

## **Windsor v. United States Press Conference Remarks**

### **Press Conference Remarks 11.9.10**

#### **James D. Esseks Director, ACLU Lesbian, Gay, Bisexual, Transgender Project**

Today, **Edie Windsor**, who shared her life for 44 years with her spouse Thea Spyer, filed a lawsuit against the federal government challenging the so-called Defense of Marriage Act as unconstitutional, because the federal government has refused to recognize their marriage. She is represented in the suit by the ACLU, Paul Weiss, and the NYCLU. Also today, there's another lawsuit being filed in Connecticut that raises the same legal challenge to the constitutionality of DOMA. That one involves five married couples and one widower from three different states and is brought by Gay & Lesbian Advocates & Defenders. You'll hear more of the details of Edie Windsor's lawsuit in a minute, but first I want put the issues that the lawsuit raises into context. If any one of us wants to get married, we wouldn't go to the federal government for a license – we get a marriage license from the County Clerk, or from City Hall. That's because the states marry people, but the federal government doesn't. But 1,138 federal statutes or programs provide either protections or responsibilities for people who are married. Those include social security, family medical leave, and access to health care for federal workers. And throughout the history of this country, the federal government has said that you're married, for purposes of all those federal programs, if your home state says you're married. The federal government has simply deferred to the state's determination of whether a couple is married.

In 1996, Congress passed the so-called Defense of Marriage Act, or DOMA, that makes one specific exception to that rule: Even if a state considers a same-sex couple to be married, the federal government won't respect that decision, and will treat the couple as legal strangers to one another. They won't be considered married under all of those 1,138 federal programs and statutes. At this point in America, same-sex couples can marry in five states and the District of Columbia. And New York State recognizes marriages of same-sex couples validly entered into in other states. So there are literally thousands and thousands of married same-sex couples, all across the country. Even where their own states respect

those marriages, the federal government doesn't, because of DOMA. The story of Edie Windsor and Thea Spyer, which you're about to hear, illustrates how harmful and how unfair it is for the federal government to refuse to respect the valid marriages of same sex couples. Summary of the legal claim in the case:

The legal claim at the heart of this case is very simple: Edie seeks equal treatment of her marriage under the law. New York recognizes marriages performed in Canada, whether they are of different-sex couples or of same-sex couples. Because of DOMA, the federal government treats Edie as if she and Thea were strangers. That's discrimination by the federal government, and a violation of EP. The government needs a very good reason to treat Edie differently, and it doesn't have one. This discrimination has cost Edie not only quite a bit of money, but the dignity and respect that her 44-year relationship with Thea deserves. The lawsuit asks the court to declare that DOMA is unconstitutional as applied to Edie.

Both of these lawsuits follow on the heels of an earlier lawsuit by GLAD, Gill v. OPM, in which a federal district court struck down DOMA last summer. That case is now on appeal.

### **Edith Windsor Plaintiff**

Thank you all – each and every one of you, for being here today. This case is extremely important to me, and I am grateful for your presence and support. My late spouse, Dr. Thea Spyer, would have been so proud to be part of our effort to challenge this unjust law, known as DOMA. to get the federal government to treat married same-sex couples the same way that it treats all other married couples.

I was introduced to Thea in 1963 at the Portofino restaurant in Greenwich Village. That evening, we danced and danced until I wore a hole through my stocking. Thea was beautiful, vibrant and incredibly smart. We met often after that – at parties and dinners – and though we had a magnetic attraction that drew us toward one another, it wasn't until two years later that we became a "couple". We became engaged with a circular diamond brooch in 1967 and the rest is, indeed, history. For just under 44 years, Thea and I lived together, loved and cared for one another and shared all the joys and sorrows that came our way. During those years, we both had good jobs that we loved – I as a computer systems programmer at IBM, Thea as a Clinical Psychologist, and like all happy couples, we partied and we danced – oh how we danced.

And we always had good friends whom we regarded as family. At first, they were our contemporaries and in recent years, as our contemporaries have passed away, they have been replaced by younger ones who remained there for us, and are still here for me. Thea was first tentatively diagnosed with chronic progressive multiple sclerosis in 1977. She first used a cane, then crutches, then a manual wheelchair and then, when she lost the strength of her arms, a motorized chair. The MS never had any impact whatsoever on her cognition. I felt two major things about the MS: 1. It happened to both of us as a couple – as a family. 2. Since her work mattered enormously to her, I was determined to keep her working as long as she wanted. It turned out to be until the day before she died.

As a result of her illness, I helped her with all the daily tasks of living – bathing, exercise, putting her to bed, introducing her to the computer and special software for on screen key board, selecting and pointing when she couldn't press a mouse, etc. Thea was diagnosed with a serious heart condition in 2002, which became increasingly severe. We wanted to be legally married in New York, but as her heart condition worsened, it became clear that this dream was not likely to become a reality in our lifetime. So in 2007, we went to Toronto to get married. Mr. Justice Harvey Brownstone, who presides in the Toronto Family Court and was Canada's first openly gay Judge, officiated over a beautiful ceremony. Many have asked me: "Why get married at that point in your life? What would it change? What could possibly be different?" It turns out marriage is in fact different. In 42 years of living together and loving each other, we never thought of ourselves as single, and it didn't occur to us that people would see us differently as a legally married couple. But they did. When our wedding announcement ran in the New York Times, we heard from literally hundreds of people from every stage of our lives – playmates and schoolmates, colleagues, friends and relatives, pouring out love and congratulations because we were married! Marriage is an institution that means so much to so many. The word itself has a magical quality that conveys clearly that you and your spouse are united and belong together. At its core, marriage is about loving and sharing and trust. It represents the ultimate expression of love and commitment between two people -- and everyone understands that. In the whole world, everyone understands that.

When Thea passed away in February 2009, I was overcome with grief. In the midst of my grief at the loss of the love of my life, I had to spend countless hours defending our relationship to the federal government. While New York State considered us married, the federal government did

not. So the government taxed what I inherited from Thea as though we were strangers rather than spouses. I am 81 years old and live on a fixed income, and paying that tax was not easy for me. Even more distressing, the woman I had cared for and shared my life with for over 40 years was not my legal spouse in the eyes of the federal government. So, when I think about what federal recognition of marriage by same sex couples would mean, I think it would mean justice and fairness instead of the inherent injustice of a law that treats married people as though they were legal strangers to each other, a law that effectively imposes a tax on being gay. Without that recognition, I think about the future generations of same-sex couples who will have to confront many of the same issues that I did when my spouse died, of the children of same-sex couples who are harassed and name-called by their peers and perhaps most importantly, of the teenagers who commit suicide because their government defines them as inferior. All people – whether gay or straight – want to get married for the same reasons – to make a lifetime commitment to the person who they love. The Defense of Marriage Act excludes same-sex couples from fully participating in marriage and that is unfair. And it excludes gay people from the ability to protect their spouse when one of them dies and that is unfair. All marriages should be treated equally in the eyes of the law.

---

**Roberta Kaplan Partner, Paul, Weiss, Rifkind, Wharton & Garrison  
LLP**

There is no question that I get the best part of this press conference. Why? you might ask. Because I get to speak this morning about the plaintiff, Edith or “**Edie**” Schlain **Windsor**. It is not very often that a lawyer gets a chance to represent their hero. In fact, it’s probably a once in a lifetime opportunity. I kind of feel like the kid who has spent years collecting baseball cards who finally gets to meet his or her favorite, all-star homerun hitter. That’s exactly what it feels like to have the honor and privilege of representing **Edie Windsor**.

Let me tell you a little bit about why Edie is such a hero to me. I’m confident that having already heard her yourself, she will soon be a hero to all of you as well (if she isn’t already). First of all, some context is in order. We are lucky enough to live in a world that has changed for the better in many ways. So many who did not have rights, including women and gay men and lesbians, now do and many gay people can and do now live their lives openly and with dignity. During the course of their lives, Edie and

Thea helped to bring about that fundamental change. While there is still a long way to go and indeed that's what this case is about, it is worth remembering that when Edie moved to New York to get her master's degree in mathematics from NYU in the 1950's, no one – and I mean no one – could be openly gay and pursue a career in any but a few very narrow professions. That's why when Thea proposed to Edie she did so with a circular diamond pin rather than a ring so that Edie could wear it at her job and not be "out" at work and risk what might happen if people knew that she was a lesbian. Thea did that in 1967, you heard me correctly – in 1967 – two years before the Stonewall rebellion that led to the modern gay rights movement. Take a moment and think about that. In 1967, the idea that two women would be able to get legally married to each other anywhere in the world, much less in the United States, was beyond comprehension. That Thea and Edie had the inner conviction, self-worth, foresight and bravery to get engaged at that time is one of the many reasons why Edie is such a hero. I could go on and on. But another key reason why Edie is such a hero is what happened for the next 40 years after Edie and Thea became engaged. As you know, the traditional marriage vows talk about two people promising "to have and to hold, in sickness and in health, until death do us part." Thea and Edie truly lived those words in a way that would be a model to any couple, straight or gay.

When Thea was diagnosed with multiple sclerosis in 1977, a disease that ultimately led to her paralysis, the diagnosis, as Edie explained, happened to both of them. Edie cared for Thea in ways that extended from the ordinary, like feeding or bathing Thea, to the extraordinary, like developing software so that Thea could continue to see her patients and use the computer. All of these acts were acts of everyday heroism that all successful marriages demand. None of us, of course, knows what life holds in store for us, but one thing I think we do know is that any of us would be very fortunate indeed to be able to go through life with a spouse like Edie at our side. And there is one more thing that I think all of us can agree upon. If and when any of us get to the point where we lose the love of our life to death in the way that Edie did, we all deserve to be treated with dignity. And we all deserve to have our marriages be treated equally by the federal government. No one should have to go through what Edie had to go through after Thea died in 2009 where the federal government treated Edie as if she and Thea were strangers to each other. At its core, that is what this case is about. It's really very simple. We very much look forward to pressing ahead with it in court.