswick, on Monday, Feb. 25, 2013, at 2 p.m.

Along with the Women in the Profession Section, the LGBT Rights Section will be co-sponsoring a program on gender bias, presented by the Supreme Court Committee on Women in the Courts. Robyn Gigl and I will be contributing panelists from our section at the program at the New Jersey State Bar Association Annual Meeting in Atlantic City. This is the first time LGBT attorneys have been included in this conversation, and we are looking forward to offering our viewpoint and participating in the discussion.

This has already been a big year for the section in the courts. We are anxiously awaiting the Supreme Court's decision on the Defense of Marriage Act and litigation continues for marriage equality in New Jersey. Additionally, the LGBT Rights Section has weighed in on several pieces of legislation, including the marriage equality voter referendum bill, which we strongly oppose. The Legislative Committee, Debra Guston, Thomas Prol, and especially John Keating, have been very busy reviewing new legislation and drafting our section's legislative position statements in recent months.

You may recall that two years ago our section had a corporate sponsor. This was a win-win for the section, bringing publicity and potential customers to the sponsor and allowing the section to present programs that it might not otherwise have the funding to offer. I appointed a Sponsorship Committee this term because I believe it is important for our section to continue pursuing these relationships. Chair-Elect Stephanie Hunnell has been doing an amazing job chairing the Sponsorship Committee. Her efforts have been indispensable in helping us forge new associations with several donors, whose generosity allowed us to hold the LGBTQ Homeless Youth Symposium and many other events at a reduced cost to our attendees. These events included the holiday party (organized by Stephanie Hunnell), which was great fun as always, and the upcoming Awards Dinner, which is being coordinated by Rebecca Levin.

On the continuing education (CLE) front, the section has presented or will be presenting several programs. So far we have presented Domestic Violence and the GLBT Client, moderated by Stephanie Hunnell and co-sponsored with the Institute for Continuing Legal Education, and State and Federal Tax Implications of Civil Unions, with Debra Guston. Upcoming CLEs include the LGBT Update, moderated again by John Nachlinger. Also, Frank Vespa-Papaleo has offered to be a panelist for a Housing Law CLE program on behalf of our section at the NJSBA Annual Meeting in Atlantic City in May. Please contact Robyn Gigl if you have additional programming ideas for the Annual Meeting.

Finally, section founding member Daniel Weiss has called upon each of us to bring in one new member before the end of this term (May 2013). Our section secretary, C.J. Griffin, suggested we try even harder, and asked, "How about 10?" Impressively, C.J. has been quite effective helping on that front. She suggested and spearheaded the Law Student Happy Hour. This Newark event was so successful, it yielded 10 new members. We are working on another Law Student Happy Hour for the southern end of the state, which Rebecca Levin is coordinating. At this point, we have already increased our membership ranks by nearly 25 percent since last year. So, let's get the word 'out' and answer Danny and C.J.'s call!

As always, I would love to hear from any member with ideas for the betterment and growth of the LGBT Rights Section. We have come a long way with the guidance and support of our founding members and the energy and vision of our newest members. Together, we can promote diversity throughout the bar, the profession and our community by leading by example with our own efforts toward diversity and inclusivity. ■

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## Inside this issue

<b>Chair's Corner</b> <i>by Nina C. Remson</i>	1
<b>LGBT Issues Win Big in November Elections</b> <i>by C.J. Griffin</i>	4
<b>Hurricanes and Law Firms... A Deadly Combination: Learning to Prepare for the Next One</b> <i>by John Nachlinger</i>	7
<b>The Fall of DOMA?</b> <i>by Stephanie Cañas Hunnell</i>	9
<b>William S. Singer Receives LGBT Rights Section's First Lifetime Achievement Award</b>	13
<b>LGBT Rights Section Holiday Party</b>	15

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# LGBT Issues Win Big in November Elections

by C.J. Griffin

The Nov. 2012 election cycle produced significant gains for members of the lesbian, gay, bisexual and transgender (LGBT) community. At the federal and state level, same-sex marriage was on the forefront, and in each instance voters chose to advance LGBT civil rights. LGBT-identified candidates and straight candidates with pro-LGBT views also fared well, leading to historic victories and new opportunities for civil rights advancement in the near future.

## State Gay Marriage Referendums

Same-sex marriage referendums were a key get-out-the-vote strategy for Republicans in the 2000 and 2004 campaigns. As a result, currently 29 states have constitutional amendments or similar measures that ban same-sex marriages.<sup>1</sup> In November, that trend changed, with citizens in Maine, Maryland, and Washington voting to legalize same-sex marriage, and voters in Minnesota rejecting an effort to amend the state constitution to redefine marriage as an institution between a man and a woman, and thus permanently ban same-sex marriage.<sup>2</sup>

The issue of same-sex marriage was not new to Maine, where the Legislature had voted to legalize it and the governor had signed it into law. This positioned Maine to be the first state with legalized same-sex marriage that was provided by an elected legislative body and not through judicial determination. However, before the law could take effect same-sex marriage opponents successfully passed a statewide referendum that overruled the Legislature and banned same-sex marriages.<sup>3</sup> Just three years later, marriage equality proponents were elated when Maine Question 1, "An Act to Allow Marriage Licenses for Same-Sex Couples and Protect Religious Freedom," passed by a 53-47 margin.<sup>4</sup> The law took effect on Dec. 29, 2012, making same-sex marriages once again legal.<sup>5</sup>

Maryland shares a similar history with Maine, in that its elected officials had voted and signed same-sex marriage legislation into law earlier in 2012.<sup>6</sup> Question 6 on the Nov. 2012 ballot was an attempt by anti-same-sex

marriage opponents to overturn the legislation and ban same-sex marriages.<sup>7</sup> By a 52 to 48 margin, the people of Maryland voted to legalize same-sex marriage.<sup>8</sup> The law went into effect on Jan. 1, 2013.<sup>9</sup>

In Washington, too, state-elected officials had previously voted to legalize same-sex marriage and the measure had been signed into law by the governor.<sup>10</sup> Referendum 74 was an effort by anti-equality opponents to overturn the law and ban same-sex marriages. After what at first appeared to be a close vote, the secretary of state ultimately certified that the public had voted to uphold same-sex marriages by a margin of 53.7 to 46.3.<sup>11</sup> The law took effect on Dec. 6, 2012.<sup>12</sup>

In contrast, same-sex marriage in Minnesota has long been illegal.<sup>13</sup> However, in November voters rejected Amendment 1, which would have amended the state's constitution to permanently limit the right of same-sex couples to marry by defining marriage as a union between a man and a woman. The referendum failed by a 51-47 margin.<sup>14</sup> While LGBT Minnesotans cannot yet marry in Minnesota, this victory was the first time in U.S. history where voters went to the polls and rejected a same-sex marriage ban.<sup>15</sup>

After these victories, a total of nine states and the District of Columbia now have afforded full marriage rights to same-sex couples.<sup>16</sup> In addition to these jurisdictions, according to the Freedom to Marriage Foundation:

[New Mexico] and [Rhode Island] explicitly respect out-of-state marriages of same-sex couples, while nine states now offer broad protections short of marriage. [Delaware, Hawaii, Illinois, New Jersey, and Rhode Island] allow civil union[s], while [California, Oregon, and Nevada] offer broad domestic partnership[s]. Two other states [(Colorado and Wisconsin)] have more limited domestic partnership.<sup>17</sup>

These November victories give hope to LGBT activists that the trend in favor of granting same-sex couples full and equal marriage rights will continue.

## New Faces in Washington

In addition to specific ballot initiatives, voters also chose to elect into office numerous openly LGBT candidates, who are sure to advance civil rights issues for the LGBT community. According to the Gay & Lesbian Victory Fund, 123 of the openly LGBT candidates it endorsed won their elections in Nov. 2012.<sup>18</sup>

History was made when Wisconsin elected Tammy Baldwin, the first openly gay politician ever to serve in the U.S. Senate.<sup>19</sup> Baldwin, formerly a seven-term congresswoman, has played a key role in federal LGBT civil rights issues. She was the lead author of legislation that extended benefits to same-sex partners of federal employees<sup>20</sup> and she played a key role in passing legislation to expand hate crimes laws.<sup>21</sup> Baldwin has long been an advocate for the Employment Non-Discrimination Act (ENDA), so her voice could be vital in providing nationwide job discrimination protection for LGBT employees.

Voters in Iowa, Minnesota, and New York elected state legislators who will make efforts to either achieve or maintain legal same-sex marriage easier. In both New York and Iowa, Republicans had hoped to overtake each state's senate, paving the way for new votes and possible repeals of the states' same-sex marriage laws.<sup>22</sup> However, in both states Democrats won and same-sex marriage repeal is far from likely. In Minnesota, voters elected a Democratic majority into the state Legislature for the first time since 1960.<sup>23</sup> Same-sex marriage proponents believe this paves the way for marriage equality in the near future.

Similarly, Iowans voted to keep Justice David S. Wiggins as a jurist on the Supreme Court, despite his vote three years prior to legalize same-sex marriages in Iowa.<sup>24</sup> In the 2010 election cycle, voters had ousted

three other justices who were also part of that same majority to legalize same-sex marriages. The decision to keep Justice Wiggins represents a clear change of public opinion in Iowa, now that same-sex marriage has been legal for three years. This loss was also a blow to conservative efforts to seek revenge for the Iowa Supreme Court's decision to legalize gay marriage.

Finally, the re-election of President Barack Obama itself was a victory for the LGBT community. President Obama, endorsed by the leading LGBT-rights group Human Rights Campaign,<sup>25</sup> expressed his support for full marriage rights for same-sex couples in May 2012, making him the first U.S. president in history to do so.<sup>26</sup> Obama's words are not empty and his victory is not just symbolic. In his first term, he led efforts to repeal Don't Ask, Don't Tell so LGBT military personnel could openly serve.<sup>27</sup> In 2008, President Obama announced that he had instructed his Department of Justice to no longer defend the Defense of Marriage Act (DOMA).<sup>28</sup> This allows plaintiffs to challenge DOMA virtually unchallenged, but for counsel hired by Republicans in Congress. In sharp contrast to Obama, Republican candidate Mitt Romney did not support same-sex marriage or gay adoptions, had confusing positions on Don't Ask, Don't Tell, and did not support the Employment Non-Discrimination Act, known as ENDA.<sup>29</sup> Had the president lost his re-election bid, LGBT civil rights would not be nearly as secure under a Mitt Romney presidency. ■

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# Hurricanes and Law Firms... A Deadly Combination: Learning to Prepare for the Next One

by John Nachlinger

Super Storm Sandy brought the shortcomings of many law firms into focus. When this natural disaster struck, many of us discovered that our offices were not ready for extended periods without power, telephone and Internet. My office, which has two locations and five employees, discovered that we were totally incapable of operating during this crisis. However, the hurricane taught us invaluable lessons about how to prepare for the next natural disaster.

The first thing is to prepare, far in advance, for a prospective natural disaster, as well as relatively small events like the snowstorms we are used to. Planning in advance can save law firms thousands of dollars in lost revenue due to interruption of business operations because of structural damage, loss of utilities and/or displacement of employees. It is critical that all firms have an emergency plan in place to protect both you and your employees.

You also need to review your property and business interruption insurance with your insurance agent to ensure you have adequate coverage. Then, establish written procedures for your employees to follow in the event of a natural disaster. Part of this is ensuring you have a member of your firm in charge of implementing your disaster policy, both before, during and after the natural disaster.

Naturally, your emergency plan cannot be effective unless you have a way of activating your emergency plan. Establish an emergency roster and contact information, so that not only can you activate your emergency plan, but you can check on your employees during and after a natural disaster.

Most importantly, as my firm discovered during Sandy, it is important to establish a plan for protecting your computer system. Ensure you back up your entire database on a daily basis, and store your data in a location other than your office. There are many companies

that can externally back up your database. In my firm, we back up daily to a disk that is taken home by a secretary each night. That is not only effective in the event of a natural disaster, but also if your firm were to be victimized by fire or theft.

The best defense against the devastation of a natural disaster is preparation. Businesses, including law firms, are the key to economic stability in any community. They provide necessary services to clientele and economic support for employees. For these reasons, and many more, law firms should prepare to protect their property against the hazards that hurricanes can cause. Preparations can be divided into two categories: 1) actions needed at the beginning of each year, and 2) actions needed when a weather advisory is issued.

There are some commonsense things that firms in Florida and all along the Gulf Coast have developed because they experience hurricanes more often. First, photograph the interior and exterior of your building to assist you in the event you need to make an insurance claim. Second, contact a computer technician who can develop redundancy in your system to protect your data. Third, make sure your insurance policies and employee records are stored off site and in a secure location. Fourth, make sure your client files (both electronic and physical) are secure.

Once a disaster hits, it is important to stay calm and realize that everyone is in the same boat. No one has electricity or Internet; your clients will be dealing with the disaster as will your adversaries and the judicial system. The most important thing to do is ensure your emergency plan was activated appropriately and your employees are safe and secure. As during Sandy, many courts were closed for a week or more, and many offices were without power for up to two weeks. Therefore, it is important that you have access to a calendar and client contact information during such a time.

In my office, we encountered many systematic problems during Sandy. Our calendar was entirely online, and therefore inaccessible during the power outages. Our client information was on our computers, which were inoperable and inaccessible. Since Sandy, we have begun printing the firm's calendar each week, and keeping a hard copy of all client information in case we cannot access our server.

Running your firm with the view that a natural disaster can strike at any time—be it a hurricane or a snowstorm—can save data, client trust and, most importantly, can allow you to continue operating and earning money during extended periods of power and Internet loss. ■

*John Nachlinger is a past chair of the LGBT Rights Section. He exclusively practices family law at Cores and Nachlinger, L.L.C., based in Howell.*



# The Fall of DOMA?

by Stephanie Cañas Hunnell

A finding by the Supreme Court that the Defense of Marriage Act (DOMA) is unconstitutional will impact same-sex married couples in several areas, including taxation, spousal health insurance benefits, Employee Retirement Income Security Act (ERISA) benefits, bankruptcy, immigration, and dissolution. Unfortunately, to cover every one of these topics with any sufficiency, each would require a separate article of its own. Accordingly, this article only addresses the legal background regarding taxation and the Defense of Marriage Act, and how tax revenues may be impacted if DOMA is found unconstitutional.

DOMA, the 1996 act signed under President Bill Clinton, defines the word 'marriage' to mean "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>1</sup> DOMA further provides that no state "shall be required to give effect to any public act...of any other State...respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such State."<sup>2</sup>

Since that time, there has been a legal basis for the disparate treatment between heterosexual married couples and same-sex married couples. Some of the ways same-sex couples are treated differently than their heterosexual counterparts include, but are not limited to:

- their inability to file joint federal income taxes and inherit ERISA plan benefits as a 'spouse';
- the fact that they do not qualify as a 'surviving spouse' for estate tax purposes;
- the fact that they are required to pay taxes on employee health insurance benefits for their partners;
- the fact that they are not eligible for tax-free transfers of property upon dissolution of their marriages; and,
- the fact that they are not permitted to deduct 'spousal support' payments.

These are but a few benefits and protections provided by a heterosexual marriage license. Attempting to secure some of the very same benefits and protections ultimately costs same-sex partners thousands of dollars, through the drafting of wills, trusts, and powers of attorney.<sup>3</sup>

The tide changed with the Obama administration, and on Feb. 23, 2011, the Department of Justice, Office of Public Affairs issued a *Statement of the Attorney General on Litigation Involving the Defense of Marriage Act*, which provided that "the President has instructed the Department not to defend the statute in" cases where Section 3 of DOMA is applied to same-sex married couples, because it does not meet the more heightened standard of scrutiny, thus making it unconstitutional.<sup>4</sup>

Thereafter, several federal courts ruled that aspects of DOMA are unconstitutional.<sup>5</sup> Some notable decisions include the case *In re Balas & Morales*,<sup>6</sup> where in June 2011, the U.S. Bankruptcy Court for the Central District of California found that Section 3 of DOMA was unconstitutional as it applied to Bankruptcy Code 302(a). *In re Balas & Morales* specifically examined the federal government's refusal to extend to legally married same-sex couples the same bankruptcy protections offered to heterosexual married couples.<sup>7</sup> The Bipartisan Legal Advisory Group, which receives funding from the U.S. House of Representatives specifically for the legal defense of DOMA, has not elected to challenge the ruling of the court, and on July 11, 2011, the appeal was dismissed.<sup>8</sup>

In *Golinski v. Office of Personnel Mgt.*, the United States District Court in California ruled that DOMA violates both equal protection and due process, rights delineated by the 14th and Fifth Amendments, respectively. The decision as written by District Judge Jeffrey S. White echoes the statement from the Department of Justice, concluding that DOMA "fails to satisfy heightened scrutiny, and is unconstitutional as applied to Ms. Golinski."<sup>9</sup>

The United States District Court in Connecticut also found Section 3 of DOMA to be unconstitutional in *Pederson v. Office of Personnel Mgt.* In that decision, Judge Vanessa L. Bryant outlined the inequity in the application of federal marriage laws to the states, with some states having all marriages authorized while other states receive federal recognition and benefits for “only a portion of marriages.”<sup>10</sup> Petitions for *writ of certiorari* were filed, however no orders have been issued.<sup>11</sup>

On Oct. 18, 2012, the Second U.S. Circuit Court of Appeals in New York ruled in *Windsor v. United States* that Section 3 of DOMA violates the 14th Amendment’s equal protection clause. The majority opinion, written by Judge Dennis Jacobs, supported a ruling by a lower court that found that the amplified impact of the federal estate tax on same-sex partners, brought about by DOMA’s definition of marriage, was unconstitutional.<sup>12</sup> This case was particularly media-worthy because the couple had been together for more than 40 years and legally married in Canada in 2007.<sup>13</sup> When Edie Windsor’s spouse died in 2009, she was forced to pay more than \$363,000 in federal estate taxes because under DOMA they are considered legal strangers. Had Windsor been married to a man, she would have paid zero in federal estate taxes.<sup>14</sup>

On Jan. 7, 2013, the Supreme Court published its argument calendar for the March 2013 session.<sup>15</sup> On the calendar are two same-sex marriage cases, including *Hollingsworth v. Perry*, California’s Proposition 8 case, which challenges the 9th Circuit Court of Appeals’ decision that *Proposition 8 is unconstitutional*,<sup>16</sup> and *United States v. Windsor*, a New York case, which challenges Section 3 of the Defense of Marriage Act.<sup>17</sup> The Supreme Court granted *certiorari* on both cases on Dec. 7, 2012.<sup>18</sup>

While many spectators predicted that the Court would hear *Windsor*,<sup>19</sup> many were surprised by the Court’s choice to hear *Hollingsworth*.<sup>20</sup> The Court’s decision to take up both Proposition 8 and the Defense of Marriage Act has caused national debate regarding whether this is the beginning of marriage-equality nationwide<sup>21</sup> or whether the Court will decline to issue a decision on the merits due to the lack of standing.<sup>22</sup>

Although it appears that there are only a small sampling of courts finding DOMA unconstitutional,<sup>23</sup> a Pew Research Poll taken this year “showed that 49% of Americans favored same-sex marriage (with 40% opposed), versus 37% in 2009 and 33% in 2003.”<sup>24</sup>

To be sure, the Court watches the temperature of the country with regard to these issues, and although a majority of the country favors same-sex marriage, it is not an overwhelming majority. Constitutional law scholar William Eskridge told *Forbes* that the country may not be ready for a far-reaching decision that requires same-sex marriage nationwide, and thus the Court will not likely render one.<sup>25</sup> Based on the current make-up of the Court, it is this writer’s opinion that the Court will find Section 3 of the Defense of Marriage Act unconstitutional, but will decline to mandate same-sex marriage nationwide.

What would this mean to those same-sex couples currently in civil unions in New Jersey? At this point, likely nothing. In New Jersey, individuals in a lawful civil union theoretically receive all of the same state rights and state benefits as their married counterparts.<sup>26</sup> How that was accomplished was by revising all of New Jersey’s laws affecting married persons, to include “or civil union,” or some similar phrase.<sup>27</sup> The intent was to ensure that all parties to a civil union would “have all of the same benefits, protections and responsibilities under the law.”<sup>28</sup> So, for example, our alimony statute now provides: “Pending any matrimonial action *or action for dissolution of a civil union*...the court may make such order as to the alimony or maintenance of the parties... shall render fit, reasonable and just.”<sup>29</sup>

Thus, individuals in a civil union will still not be considered ‘married’ under the current federal system even if DOMA is found to be unconstitutional. However, those individuals who are legally married in other states, like New York,<sup>30</sup> will be able to reap all of the benefits currently afforded their heterosexual counterparts. One of the biggest benefits most same-sex married couples are looking at is the right to file a joint federal income tax return, because that right affects all married couples. As it stands currently, same-sex married couples are entitled to file joint state tax returns, and thus must prepare three federal income tax returns, one filing jointly, so that the state return can be properly prepared, and then two separate individual federal tax returns, which are filed with the Internal Revenue Service. Instead of filing at the state level as a married couple and filing two single returns at the federal level, same-sex couples will be able to maintain consistency between the two returns, reducing paperwork and making errors less likely.

## Effect on Income Tax Revenues

A 2004 study by the Congressional Budget Office evaluated the budgetary impact of a federal recognition of same-sex marriage, and concluded that revenues from federal income taxes could stand to increase “by between \$200 million and \$400 million each year.”<sup>31</sup> This assessment was conducted using income tax rates that are no longer in place, but an analysis based on the current law of the American Taxpayer Relief Act would likely yield similar results, with revenues increasing by a small amount relative to the federal budget. However, this does not mean that every same-sex couple will see an increase in their income tax liability. Rather, same-sex couples will need to evaluate the position of their yearly income with regard to the ‘marriage penalty’ point. A marriage penalty commonly refers to the general point where some couples, generally with higher incomes, face a higher tax liability if they file a joint return as a married couple versus their combined liabilities if they filed as singles.<sup>32</sup> While previously income tax brackets featured a structural marriage penalty, it is now only possible for higher-income couples affected by a phase-out of their personal exemption.

On the other hand, if one spouse has a significantly higher salary than the other, the couple will typically stand to decrease their tax burden by filing a joint return. Additionally, it is worth noting that couples filing a joint tax return will be able to take advantage of each other’s credits and deductions, including tuition and fees tax deduction for educational expenses and mortgage interest and property tax deductions. They will also no longer be required to claim additional taxable income for the additional premium costs for a partners health insurance benefits, and other related benefits available to spouses, that were not previously recognized by the federal government.<sup>33</sup>

For combined incomes under \$100,000, there will likely be no difference in tax burden whether filing as two singles or filing a joint return as a couple.

Retrospectively, if DOMA is declared unconstitutional, then currently married same-sex couples will be eligible to file an amended tax return for the three previous years.<sup>34</sup> For all those who would reduce their tax burden by filing as a couple, a tax rebate may be in order. Additionally, they could be entitled to reduce their taxable income based on various spousal benefits, including health insurance, that are currently being taxed as income. This could pose a serious problem for the federal government if same-sex married couples are permitted to file amended tax returns *only* when it is lucrative for them to do so. In that event the cost of DOMA being declared unconstitutional could be in the tens of millions of dollars. Given the level of scrutiny the federal government’s budget deficit faces in current public discourse, it is not unreasonable to expect that this may be resolved legislatively. If all married same-sex couples are required to file amended tax returns, whether they are entitled to a rebate or not, then DOMA being struck down will likely not affect the federal budget deficit, since the expenditures from disbursing rebates will be more than offset by the increased revenue from couples who benefited financially from the federal government’s refusal to recognize their marriage.

These examples are not tax advice; they only seek to belie the common assumption that every same-sex married couple will be entitled to a tax rebate if DOMA is found to be unconstitutional and convey that some couples substantially increase their tax burden by marrying. So, if DOMA is found unconstitutional, practitioners must counsel their clients to seek tax advice and investigate where they stand in relation to the marriage penalty before running out to file an amended return. ■

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## Endnotes

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6. *In re Balas and Morales*, No. 2:11-bk-17831 (Bankr. C.D. Cal. 2011).
7. *Id.*
8. *Id.*, see Order Dismissing Appeal (July 11, 2011).
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10. *Pedersen v. OPM*, No. 3:10-cv-01750-VLB (D. Conn. 2012).
11. *Pedersen v. OPM*, No: 12-231, *pet. for cert.* (Aug. 21, 2012); and *Pedersen v. OPM*, No.: 12-302, *Pet. for Cert.* (Sept. 11, 2012).
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13. Ian Thompson, What the Supreme Court's Decision to Hear a Challenge to DOMA Should Mean for Same-Sex Bi-National Couples, Dec. 11, 2012, available at [www.aclu.org](http://www.aclu.org).
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15. [http://www.supremecourt.gov/oral\\_arguments/argument\\_calendars/MonthlyArgumentCalMar2013.pdf](http://www.supremecourt.gov/oral_arguments/argument_calendars/MonthlyArgumentCalMar2013.pdf).
16. *Hollingsworth v. Perry*, No. 12-144, *pet. for cert.* (July 30, 2012).
17. *United States v. Windsor*, No. 12-307, *pet. for cert.* (Sept. 11, 2012).
18. *Id.* at order list: 568 U.S. (Dec. 7, 2012); *Hollingsworth v. Perry*, No. 12-144, order list: 568 U.S. (Dec. 7, 2012).
19. *Id.*
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21. James Esseks, We're Going to the Supreme Court! The Supreme Court Takes Review of DOMA and Prop 8!, Dec. 7, 2012 (statement by Esseks, Director, ACLU Lesbian Gay Bisexual Transgender & AIDS Project "the full range of marriage issues will now be before the high court. These cases are poised not just to take down DOMA and Prop 8, but to be the next building blocks for LGBT equality more broadly.").
22. *See*, 568 U.S. Grant Order, Dec. 7, 2012 (granting *certiorari* and requiring the parties in both *Hollingsworth* and *Windsor* to brief and argue the issue of standing).
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## William S. Singer Receives LGBT Rights Section's First Lifetime Achievement Award

*(Editor's Note: On April 10, 2012, the LGBT Rights Section presented its first Lifetime Achievement Award to William S. Singer of Singer & Fedun, LLC, Belle Mead. Susan Feeney, the immediate past president of the New Jersey State Bar Association, was on hand to help make the presentation. For those of you who were not able to attend, reprinted below is Singer's acceptance speech, which demonstrates his breadth, depth and humility—all of which served to make him worthy of this award.)*



*Susan Feeney and Bill Singer*

Thank you to Susan, Nancy and all of the members of the section. Being honored by one's peers is extraordinary. It is so special to be recognized by the New Jersey State Bar Association. After all, I am a real New Jersey product. I have lived in New Jersey all my life and only in two counties—Middlesex and Somerset.

I am honored to have a childhood friend here, someone with whom I went from K to BA. We are both products of Highland Park and Rutgers University. He is Doug Greenberg, executive dean of arts and sciences at Rutgers. He is here with his wife Margee, who he met in high school and never let her out of his sights—now how many years, 47?

I also want to thank my friend, Deb Guston. I always find it amusing when Deb calls me her mentor because anyone who knows Deb knows that when it comes to LGBT family law she is a mentor to us all. I also want to thank Michael Fedun, my exceptional law partner for nearly 20 years.

Tonight, I want to speak about the future and some about the past. As to the future, I have two points that I want to make.

First, we will win marriage equality. Yes, we need to be tireless in pursuing it. But, looking through the prism of experience, I want to preach caution. I respect Justice Ruth Bader Ginsburg. She has such wisdom and knows

when to pick a fight. Looking back at the decision in the abortion rights case *Roe v. Wade*, she said:

The political process was moving in the early 1970s, not swiftly enough for advocates of quick, complete change, but majoritarian institutions were listening and acting. Heavy-handed judicial intervention was difficult to justify and appears to have provoked, not resolved conflict.

I must agree. We should not expect the U.S. Supreme Court to tell 35 states tomorrow to accept marriage equality overnight. Such a decision will create more upheaval and not get us to the goal we all seek. The Supreme Court will not get ahead of the public on this issue.

We first need to get rid of the Defense of Marriage Act. With DOMA gone, same-sex couples in recognition states will have the full panoply of rights. Let the rest of the country see how it works. I think we all know what the trajectory will be.

Secondly, while we work toward marriage equality and a more equal and just society, we need, as a community, to support each other. Our mutual support will be a key element in making our community strong.

It is great that we have a successful section of

this bar association after two failed attempts before. Congratulations are due to Danny Weiss who had the perseverance to form our section. I remember two failed attempts earlier, one in the 1980s and one in the 1990s. And congratulations to Tom Prol as he ascends the ladder to become the first openly gay president of our state bar association.

Most of you are familiar with the LGBT Family Law Institute. For those who don't know, it is Annual Meeting for seasoned LGBT family lawyers with an active listserv that I created. Each meeting attracts 125 attorneys from throughout the United States and Western Europe. My impetus for FLI was to connect like-minded attorneys and to develop a cadre of lawyers to advance our goals. Before Michael and I became law partners, I remember my own experience practicing alone out in the sticks in New Jersey as an out gay attorney, and how isolated I felt. Now, through FLI, attorneys in hostile jurisdictions, and those far from metropolitan centers, have a way to connect.

We are learning how to use the law in more friendly states to help those in our community in hostile territory. That is the kind of connection we need to think about. We are on the cutting edge of the law. We write statutes and try cases that lay the groundwork for the whole country. We are looking at new forms of family, including three- and four-parent families, which reflect who we are and how we live our lives. We are making the general society recognize new forms of relationships. We are the vanguard. If we remain united, we will continue to win. That is the future, but this award tonight makes me reflect on the past—after all, I was a history major at Rutgers.

Last year there was an art exhibit at the Smithsonian. I caught it at the Brooklyn Museum. It was titled "Hide/Seek: Difference and Desire in American Portraiture." It astounds me that this exhibit was the first time an exhibit ever focused on artists identified as being part of the LGBT community. The exhibit underscores that we have an obligation to reclaim our history and to celebrate it. For too long our community has been marginalized by the mainstream. We are too important for our history to be ignored.

There are also other parts of our history that we need to remember, even if we do not celebrate them. It was not that long ago that esteemed New Jersey judges openly despised us. We must not forget two decisions by appellate court judges in New Jersey in the 1960s from which I want to quote.

In one case, the court found that a bar permitted to congregate at the premises "persons who conspicuously displayed by speech, tone of voice, bodily movements, gestures, and other mannerisms the common characteristics of homosexuals." Although the court recognized that there was no evidence produced that the patrons were, in fact, homosexuals, the judges held "it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird." In a second case, a court found that a bar was patronized by "males impersonating females who appeared to be homosexuals" and males who engaged in "foul, filthy and obscene conduct," including "overtures for and arrangements with other male persons...for acts of perverted sexual relations." These historic references to us also make up part of our history that we need to remember. We were forced in the shadows and were punished for being who we are. We all carry those wounds. We need to carry those memories with us as we fight for our rights.

Finally, I want to speak about a portion of my life that I usually avoid. The hurt and rage are too deep. But I have to air these feelings as part of the healing process. Of course, I am talking about the AIDS holocaust. Those were years of inexorable death. Every day *The New York Times* was filled with numerous obituaries of gay men felled by the disease.

Those of us in that battle were either caring for friends, going to funerals or just scared out of our minds. It was a time of fear and hysteria. And yet, as we lived through this devastation, most of society blithely went about its normal life. The incongruity was hard to stomach. That silence, that lack of caring smelled like bigotry to me.

Inevitably, that crisis made us stronger. We were forced to mobilize and to invent new means to win battles. AIDS made gay men suddenly more apparent. It made us crusaders and political activists. Dark days do have benefits. So, I counsel when we are hit another time by opposition or calamity, take it and use it to make yourself stronger as an individual. Remember our glorious history. Use it to fortify yourselves, because we have many more battles ahead.

Again, thank you to the section for this great honor. Thank you to my husband Danny for his love and support. I pledge to continue to work on behalf of all of us. ■



# LGBT Rights Section Holiday Party

