
THE CONGRESS PROJECT

Assignment Prompt Sheet

Defense of Marriage Act

Overview

Act Title: Defense of Marriage Act

Congress: 104th Congress (1995-1996)

Session/Sessions: 1

Statute No: 110 Stat. 2419

Public Law No: 104 PL 199

Eid: 1040199

Gid: 213-008

Bill: [HR 3396](#)

Sponsor: [Rep. Bob Barr \(R-GA\)](#)

House Committees: Judiciary

Senate Committees: Judiciary

Companion Bill: S 1740

Related Bills: S 1999; S 2056; S 932

House Rules: Hres 174

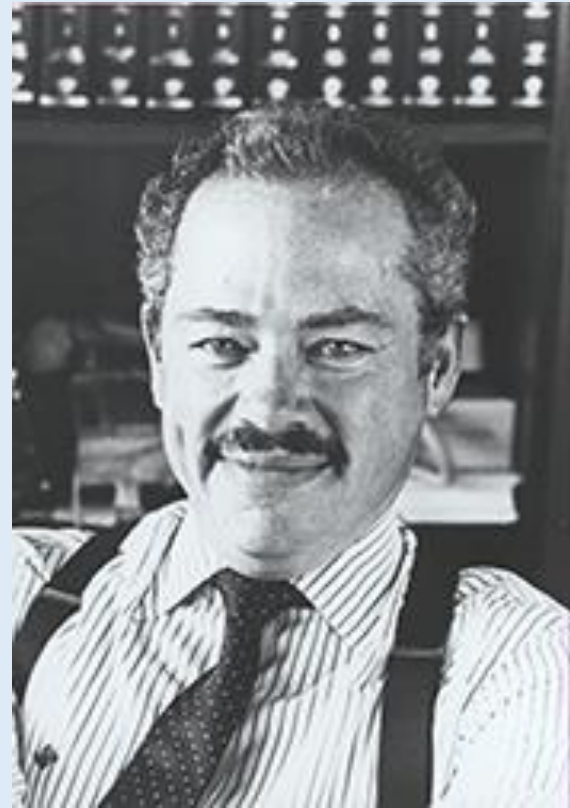
Past Bills:

Introduced Date- Law Date: May 7, 1996-September 21, 1996

House Floor Days: 2

Senate Floor Days: 2

Roll Call Votes: 6 (3 in the House, 1 in the Senate on HR 3396; 1 in the House on Hres 174; 1 in the Senate on S 2056)



(Above) Rep. Bob Barr (R-GA), the bill sponsor. He later called for its repeal.

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Legislative History Comments

Same-sex marriage became legal in the United States after the Supreme Court ruled in [Obergefell v. Hodges \(2015\)](#) that it was guaranteed by the Fourteenth Amendment to the Constitution. In doing so, they invalidated a section of the [Defense of Marriage Act \(104 PL 199\)](#). Another section had been invalidated by a previous Supreme Court ruling in [United States v. Windsor \(2013\)](#). The law's primary provision was one defining the federal definition of marriage as a "legal union between one man and one woman ([CRS 2014, 3](#))." This, according to [CQ Almanac \(1996\)](#), served to bar gay couples from "filing joint tax returns or making use of any spousal benefits under Social Security or other federal programs." The act also codified language that ensured states did not have to recognize same-sex marriages sanctioned in other states. The measure, introduced in the House by Rep. Bob Barr (R-GA), was largely pushed in response to a 1993 Hawaii court case.

Procedurally, passage of DOMA not that particularly controversial. Concerned about reelection, President Clinton quietly announced he would sign the bill if it cleared both chambers. It was considered in the House under a structured/modified closed rule and passed with an overwhelming majority, 342-67. After some filibuster posturing, it cleared the Senate 85-14 shortly afterwards and was signed into law. Probably the trickiest element of this bill is dealing with S 2056. It sounds like Sen. Ted Kennedy (D-MA) was holding up the unanimous consent agreement in order to force a vote on this bill. S 2056 was defeated [49-50](#).

Don't hesitate to e-mail me with questions! In addition to the above CQ Almanac piece, [this CRS report](#), which is pre-Hodges, is also worth a look.

Assignments

For the sections below, you're going to want to answer the questions and write-up the process sections that correspond to your assigned number. Here they are:

#1.

#2.

#3.

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Background Questions

1. Discuss the broader political context this bill was considered in. Who controlled the House? The Senate? By how many? Who was President? Was this part of the President's agenda? What was the Clinton administration's attitude towards this bill? What other pieces of legislation were being considered/passed in this Congress? Were there other political efforts that dealt with this issue during this period? What about "Don't Ask, Don't Tell" ([see CQ Almanac 1993 here](#))?

For this Congress, a discussion of the Contract with America might be worthwhile. Additionally, the Stathis (2014) piece might worth a citation here.

2. What motivated consideration of this legislation in this specific Congress? More specifically, what happened in *Baehr v. Miike*? Why did Congress feel the need to respond to it? Was it likely that other states would have taken similar steps as Hawaii?
3. What does this act actually do? What is the distinction between a "civil union" and "marriage"? Who was pushing for it? Who was pushing against it? Why did supporters feel this was needed? Specifically, was this a "state" or "federal" issue before DOMA?

In the process sections below, I mention the one Republican "no" vote on this bill came from Rep. Steve Gunderson (R-WI). Gunderson had been "outed" during a floor debate months earlier by Rep. Bob Dornan (R-CA). What happened in that episode?

Process Sections

Please write-up the sections that correspond to your number. Feel free to incorporate any notes I might have dumped in the margins.

#1. House Consideration of HR 3396 (July 11-12, 1996)

HR 3396 was considered under a special rule, Hres 474. This rule is a structured rule that provided for one hour of general debate that is divided equally between the chairman and ranking minority member of the Committee on the Judiciary.

On the floor, there were two amendments, both offered by Rep. Barney Frank (D-MA), one rejected by voice vote and one by recorded vote.

Prior to final passage, there were two motions to recommit with instructions. One, offered by Rep. Sheila Jackson-Lee (D-TX), would have inserted a new section at the end of the measure that bars employers from discriminating on the basis of sexual orientation. Canady raised a point of order against the motion on the grounds that it was not germane. This was sustained.

A second motion to recommit with instructions was offered by Rep. Howard Berman (D-CA). It sought to amend the bill to provide for "for a GAO study to look at the differences in benefits, rights, and privileges available to persons in a marriage and to persons in a domestic partnership

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resulting from the non-recognition of domestic partnerships as legal unions by State and Federal laws.” It was rejected 164-249.

The bill then passed the House [342-67](#) with 118 Democrats joining 224 Republicans voting year. 66 Democrats joined one Republican in opposition.

The lone Republican no came from Rep. Steve Gunderson (R-WI), the first openly gay Republican representative. During the debate, he offered a motion to rise and report so he could give a speech against the bill.¹

#2. Senate Consideration of HR 3396 & S 2056 (September 5-6, 1996)

S 1740 was introduced in Senate by Senator Don Nickles (R-OK).

Senate Majority Leader Trent Lott (R-MS) initially requested unanimous consent the measure be taken up on September 5th. The minority leader, Senator Tom Daschle (D-SD), objected to this request. While Daschle acknowledged the measure had “support on our side as well” he stressed a desire to offer amendments to the bill.² An agreement was reached and a unanimous consent request agreed to later that day.

As per the agreement, the Senate debated S 2046 on September 6th.

#3. Senate Consideration of HR 3396 & S 2056 (September 10, 1996)

Floor consideration of HR 3396 began on September 10th.

HR 3396 passes [85-14](#) with all 14 no votes coming from fairly liberal Democrats.

Under the previously reached unanimous consent agreement, S 2056, the Employment Nondiscrimination Act of 1996.

Member Spotlight

Choose one of the following for your member spotlight:

¹ He’s gotten a decent amount of publicity for his “Why are we so mean?” speech (page 17065 in the Record). See the speech here <https://www.c-span.org/video/?c4542182/rep-steve-gunderson-house-floor-remarks-defense-marriage-act> or read “House Votes to Curb...”; House Passes Bar...

² Daschle’s full statement: “I just wanted to take a moment to explain that it is not our desire necessarily to hold up this piece of legislation. There is support on our side as well. Unfortunately, the majority leader has not been able to work out an agreement with us to accommodate a number of Senators on our side who wish to offer amendments. It was for that reason that I objected tonight. Obviously, we will have a good debate about the bill. It will be my hope we could offer amendments, but at least at this time it does not appear to be likely. We will continue to work together and try to find a way to resolve these issues, but at least tonight that has not been resolved (*Congressional Record*, 104th Congress, September 5, 1996, 22166).”

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#1. Rep. Bob Barr (R-GA); Rep. Barney Frank (D-MA); Rep. Howard Berman (D-CA); Rep. Sheila Jackson-Lee (D-TX); Rep. Newt Gingrich (R-GA)

#2. Sen. Don Nickles (R-OK); Sen. Trent Lott (R-MS); Sen. Tom Daschle (D-SD); Sen. Ted Kennedy (D-MA); Sen. Jesse Helms (R-NC)

#3. Rep. Steve Gunderson (R-WI); Rep. Bob Dornan (R-CA); Rep. Jim Kolbe (R-AZ); Rep. Sonny Bono (R-CA); Rep. John Lewis (D-GA)

Aftermath Questions

1. How was this act viewed upon passage? What did the newspapers say? How did the final measure differ from the one reformers were pushing? How have scholars reacted to it? Were there electoral repercussions for its passage?
2. How has this law evolved over time? Has it been featured in any major Supreme Court cases? Significantly altered by subsequent legislation? Specifically, for this bill, detail [*Obergefell v. Hodges \(2015\)*](#) and [*United States v. Windsor \(2013\)*](#). What happened in those cases? How did scholars view them?
3. How has this act been viewed by scholars? Did it achieve its stated goals? Do scholars highlight any major limitations? Are there aspects of the bill that are viewed more favorably than others?

Discuss the relevance of this act as it pertains to contemporary policy. How did the issue of gay marriage evolve since this bill was passage? How did the states react to it?

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Suggested Sources

Scholarly Articles:

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Koppelman, Andrew. "Dumb and DOMA: Why the Defense of Marriage Act is unconstitutional." *Iowa L. Rev.* 83 (1997): 1.

Ruskay-Kidd, Scott. "The defense of marriage act and the overextension of congressional authority." *Columbia Law Review* (1997): 1435-1482.

Whitten, Ralph U. "The Original Understanding of the Full Faith and Credit Clause and the Defense of Marriage Act." *Creighton L. Rev.* 32 (1998): 255.

Butler, Charles J. "Defense of Marriage Act: Congress's Use of Narrative in the Debate over Same-Sex Marriage." *NYUL Rev.* 73 (1998): 841.

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<https://www.everycrsreport.com/reports/RL31201.html>

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Newspaper Pieces:

<https://www.politifact.com/factchecks/2013/jul/03/ed-lindsey/barr-has-not-always-been-faithful-doma/>

<https://www.latimes.com/la-oe-barr5-2009jan05-story.html>

<https://abcnews.go.com/Politics/congress-evolves-doma-sex-marriage/story?id=17888075>

<https://www.theatlantic.com/national/archive/2012/04/the-losing-argument-for-the-defense-of-marriage-act/255364/>

<https://www.npr.org/sections/thetwo-way/2013/06/26/195881288/after-doma-whats-next-for-gay-married-couples>

<https://www.theatlantic.com/politics/archive/2014/06/which-states-have-passed-gay-marriage-laws-in-the-past-year/455511/>

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https://www.washingtonpost.com/opinions/bill-clinton-its-time-to-overturn-doma/2013/03/07/fc184408-8747-11e2-98a3-b3db6b9ac586_story.html

https://www.washingtonpost.com/outlook/gay-rights-advanced-significantly-in-the-last-25-years--no-thanks-to-congress/2021/09/17/302a881a-164a-11ec-a5e5-ceecb895922f_story.html

<https://www.nytimes.com/2013/03/28/us/supreme-court-defense-of-marriage-act.html>

<https://www.nytimes.com/2012/06/11/opinion/the-defense-of-marriage-act-exposed.html>

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<https://www.vox.com/policy-and-politics/2015/10/30/9642602/clinton-doma-constitutional-amendment>

<https://www.vox.com/the-highlight/2019/12/11/21002988/gay-marriage-same-sex-legal-doma>

<https://www.vox.com/marriage-equality>

<https://www.npr.org/2015/07/09/421462180/from-doma-to-marriage-equality-how-the-tide-turned-for-gay-marriage>