

The New York Times

Corporate Call for Change in Gay Marriage Case

By [ERIK ECKHOLM](#) Published: February 27, 2013 [56 Comments](#)

Arguing that the federal Defense of Marriage Act imposes serious administrative and financial costs on their operations, some of the nation's largest companies [filed a supporting brief](#) with the [Supreme Court](#) on Wednesday, urging it to overturn a section of the act that denies federal benefits and recognition to same-sex couples.

Edith Windsor is challenging part of the law that defines marriage as between a man and a woman for the purposes of federal laws and programs.

The brief drew 278 signers, including more than 200 companies — among them giants like Citigroup, Apple, Mars and Alcoa — as well as city governments, law firms and other groups. In statements on Wednesday, many declared their firm opposition to discrimination based on sexual orientation. But the “friend of the court” brief focused more on the burdens imposed by the 1996 law on companies that offer benefits to same-sex spouses.

The brief was one of many received by the court as it considered landmark cases on gay rights and marriage. With a wide swath of leading companies signing on, it is the latest sign of the rapid shift toward acceptance of same-sex marriage in the corporate world as well as in the country. Recent polls indicate that a majority of Americans now agrees that same-sex marriage should be legal. Nine states plus the District of Columbia have legalized gay marriage and three more states recognize gay marriages performed elsewhere.

Prominent [Republicans also announced](#) they would also file a Supreme Court brief in support of a suit seeking to strike down Proposition 8, a California ballot initiative barring same-sex marriage, and all similar bans.

In the brief, the signers said the federal law “puts us, as employers, to unnecessary cost and administrative complexity.” But the law also, the brief stated, “forces us to treat one class of our lawfully married employees differently than another, when our success depends upon the welfare and morale of all employees.”

For companies operating in the states where same-sex marriage is legal, the ban on federal benefits under the law has proved a headache. Contradictory marriage laws in different states have also complicated benefits and other programs of companies operating in multiple states.

Treating heterosexual and same-sex married employees differently under federal law, the brief said, imposed high administrative costs as companies maintained dual systems of tax withholding and payroll. It results in extra tax burdens for both companies and employees with health plans, and can affect payments including retirement, pension and life insurance as well as having a bad effect on morale.

“We feel it’s critical for the court to understand the burdens that this law imposes on both employers and employees,” said James Klein, president of the American Benefits Council in Washington, whose

members include a broad cross-section of major employers. “DOMA is not just a piece of social legislation, but it also has very practical costs for the business community and the people they employ.”

Those signing the brief included major companies like Walt Disney, Starbucks, Amazon, Microsoft, Levi Strauss, Marriott International and New York Life, as well as smaller firms like the U.S. Balloon Company in Brooklyn and Holdredge Wines in California.

The list also includes Wall Street firms like BlackRock, Goldman Sachs and Morgan Stanley.

The brief was filed in support of *United States v. Windsor*, No. 12-307, which challenged a part of DOMA that defined marriage as being only between a man and a woman for the purposes of more than 1,000 federal laws and programs.

The case involved Edith Windsor of New York City, who had [married Thea Clara Spyer](#) in Canada in 2007. Ms. Spyer died in 2009, leaving her property to Ms. Windsor. But the Internal Revenue Service said that under DOMA, Ms. Windsor could not be treated as a surviving spouse and she faced a large tax bill that a spouse in an opposite-sex marriage would not have to pay.

Ms. Windsor sued and a federal appeals court struck down the 1996 law, the second time an appeals court called this part of DOMA unconstitutional.

The case is one of two now before the Supreme Court concerning same-sex marriage; a second, involving Proposition 8, is the subject of another amicus brief supported by some of the same corporations that signed the Windsor brief.

The court is expected to hear arguments on both cases in March.

The Windsor amicus brief, mainly drafted by Sabin Willett, a lawyer with Bingham McCutchen in Boston, outlined the costs imposed on both employers and employees when companies must maintain dual policies for those in same-sex and opposite-sex marriages. But it also argues that the discrimination undermines their business performance.

“It’s 2013, the face of the nation is changing and to be competitive, to win in business today, you need to change with the demographics of the nation,” said Bernadette Harrigan, an assistant vice president in the law department of the Massachusetts Mutual Life Insurance Company, one of the signers, who has been active on gay rights issues.

Several companies, in statements issued Wednesday, stressed their concerns about the impact of DOMA not only on costs but also on fairness.

“Mars’ decision to support the amicus brief was based on our belief that all married Mars associates should be treated equally under the law,” said a statement from the candy maker.

A Johnson & Johnson statement said: “We have joined the amicus brief because, as an employer, we believe that all lawfully married employees should be treated by our company in the same way.”

John Holdredge, of Holdredge Wines in Healdsburg, Calif., said in a telephone interview, “We don’t want to have to ask employees about their orientation and we don’t want to have to discriminate.”

The New York Times

Corporate America Weighs In on Treatment of Gay Couples

By [TARA SIEGEL BERNARD](#) February 28, 2013, 10:48 am

Gay couples face a host financial and legal complications because of the federal law that bans same-sex marriage. As a result, they often end up having to pay more for a host of things — [tax preparation](#), health benefits and estate planning, among other things.

So it's not terribly surprising that the law complicates things for same-sex partners' employers, too, especially when a couple's union may be recognized in a particular state, but not in the eyes of the federal government. Not only does that leave plenty of room for error in the administration of employee benefits, it also forces employers to treat their employees differently simply because of their sexual orientation.

As a result, [more than 200 companies](#) — among them giants like Citigroup, Apple, Mars and Amazon — as well as city governments, law firms and others, are arguing that the law that bans same-sex marriage imposes serious administrative and financial costs on their operations. The companies filed a [supporting brief](#) with the [Supreme Court](#) on Wednesday, urging it to overturn a section of the Defense of Marriage Act that denies federal benefits and recognition to same-sex couples.

“It puts us, as employers, to unnecessary cost and administrative complexity, and regardless of our business or professional judgment forces us to treat one class of our lawfully married employees differently than another, when our success depends upon the welfare and morale of all employees,” they wrote in the brief.

We've documented these inequities and complications as part of the “[Cost of Being Gay](#)” series on Bucks. For instance, gay employees who add their partners to their health benefits are taxed on the value of that coverage (if the partner is not considered a dependent) since their unions are not federally recognized. Opposite-sex married couples are not subject to the tax, so some employers have attempted to equalize the playing field by [covering the extra costs](#) for same-sex employees. We've tracked these efforts on a chart, which can be [found here](#).

We've also written about the [errors that can arise](#) when organizations have to keep track of those extra taxes, including [Yale University](#)'s failure to withhold the proper amount of income for a group of workers.

Then, there are the variety of questions that are easily answered for married employees with opposite-sex spouses, but not so straightforward for gay employees: If I get married, [can I automatically add my spouse to my health insurance](#) outside the annual “open enrollment” period? Will my partner [even be covered](#)? What about [our children](#)?

What other administrative and benefit-related issues do same-sex couples face in the workplace? Please share your thoughts in the comment section below.

In Supreme Court Briefs, Employers Come Out for Gay Marriage

By Leslie Kwoh February 27th

Nearly 300 businesses have filed a legal brief with the Supreme Court arguing for gay rights, the latest sign of support for same-sex couples in the corporate world.

The employers, which include Apple Inc., Starbucks Corp., UBS AG, Ernst & Young LLP, BlackRock Inc., Bain & Co., AIG Inc., Amazon.com Inc. and Alaska Airlines, filed the friend-of-the-court brief Wednesday morning to challenge the Defense of Marriage Act, which prevents same-sex couples from enjoying the same tax, retirement and leave benefits that other married couples get under federal law.

The employers cited talent recruitment and retention as one of their biggest concerns, adding that the law burdens their businesses with “unnecessary cost and administrative complexity.”

“Our organizations are engaged in national and international competition – for talent, customers, and business,” the brief states. “That competition demands teamwork, and teamwork thrives when the organization minimizes distracting differences, and focuses on a common mission.”

The brief was filed in one of [two gay-marriage cases](#) scheduled to be heard by the U.S. Supreme Court in late March. The case involves Edith Windsor, who was hit with a \$363,000 estate tax bill after her spouse, Thea Clara Spyer, died in 2009 – fees she would have been exempt from had her spouse been male.

Dozens of companies are also expected to submit an amicus brief Thursday in the second case, Hollingsworth v. Perry, according to [Fortune](#). More than 60 businesses have already signed onto the brief, which challenges the constitutionality of California’s Proposition 8 initiative banning same-sex marriage.

One reason that companies are signing on is that California’s law puts them at a recruiting disadvantage—rather than staying in a state where they cannot marry, gay employees may opt to find work in states more hospitable to same-sex unions.

According to the brief obtained by Fortune, potential recruits “may forgo the opportunity to work in California, and prefer other states (like Iowa, New York, and Massachusetts) or other nations (like Spain, Sweden, Denmark, the Netherlands, Portugal, or Belgium) where they can be married and obtain equal treatment and respect under the law.”

Before same-sex marriage became legal in Washington State last year, for example, companies headquartered there, such as Starbucks and Amazon, would have encountered difficulty luring gay and lesbian talent from states like New York, which already had gay marriage laws on the books, says Deena Fidas, a deputy director of Human Rights Campaign, an advocacy organization. Amazon CEO Jeff Bezos [donated \\$2.5 million](#) to the gay-marriage cause in his state last July.

“When recruiting, companies want to make sure there are as few barriers as possible,” she says.

The legal filings echo a growing movement among corporations. A [Human Rights Campaign study](#) released in November found that more than 70 major businesses had made public statements supporting same-sex marriage or opposing gay-marriage bans in the previous 18 months.

To be sure, not all workplaces are welcoming to lesbian, gay, bisexual and transgender employees. An estimated 41% of LGBT professionals in the U.S. remain closeted at work, according to [a recent study](#) by the Center for Talent Innovation, a nonprofit research group.

And, as [the Journal](#) noted last July, while some top executives are coming out of the closet, few, if any, prominent CEOs are openly gay.



Federal Gay Marriage Ban Hurts The Bottom Line, Businesses Argue

by Erica Ryan; February 28, 2013 1:56 PM

After years of legal wrangling, the Defense of Marriage Act — the law that prevents the federal government from recognizing marriage as anything but a "legal union between one man and one woman" — comes before the Supreme Court next month.

Among those urging the court to strike down the ban are some familiar names, like Google, Apple, Facebook, JetBlue and Starbucks. They were among a group of more than 200 businesses that [filed a friend of the court brief](#) this week, taking a corporate approach to the gay marriage debate.

As [The New York Times reports](#): "The brief was one of many received by the court as it considered landmark cases on gay rights and marriage. With a wide swath of leading companies signing on, it is the latest sign of the rapid shift toward acceptance of same-sex marriage in the corporate world as well as in the country."

The problem, the businesses argue, is that while they operate in places where gay marriage is recognized under state law, "DOMA, a federal law withholding marital benefits from some lawful marriages but not others, requires that employers treat one employee differently from another, when each is married, and each marriage is equally lawful. DOMA thus impairs employer/employee relations and other business interests."

The law means employers must treat employees in same-sex marriages differently when it comes to things like health care, retirement and taxes, they say, causing "unnecessary cost and administrative complexity."

In a statement Thursday, Apple spokeswoman Amy Bessette said, "DOMA hurts legally married same-sex couples and prevents companies from treating all employees as equals. Apple strongly supports marriage equality and we hope the Supreme Court will declare the law unconstitutional."

Among the businesses signing the brief was one familiar from last year's presidential campaign, as the [Boston Globe notes](#): "The group also included Bain & Co., the Boston consulting firm that launched Mitt Romney's career before he started Bain Capital. Romney, a former Massachusetts governor, opposed gay marriage when it became legal here in 2004 and opposed it in his campaign for president last year."

The Obama administration has also [gone on the record](#) asking the court to get rid of the federal ban on recognizing same-sex marriages.

The other landmark gay-marriage case the court is considering in March is a challenge to Proposition 8, the ban on same-sex marriage in California. A group of more than 80 Republicans made headlines this week for signing on to a brief asking the court to overturn it.

But as [NPR's Don Gonyea pointed out](#), "only two of the names on the list so far are sitting GOP officeholders, both members of Congress: Richard Hanna of New York and Ileana Ros-Lehtinen of Florida."

More are people who have held office or run for it in the past, like "Meg Whitman, the former CEO of eBay who opposed gay marriage as a candidate for governor of California in 2010. There's also former Utah governor and GOP presidential hopeful Jon Huntsman and Christie Todd Whitman, a former governor and EPA administrator."

And the GOP's official position on gay marriage hasn't changed. House Republicans are defending the Defense of Marriage Act in court, since the administration has declined to.

The Obama administration may outline where it stands on the Proposition 8 case in a filing with the Supreme Court this week.

Los Angeles Times

Hundreds of businesses join brief in Supreme Court opposing DOMA

Alana Semuels; February 27, 2013, 7:13 a.m.

New York— Days after prominent Republicans said they were [signing a legal brief](#) arguing that gay couples have a right to marry, 278 employers have filed an amicus brief in the Supreme Court, arguing the same thing.

The businesses include [Apple Inc.](#), [Broadcom Corp.](#), [Citigroup Inc.](#), Facebook Inc., Johnson & Johnson, [Marriott International Inc.](#), Microsoft, Orbitz, [Starbucks](#), Twitter and the [Walt Disney Co.](#) Chambers of Commerce in San Diego, Boston, Portland, Seattle and San Francisco also joined the brief.

"DOMA, a federal law withholding marital benefits from some lawful marriages but not others, requires that employers treat one employee differently from another," the brief argues. That's especially true for employers who operate in any of the 12 states that now permit gay marriage, the brief says, because the states recognize marriages but the federal government does not. It was written by Sabin Willett, of Boston firm Bingham McCutchen LLP.

Employers must compete in order to attract the best employees, and they do so by offering benefits packages, which help promote employee loyalty. But the Defense of Marriage Act "forces amici to consider the gender of the spouses of our lawfully married employees when determining the scope and manner of benefits that may be extended to the spouses."

DOMA also prevents some same-sex employees from taking advantage of tax benefits that other employees can take advantage of; same-sex employees cannot use pre-tax salary to pay for health coverage of a same-sex spouse, nor can they use flexible savings accounts to pay for child care of dependents from a same-sex marriage. In all, an employee married to a same-sex spouse will pay \$1,069 more in taxes than a colleague married to a different-sex spouse, according to a study of W-2 forms, the brief says.

Federal law also does not allow employees married to same-sex spouses to give spouses access to COBRA or family medical leave. It prevents same-sex spouses of highly qualified visa recipients to receive the same type of visa as their spouse; it also prevents these spouses from being the beneficiary of pension plans.

All in all, "DOMA forces amici to administer dual systems of benefits and payroll, and imposes on them the cost of the workarounds necessary to protect married colleagues," the brief says.

In the states that allow gay marriage, employers must treat employees with same-sex spouses as single for purposes of federal tax withholding and workplace benefits that depend on marital status, but married for everything else. Many employers thus retain two sets of books to keep track of all this paperwork.

"For many employers, DOMA does violence to the morale of the institution itself," the brief says.

Many employers have come forth in support of gay marriage before, most notably in November's elections, when three states -- Washington, Maine and Maryland affirmed the right of same-sex couples to marry. Starbucks, Microsoft and others spoke out in those campaigns.

DOMA is expected to be argued in front of the Supreme Court in the end of March. It concerns Edie Windsor, who was married to her wife, Thea Speyer, for 44 years. When Speyer died in 2009, the federal government refused to recognize the marriage and taxed Windsor as if she had not been married to Speyer. Had the marriage been recognized, Windsor would have been exempt from these taxes, which amounted to more than \$300,000.

In October, the 2nd Circuit struck down DOMA, and in December, the Supreme Court agreed to hear the case.

The Boston Globe

Businesses call Defense of Marriage Act unfair

By *Beth Healy*| Globe Staff February 28, 2013

Nearly 300 companies and business groups across the country, including many prominent Massachusetts firms, are asking the US Supreme Court to strike down the Defense of Marriage Act, saying it forces them to discriminate against married gay employees.

A who's who of corporate America signed on to a friend-of-the-court brief filed Wednesday. The group of 278 businesses includes the Bay State's EMC Corp., State Street Corp., Akamai Technologies Inc., and a number of law firms and health insurers.

"The federal law forces an employer to put its employees in two different castes," said Sabin Willett, a partner with the Boston law firm Bingham McCutchen, which wrote the brief. "DOMA is bad for business."

The stand is the latest sign that gay marriage is gaining greater acceptance in mainstream America, just 10 years after Massachusetts became the first state to legalize it.

The Obama administration last week asked the Supreme Court to side with a lower court to strike down the Defense of Marriage Act — known as DOMA — which defines marriage as between one man and one woman.

That was followed by Wednesday's filing by businesses, from Wall Street to Silicon Valley, adding their legal objection to DOMA. The new court brief was the most sweeping of its kind yet, as a major swath of corporate America stood up to argue that treating married employees differently based on whether they are gay or straight is unfair and a cost burden.

Nationally, companies that signed the brief included high-tech giants Google Inc. and Apple Inc., Wall Street's Goldman Sachs Group, and the Walt Disney Co.

The group also included Bain & Co., the Boston consulting firm that launched Mitt Romney's career before he started Bain Capital. Romney, a former Massachusetts governor, opposed gay marriage when it became legal here in 2004 and opposed it in his campaign for president last year.

"We have always felt that our employees should be focused on why we brought them to the company," said Paul T. Dacier, executive vice president and general counsel at EMC, a Hopkinton-based computer storage company. "We do not want them concerned about their benefits, their marital status, and how they're treated."

An amicus — or “friend of the court” — brief is filed by a person or group that has a stake in, and knowledge of, the legal issues at hand.

The filer is not an official party to the case, but is allowed to bring issues to the court’s attention.

Under current law, gay employees who are married must pay taxes on health benefits provided to a spouse, unlike their straight peers. And they can be subject to a number of other tax and benefit issues as well, according to the American Benefits Council, which also joined the brief, calling DOMA “an unnecessary and troublesome obstacle.”

The Supreme Court is scheduled to hear the case of Windsor v. United States on March 27. It started with a lawsuit brought by a New York woman, Edith Windsor, whose spouse, Thea Spyer, died in 2009, triggering \$363,000 in estate taxes that Windsor would not have owed if she had been married to a man.

A lower court ruled in Windsor’s case that DOMA was unconstitutional in prohibiting the federal government from recognizing the legal marriages of same-sex couples. The businesses that filed the brief Wednesday are asking the Supreme Court to agree with the lower court, and throw out the law.

They said the law “puts us, as employers, to unnecessary cost and administrative complexity, and regardless of our business or professional judgment forces us to treat one class of our lawfully married employees differently than another, when our success depends upon the welfare and morale of all employees.”

In a separate action earlier this week, scores of prominent Republicans said they would file an amicus brief in a related case, asking the high court to strike down California’s Proposition 8 banning same-sex marriage. Former Massachusetts governors William Weld, Jane Swift, and Paul Cellucci all signed that brief.

The number of businesses supporting an overturn of DOMA has quadrupled since 2011, when Attorney General Martha Coakley filed an amicus brief on a different gay marriage case. Eastern Bank of Boston was one of the participants then and joined the latest effort as well.

“We’re trying to protect the rights of our employees,” said Richard Holbrook, chief executive of Eastern Bank.

Now, he noted, “It’s a very broad brush of American companies who all have obviously understood that there’s some injustice being done that should be corrected.”

The US Chamber of Commerce said it had not filed a brief and had no comment. The Family Research Council, a Washington group that opposes gay marriage, last month filed amicus briefs in defense of DOMA.

Tom McClusky, vice president for government affairs at the council, said of the brief by the business interests: “It’s certainly unfortunate. The premise is that it’s good for business and attracts business to

states. But most of the states that have marriage amendments are also states that are doing rather well financially.”

He added, “You might be attracting some business, but you’re also detracting lots of other business.”

It’s unclear to what extent the Supreme Court will take the view of businesses into account when it hears the case. But Lee Swislow, executive director of the Gay & Lesbian Advocates & Defenders, a Boston group that’s been working on the amicus briefs, said the broad support of companies was important for the justices to see.

“It indicates that support for marriage equality isn’t some out-there kind of idea,” she said. “These businesses know what we’ve been saying is true — DOMA is bad for people. It’s bad for employees, it’s bad for business.”

<http://www.bostonglobe.com/business/2013/02/28/nearly-businesses-ask-supreme-court-strike-down-defense-marriage-act/KwETbPZkdyVklCvwTu6tmM/story.html>

Brief in same-sex marriage cases cite burdens on employers

2/28/2013 By [Carlyn Kolker](#)

(Reuters) - A brief filed by employers on Wednesday asking the Supreme Court to strike down the federal Defense of Marriage Act highlighted administrative burdens caused by the law.

Because same-sex marriage is legal in some states while the Defense of Marriage Act limits marriage to opposite-sex couples, the law creates dual regimes that employers must navigate, according to the brief.

The brief was written by Sabin Willett of the law firm Bingham McCutchen on behalf of companies including Google Inc, Pfizer Inc and Starbucks Corp. Thomson Reuters, the parent company of Reuters and Westlaw, was among the signatories.

"Far from creating uniformity, DOMA obliges employers to treat an employee married to someone of the same sex and an employee married to someone of a different sex unequally," the brief said.

The brief centers on the technical issues faced by employers and their legal, human resource and compliance managers, rather than on constitutional issues.

The Defense of Marriage Act creates compliance difficulties for employers in the administration of healthcare, leaves of absence and retirement benefits, it said.

For example, the act mandates that employers treat health benefits to a same-sex spouse as taxable income, according to the brief. Payments to health savings accounts or flexible spending accounts are similarly affected. The result is that tax and wage forms for employees who are married to same-sex partners are different from forms for employees married to opposite-sex partners.

Under the Defense of Marriage Act, employees married to same-sex partners get different paid and unpaid leave from employees married to opposite-sex partners, and employee retirement benefits are similarly affected, the brief said.

"These dual regimes have spawned an industry of costly compliance specialists," it said. Companies must pay attorneys, benefits experts and payroll personnel to sort through and maintain different regimes, depending on the states where employees reside. They must also rewrite employee forms according to legal developments in differing states, according to the brief.

'A DISASTER' DEALING WITH DOMA

The patchwork of different tax and healthcare structures exposes companies to potential litigation, the brief said, because companies are left on their own to sort out different regulatory regimes. It also affects employee morale, it said.

"HR departments would tell you it is a disaster trying to deal with DOMA when you are a large employer, because you have these employees who are legally married, but now you've got to put them in a different box for W-2s, for ERISA, for retirement benefits, and it's really vexing," Willett told Reuters.

Signatories to the brief include an array of law firms, including firms that specialize in defending corporations in labor and employment cases, such as Seyfarth Shaw, Littler Mendelson and Peabody & Arnold.

The law firm Orrick, Herrington & Sutcliffe was expected to file a brief on Thursday on behalf of employers in a related Supreme Court case. That case questions a California law, known as Proposition 8, that bans same-sex marriage in the state.

Joshua Rosenkranz, the author of that brief, told Reuters he had been struck by how far the debate over same-sex marriage had progressed in the past decade.

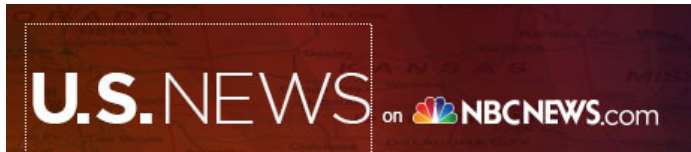
"I really wanted to do a brief that would capture that progress, a brief that would demonstrate that marriage equality was now a mainstream American issue," he said.

Corporations try to create environments that attract and retain the best talent, and they find it "maddening" that states were undermining them, he said.

Rosenkranz said his brief started out with Apple Inc, Facebook Inc and Nike Inc, and quickly grew. "My colleagues at Orrick reached out to our clients," he said. "And our clients reached out to their counterparts at other companies."

The two cases are to be argued before the Supreme Court on March 26 and 27.

(Additional reporting by Lawrence Hurley and Aruna Viswanatha)



Top corporations lobby Supreme Court to support gay marriage

By Lawrence Hurley and Aruna Viswanatha, Reuters. February 27th

WASHINGTON -- More than 200 businesses on Wednesday urged the U.S. Supreme Court to strike down a federal law that restricts the definition of marriage to heterosexual unions, in one of corporate America's most prominent efforts to support same-sex marriage.

The companies signed on to a friend-of-the-court brief in Windsor v. United States, a high-profile case challenging the 1996 federal Defense of Marriage Act (DOMA). They ranged from technology giants Microsoft Corp and Google Inc to Wall Street financiers such as Citigroup Inc and Goldman Sachs Group Inc to vineyards and yogurt makers in California.

Thomson Reuters Corp, which owns the Reuters news agency, also supported the submission.

The companies want the Supreme Court to void a key provision in the federal law that defines marriage as a union between a man and a woman. They largely stayed away from constitutional arguments attacking the law and instead focused on the business nuisance the law created.

DOMA forces employers to treat employees with same-sex spouses differently from those with opposite-sex partners, the companies said, depriving gay employees of certain healthcare and retirement benefits that may be on offer. The law also creates headaches for human resources officials, they said.

"HR departments would tell you it is a disaster trying to deal with DOMA when you are a large employer, because you have these employees who are legally married, but now you've got to put them in a different box for W-2s, for ERISA (Employee Retirement Income Security Act), for retirement benefits, and it's really vexing," said Sabin Willett in an interview. Willett wrote the brief for his law firm, Bingham McCutchen, which handled the matter pro bono.

Separately, lawyers representing another group of employers, including some of the same companies, said they planned to file a brief on Thursday in a related case that questions a California law, known as Proposition 8, banning gay marriage.

The two cases are to be argued before the Supreme Court on March 26 and 27. A decision is expected by the end of June.

While corporate America has long offered domestic partnership benefits and made efforts to attract gay employees, the filing seemed to represent a new step in an effort to promote the issue.

"It is old news that big business is friendly to lesbian and gay unions," said Yale law professor William Eskridge, who has argued on behalf of gay rights. "But there has never been a business brief quite like this one with so many signatories on such a landmark issue," he said.

A group of prominent Republicans, including former advisers to President George W. Bush, are also expected to file a brief challenging the California law, adding heft to backers of gay rights.

The arguments appeared directed at Justice Anthony Kennedy, as a moderate and potential swing vote, to show the kind of wide support that exists, Eskridge said.

'HURTING BUSINESS'

The brief grew out of a previous effort to represent business interests in another case challenging the DOMA law, according to Willett.

That case brought together some 70 companies that felt courts may not have understood the full business impact of the law.

"When people talk about DOMA, they usually, and rightly so, focus on its impact upon human beings ... but people may not realize, and courts may not realize, this thing is hurting business, too," Willett said.

In the brief filed on Wednesday, the companies argued that DOMA "requires that employers treat one employee differently from another, when each is married, and each marriage is equally lawful."

DOMA does not create any uniformity nationwide, they said, because 12 states either authorize same-sex marriage or recognize marriages that have been performed in other states.

That creates a burden for employers, particularly those who do business nationally, they added.

The law also forces companies to discriminate, sometimes in contravention of their own internal policies and local laws, when dealing with healthcare plans and other benefits, the companies said.

In briefs already filed in support of restricting marriage to heterosexual unions, business interests have not been represented. The U.S. Chamber of Commerce has not taken a stand on the issue.



THE NEW YORKER

The Economic Closet: The Business Case for Gay Marriage

Posted by [Amy Davidson](#) February 27, 2013

Three hundred sixty-three thousand and fifty-three dollars was the amount that Edith Windsor was assessed in federal estate taxes when her wife, Thea Spyer, died in 2009. Zero dollars, everyone agrees, would have been the amount she owed if the federal government had recognized their marriage, as the state of New York already did. There are other numbers that are more relevant to their story—like forty-four, the number of years they spent with each other; or twenty-two, the share of those years during which Spyer lived with a diagnosis of multiple sclerosis, the disease that eventually killed her—and that Windsor gave up her own job to nurse her through. There were the numbers Windsor worked while getting a graduate degree in mathematics in the nineteen-fifties, and those in the early computer codes that she wrote for the Atomic Energy Commission's UNIVAC and at I.B.M., where she was, at the time, one of very few women programmers. But the difference between zero and three hundred sixty-three thousand and fifty-three is what gives Windsor standing to [bring a case challenging the Defense of Marriage Act](#). The Supreme Court will hear her case on March 27th, and, the day before, it will hear another one challenging Proposition 8, California's ban on same-sex marriage.

How much does money matter when thinking about same-sex marriage, or about marriage at all? The essence of the debate—and certainly its emotional heart—lies with words like family and respect, honor and honesty, and, above all, love. But those words, and even more so others—security, protection, sickness and health, home and career—are not divorced from finances. This is particularly true when any one of them is used in the same sentence as “children.” Another number to add to the equation: eleven hundred and thirty-eight, which is the number of federal laws that rely on a definition of marriage. Many more of them are about money, in one way or the other, than about love. Nor is the concern simply that of the family involved: companies have an interest, too, as does the larger business world, in not having families live in what might be called an economic closet.

That there is a business case for marriage equality was confirmed this week with the news that at least sixty major corporations will [file an amicus curiae brief in support of overturning Prop. 8](#)—a move, depending on how the Court writes the decision, that could establish a right to same-sex marriage not only in California but in the country as a whole. (Some leading Republicans are [also submitting a brief](#).) More may sign on before the filing deadline on Thursday. The companies range from Apple to Xerox, with everyone from Levi Strauss, Cisco, Morgan Stanley, Nike, and Panasonic in between. *Fortune* got a [draft of the brief](#), which reads in part:

By singling out a group for less favorable treatment, Proposition 8 impedes businesses from achieving the market's ideal of efficient operations—particularly in recruiting, hiring, and

retaining talented people who are in the best position to operate at their highest capacity. Amici are competing domestically and internationally with companies inside and outside the United States in places where all couples, regardless of whether they are of the same sex, are afforded equal access to marriage.

If one believes that protecting children is a priority, then so is same-sex marriage. A third of lesbian couples and a fifth of gay couples who live together already have children, according to the Census, and a lack of access to marriage takes both social and economic security away from them. A widow or widower with a minor child whose income falls below a certain level can get social-security benefits based on the deceased spouse's earnings—but not if the spouse is of the same sex. The same is true of tax laws, like the one affecting Windsor, that might cost families their homes. Some opponents of same-sex marriage have turned this on its head and wondered if it will cost the government too much money. The answer, according to a [Congressional Budget Office study](#), is that it most likely will not, both because the amounts, though large in the life of, say, a widow with a child, are not so large in terms of the federal budget. The government will also make money from things like imposing the income-tax marriage penalty on more couples, and from some people losing eligibility for benefits when their combined income is calculated. (There are harder-to-answer questions, like how much it might save Medicare if, earlier in life, a person had access to preventive care through a spouse's insurance.) Marriage equality does not inflate budgets; it removes irrational distortions from them.

And that is why, if one believes in protecting free markets, then same-sex marriage should be a priority, too. This is the point that the amicus brief made with regard to recruiting. It hurts companies and the economy when the choice in taking a job at one firm or the other is not based on its salary offer or a belief in its prospects, but by whether it is based in a state that recognizes the employee's marriage. It hurts, too, when a spouse who is a foreign citizen is not welcome here. And—something the corporate brief also mentions—there is the wedding business to consider, too. Last summer, New York City estimated that it gained two hundred and fifty-nine million dollars from same-sex marriages in the first year that they were legal in the state. “Marriage equality has made our city more open, inclusive, and free—and it has also helped to create jobs and support our economy,” [Mayor Bloomberg said](#).

But there are less obvious ways that a failure to recognize same-sex marriage can reduce the transparency that helps the private sector thrive. For example, the Windsor brief notes that DOMA has the effect of exempting same-sex spouses of politicians and public officials from financial-disclosure requirements. It also denies them the protection of laws that, for example, make threatening the spouse of a federal agent a crime.

I.B.M. didn't know it at the time, but it came close to losing Edith Windsor when, as her brief recounts, it “unwittingly ran afoul” of an executive order that forbade companies with federal contracts from having gay or lesbian employees—the order was issued in 1953, the year before the computer pioneer Alan Turing, who had faced similar barriers in Great Britain, killed himself by eating [a poisoned apple](#). Luckily, the F.B.I. didn't ask Windsor about the women in her life when interviewing her for a security clearance (to work on that UNIVAC), and I.B.M. didn't find out, either; she wore a diamond pin, rather than a ring, as a symbol of her long engagement to Spyer. And then she left the company to care for a woman who, for many years, she could only say was a friend.

Read more:

<http://www.newyorker.com/online/blogs/comment/2013/02/the-economic-closet-the-business-case-for-gay-marriage.html#ixzz2NRaENdcn>



Mass. Companies Among Those Calling DOMA ‘Bad For Business’

By [Curt Nickisch](#) February 28, 2013

BOSTON — State Street Corp., Eastern Bank and MassMutual Life Insurance are among the Massachusetts companies joining the challenge of the Defense of Marriage Act, or DOMA, at the U.S. Supreme Court.

DOMA defines marriage as between one man and one woman.

Lawyer Sabin Willett with the Boston firm Bingham McCutchen wrote the brief arguing that “DOMA is bad for business” because it imposes unnecessary administrative costs.

“A regime of federal law that requires you to treat one set of married employees differently than another not only is bad for the employees, it’s bad for the employers,” Willett said.

The Massachusetts companies are filing a legal brief along with hundreds of other big firms across the country, including Apple, Microsoft, Google, Starbucks and Johnson & Johnson.

The Supreme Court is expected to hear the DOMA challenge next month.



Apple, Google, Facebook Tell Supreme Court: Gay Marriage Is Good for Business

By [Marcus Wohlsen](#) 02.27.13

The biggest tech companies in the world are standing up for same-sex marriage, but not just as a matter of fairness. Apple, Google, Facebook, Amazon and Microsoft are just a few of hundreds of companies that have signed on to a [brief](#) filed with the U.S. Supreme Court arguing that federal same-sex marriage restrictions hurt their businesses.

In all, 278 companies joined to support the friend-of-the-court filing, among them some of the country's biggest and most visible. Other tech companies listed as backers of the brief include Adobe, Cisco, eBay, Electronic Arts, Intel, Intuit, Oracle, Twitter and Zynga.

And tech companies aren't the only ones getting behind the push to overturn the federal Defense of Marriage Act. Some of the biggest non-tech names include Citigroup, Johnson & Johnson, Goldman Sachs, Nike, CBS Corp., Starbucks and Disney.

All of the companies signed on to the filing are located or operate in states where same-sex marriages are legal or recognized, according to the brief. The conflict between those laws and DOMA, which bars federal recognition of same-sex marriage, needlessly burdens those companies with extra costs and bureaucratic tangles, the filing argues. In effect, DOMA puts the companies in a position that "forces us to treat one class of our lawfully married employees differently than another, when our success depends upon the welfare and morale of all employees."

That morale, the brief goes on to argue, depends upon "a workplace ethos of transparent fairness." Specifically, the companies argue federal law forces companies to engage in administrative acrobatics to offer equal benefits to all employees "to compensate for the discriminatory effects of DOMA," such as unequal tax treatment of opposite-sex versus same-sex couples. As a result, keeping morale high and recruiting new talent — a persistently present issue for tech companies — becomes harder, which the companies say affects their bottom lines.

Morale and money aren't the only issues, however. The companies say that DOMA also forces them to betray their principles. "DOMA conscripts (companies) to become the face of its mandate that two separate castes of married persons be identified and separately treated," the brief complains, even in states, counties and cities that ban workplace discrimination based on sexual orientation and marital status.

The filing comes at a pivotal point in the shifting debate over same-sex marriage. Tomorrow is the deadline to submit friend-of-the-court briefs to the Supreme Court in the push to overturn DOMA and California's Proposition 8, which bans same-sex marriage in the state. Yesterday a group of [prominent Republicans filed their own brief](#) arguing against the same-sex marriage bans — among them

Hewlett-Packard CEO Meg Whitman, whose own company did not join many of its Silicon Valley rivals in attaching its name to today's filing.

Not so many years ago, the decision by these popular companies to take a stand on such a divisive social issue would have seemed incredibly risky. Even today, Apple, Google, Facebook and the others have plenty of fans who are no fans of same-sex marriage.

But Stanford University law professor Jane Schacter, who specializes in constitutional and sexual-orientation law, says the landscape has changed as opinion polls begin to show majority support for same-sex marriage, especially among young people. Schacter believes the companies likely see support of same-sex marriage as a good marketing move to court the demographic groups they covet most.

"It's almost a branding thing (for companies). 'We're the future. We're where things are moving, not where they've been in the past,'" she says. "I think there is very little for them to lose."

What's more, she says the brief could influence the justices' thinking on the issue. Opposition to the same-sex marriage bans from such a broad range of institutions signals to the court that the debate over the issue doesn't break down along predictably partisan lines.

Ultimately, Schacter says the court has to decide if the government has good reason to discriminate against one class of people. Vocal, reasoned opposition to the laws from big companies means one less good reason in the Supreme Court's eyes to uphold same-sex marriage bans, she says: "It's likely to look to the court more like an issue of prejudice and intolerance."



Facebook, Apple, Google Back Same-Sex Marriage in Supreme Court Filing

[Alex Fitzpatrick](#) Feb 27, 2013

[Facebook](#), [Apple](#), [Google](#), [Microsoft](#) and [eBay](#) are among more than 200 companies that filed a brief Wednesday calling on the Supreme Court to overturn a provision in a federal law that defines marriage as a union between a man and a woman.

The companies filed the document, known as an amicus curiae or "friend of the court" brief, in the case against the Defense of Marriage Act (DOMA). They say the law's definition of marriage forces national companies to discriminate against employees based on their marriage status, sexual orientation and state of residence.

Differences between DOMA and state laws require discriminating against LGBT employees when it comes to health insurance and other benefits, argues the companies' brief. That discrimination, it continues, violates legal requirements and the companies' own policies.

The brief also argues DOMA reduces workplace transparency, hurts the employee-employer relationship and adds unnecessary financial burden on companies as they navigate the conflicts between DOMA and various state laws.

Facebook first announced the brief in a post on its recently opened [LGBTQ@Facebook page](#). The full brief can be accessed at [Bingham](#).

Many of the same companies are reportedly planning on filing a separate amicus brief in support of striking down California's Proposition 8, which bans gay marriage.

The companies involved in that brief will argue Prop 8 sends "an unmistakable signal that same-sex couples are in some way inferior to opposite-sex couples, a proposition that is anathema to amici's commitment to equality and fair treatment to all," according to [CNN](#).

Meg Whitman, current CEO of Hewlett-Packard and former eBay CEO and California gubernatorial candidate, recently reversed her personal position on Prop 8 in a blog post.

"I have come to embrace same-sex marriage after a period of careful review and reflection," she wrote on [LinkedIn](#). "Same-sex couples and their children should have equal access to the benefits of marriage."

The Supreme Court will begin hearing arguments on Proposition 8 on March 26 and on DOMA one day later.