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Introduction

The Bankruptcy Code states that a legally married couple may file a joint bankruptcy petition pursuant to section 302(a).[1] However, this right to joint filing is narrowly limited to an "individual that may be a debtor under such chapter and such individual's spouse."[2] Generally, courts have rejected joint filings under section 302(a) filed by debtors who are not legally married.[3] For example, a parent and child cannot file a joint bankruptcy petition under section 302(a).[4] Further, a couple that is living together without being legally married may not file a joint petition.[5] The Bankruptcy Code is silent as to which state law determines the validity of a marriage,[6] which is especially problematic when determining a same-sex couple's right to file a joint bankruptcy petition.[7] In particular, it is unclear whether a same-sex couple may file a joint

[1] 11 U.S.C. § 302(a) (2012).
[2] *Id.*
[3] *See In re* Allen, 186 B.R. 769 (Bankr. N.D. Ga. 1995) (holding to be eligible to file a joint bankruptcy petition the couple must be legally married).
[4] *See In re* Lam, 98 B.R. 965 (Bankr. W.D. Miss. 1988) (holding mother and daughter cannot file a joint petition).
[5] *See In re* Malone, 50 B.R. 2, (Bankr. E.D. Mich. 1985) (stating two debtors who cohabitated but had never been legally married were not entitled to file joint petition).
[6] *See In re* Matson, 509 B.R. 861, 863 (Bankr. E.D. Wis. 2014).
[7] *Id.* at 861.

petition when a couple was legally married in one state, but currently reside in a state that does not recognize same-sex marriage.[8]

While the Bankruptcy Code does not attempt to define marriage or "spouse," DOMA did attempt to do so. The Defense of Marriage Act ("DOMA") section 3 had limited the definitions of "marriage" and "spouse" to opposite-sex marriages and spouses.[9] DOMA explicitly applies only to federal law, but bankruptcy law is federal statutory law.[10] Thus, for purposes of federal law and the Bankruptcy Code, only opposite-sex couples could file a joint bankruptcy petition.[11] Prior to the Supreme Court's decision in *United States* v. *Windsor*,[12] which held that section 3 of DOMA that defined marriage as excluding same-sex couples "[was] a deprivation of liberty guaranteed by the Fifth Amendment's Due Process Clause." In so holding, the *Windsor* court declared the definition of marriage and spouse under DOMA section 3 for purposes of federal law was unconstitutional.[13]

Prior to *Windsor*, there had been a split of authority when interpreting whether same-sex couples could file a joint bankruptcy petition.[14] In *In re Kandu,*[15] the *Kandu* court held that DOMA as a whole was constitutional, which included DOMA's definition of marriage and spouse under section 3. In so holding, the *Kandu* court rejected the debtors' Tenth Amendment, due process and equal protection arguments challenging the constitutionality of DOMA as a whole and under section 3.[16] Consequently, since the couple did not meet DOMA's definition of "spouses," they were not legally entitled to file a joint bankruptcy petition under section 302(a)

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[8] *Id.*
[9] *See* 1 U.S.C § 7.
[10] *See* 1 U.S.C § 7.
[11] *See* 1996 U.S.C.C.A.N 2905, at 2906.
[12] United States v. Windsor, 133 S.Ct. 2675 (2013).
[13] *Id.*
[14] *See In re* Balas & Morales, 449 B.R. 567 (Bankr. C.D. Cal. 2011).
[15] 315 B.R. 123 (Bankr. W.D. Wash. 2004).
[16] *Id.*

of the Bankruptcy Code.[17] However, in *In re Balas & Morales,*[18] the court held that DOMA as a whole was unconstitutional, including section 3 as applied to the debtors. In reaching its decision, the *Balas & Morales* court reviewed the constitutionality of section 3 of DOMA, which limited "spouse" to opposite-sex couples under strict scrutiny and held DOMA violated the debtors' equal protection rights.[19] Since DOMA's restrictive definition of spouse was unconstitutional, the *Balas & Morales* court declared the same-sex debtors were "spouses" and had satisfied every requirement to pursue their joint petition pursuant to section 302(a) of the Bankruptcy Code.[20]

After the *Windsor* decision, the issue of whether a same-sex couple could file a joint bankruptcy petition again presented itself. In *In re Matson,*[21] a bankruptcy court in Wisconsin permitted a same-sex couple who were legally married in another state to file a joint bankruptcy petition even though Wisconsin did not recognize same-sex marriage.[22] The *Matson* court reached its decision by applying a choice of law analysis, instead of reviewing the constitutionality of section 2 of DOMA, which provided "no state shall be required to give effect to a same sex marriage performed in another state."[23] In applying such review, the *Matson* court relied on "the place of celebration" rule, which states that a marriage is valid if it was valid according to the law of the place where it was celebrated,[24] and concluded that the court was required to grant full faith and credit to the debtors' legal marriage. Consequently, because the

[17] *Id.; see also* 11 U.S.C. § 302(a) (2012).
[18] *In re* Balas & Morales, 449 B.R. 567 (Bankr. C.D. Cal. 2011).
[19] *Id.*
[20] *Id.* at 590; *see also* 11 U.S.C. § 302(a) (2012).
[21] *In re* Matson, 509 B.R. 861 (Bankr. E.D. Wis. 2014).
[22] *Id.*
[23] *Id.*
[24] *Id.* at 863.

debtors' marriage was legally valid where celebrated, they were considered "spouses" under the Bankruptcy Code and allowed to file their joint petition.[25]

This Article discusses whether a same-sex couple who were legally married in one state may file a joint petition in another state that does not recognize same-sex marriages. Part I of this Article examines the court split prior to the invalidation of section 3 of DOMA over whether same-sex couples who were legally married are entitled to file joint petitions.[26] Part II addresses the *Windsor* decision, which invalidated section 3 of DOMA. Part III analyzes the holding in *In re Matson,*[27] which allowed a legally-married same-sex couple to file a joint bankruptcy petition in a state that did not recognize same-sex marriage. Part IV discusses the implications of the *Matson* decision for same-sex couples nationwide.

I. The Pre-*Windsor* Split

Prior to the Supreme Court's holding in *United States v. Windsor*, which invalidated section 3 of DOMA and its restrictive definition of spouse, there was a split of authority when deciding if a same-sex couple could file a joint bankruptcy petition.[28] In *In re Kandu*, the court held that same-sex couples did not meet the definition of "spouse" under DOMA, therefore, they could not file a joint petition.[29] However, in *In re Balas & Morales*, the court held that DOMA as a whole, including section 3 was unconstitutional. Therefore, since DOMA and its definition of spouse was unconstitutional, the same sex-spouses met all the requirements of the section 302(a) of the Bankruptcy Code and could file a joint petition.[30]

A. *In re Kandu* – Same Sex Couples Cannot File a Joint Petition

[25] *Id.*
[26] *See* United States v. Windsor, 133 S.Ct. 2675, 2691 (2013).
[27] *In re* Matson, 509 B.R. 861 (Bankr. E.D. Wis. 2014).
[28] *See In re* Balas & Morales, 449 B.R. 567 (Bankr. C.D. Cal. 2011); *but see In re* Kandu, 315 B.R. 123 (Bankr. W.D. Wash. 2004).
[29] Kandu, 315 B.R. at 131.
[30] Balas & Morales, 449 B.R. at 590.

In *In re Kandu*, a bankruptcy court in Washington decided that two women who were married in British Columbia, Canada, could not file a joint bankruptcy petition because they were not "spouses."[31] In *Kandu,* after filing a joint petition, the same-sex couple challenged the constitutionality of DOMA generally.[32] First, the debtors argued that DOMA infringed on powers historically reserved to the state via the Tenth Amendment.[33] Second, the debtors argued that DOMA violated both due process and the equal protection guarantees provided by the Fifth Amendment to the Constitution.[34] In so arguing, the debtors asserted that a same-sex couple's decision to marry was a fundamental right. Further, the debtors asserted that sexual orientation was a suspect class.[35]

The *Kandu* court, however, was not persuaded by any of the debtors' arguments. First, in rejecting the Tenth Amendment claim, the *Kandu* court held that DOMA did not "overstep the boundary between federal and state authority."[36] In particular, the *Kandu* court opined that The Tenth Amendment was not implicated because DOMA was not binding on states, and therefore, the court concluded that DOMA did not infringe on state sovereignty since states could still define marriage without federal intervention.[37] Next, turning to the due process claim, the *Kandu* court held that same-sex marriage was not a fundamental right, therefore, DOMA did not violate the debtors' due process rights.[38] Finally, the *Kandu* court rejected the debtors' equal protection argument, analyzing the constitutionality of DOMA under a rational basis review, instead of analyzing using "strict scrutiny," because the *Kandu* court determined that sexual orientation

[31] Kandu, 315 B.R. at 131.
[32] Kandu, 315 B.R. at 130.
[33] *Id.* at 131.
[34] *In re* Kandu, 315 B.R. 123, 135 (Bankr. W.D. Wash. 2004).
[35] *Id.* at 131.
[36] *Id.* at 132.
[37] *Id.*
[38] *Id.* at 138.

was not a "suspect class."[39] The *Kandu* court applying rational basis review concluded DOMA passed constitutional muster without indicating the legitimate purpose the law serves.[40] Therefore, because DOMA was constitutional, the definition of marriage and spouse could be restricted to opposite-sex couples. Thus, for purposes of the Bankruptcy Code, a same-sex couple would not be treated as spouses, therefore, they could not file a joint petition.

B. *In re Balas & Morales* – Same-Sex Couples Can File Joint Petitions

In *In re Balas & Morales*, the court held that two debtors who were lawfully married in California, and who filed a joint petition in a Bankruptcy court in California could pursue their joint petition despite being a same-sex couple. After filing their joint petition, the United States Trustee moved to dismiss their case.[41] In particular, the trustee argued that there was "cause" to dismiss because two men were not spouses under the Bankruptcy Code, because DOMA defined "spouses" for the purposes of federal law as "a person of the opposite-sex who is a husband or wife."[42] The debtors responded by arguing that "[they were] constitutionally indistinguishable from opposite-gender married couples who enjoy the rights and responsibilities attendant to joint bankruptcy petitions."[43] Responding to the debtors' constitutional arguments, the United States Trustee asserted that DOMA survived rational basis review because it served numerous legitimate governmental interests, such as encouraging responsible procreation, childbearing, and defending and nurturing the traditional heterosexual marriage.[44] The *Balas & Morales* court, however, rejected those justifications.[45]

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[39] *Id.*
[40] *In re* Kandu, 315 B.R. 123, 132 (Bankr. W.D. Wash. 2004). ("If participation in same-sex marriage is not a fundamental right, the court must address the constitutionality of DOMA with a more liberal rational basis analysis that requires upholding the legislation if it is rationally related to a legitimate governmental interest.").
[41] *See In re* Balas & Morales, 449 B.R. 567, 570 (Bankr. C.D. Cal. 2011); *see also* 11. US.C. § 1307(c) (2012).
[42] *Id.*
[43] *Id.*
[44] *Id.* at 578.
[45] *Id.*

The *Balas & Morales* court applied heightened scrutiny to address the constitutionality of DOMA. Consequently, after reviewing DOMA with heightened scrutiny, the court concluded that DOMA's definition of "spouse" violated the couple's equal protection rights.[46] Further, the *Balas & Morales* court concluded that DOMA would even fail rational basis review.[47] The *Balas & Morales* court stated that the various justifications for DOMA such as procreation, child bearing, and defining and nurturing the traditional heterosexual marriage were irrelevant to filing a joint petition. The *Balas & Morales* court stated, a same-sex couples joint petition would have no effect on procreation or child-bearing, and a joint petition in no way would harm any marriage of heterosexual persons.[48] Therefore, even under rational basis, there was no valid reason for DOMA's definition of spouse and marriage as applied to the debtors.[49]

Accordingly, because the *Balas & Morales* court held DOMA's definition of "spouse" was unconstitutional, the court concluded that the debtors were spouses for purposes of section 302(a) of the Bankruptcy Code. Therefore, the *Balas & Morales* court denied the United States Trustee's motion to dismiss the case and permitted the debtors to pursue their joint petition.

II. *Windsor* – Section 3 of DOMA is Unconstitutional

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[46] *In re* Balas & Morales, 449 B.R. 567, 578 (Bankr. C.D. Cal. 2011).

> The court set forth a four-factor test to determine what class of constitutional scrutiny should apply to sexual orientation. The court stated that a class is deserving of heightened scrutiny if the following has been met: (1) whether the group has faced a history of discrimination; (2) whether the class has defining and immutable characteristics; (3) whether the group is powerless in the political process; and (4) whether sexual orientation is irrelevant to an individual's ability to contribute to society. Accordingly, the court held: (1) the debtors have demonstrated through additional authoritative case law that lesbians and gay men have experienced a history of discrimination; (2) that sexual orientation is a "defining" and immutable characteristic; (3) that lesbians and gay men face significant political obstacles; and (4) that gays and lesbians have made important contributions to society.

Id.

[47] *Id.* at 579 ("The Debtors have demonstrated that DOMA violates their equal protection rights afforded under the Fifth Amendment of the United States Constitution, under heightened scrutiny or under rational basis review.").

[48] *Id.*

[49] *Id.*

In *United States v. Windsor*, the Supreme Court held that section 3 of DOMA, which restricted the definition of marriage as "one only between a man and a woman" was unconstitutional.[50] In *Windsor*, a same-sex spouse who was legally married was denied the benefit of the spousal estate tax deduction, because under section 3 of DOMA the definition of "marriage" excluded same-sex couples and "spouse" only included a husband and wife who were of the opposite-sex.[51] There, the plaintiff and the decedent had been married in Canada and were domiciled in New York, which recognized their marriage as legally valid.[52] Because the plaintiff was married to a same-sex spouse, she did not meet DOMA's requirement under the definition of "marriage" and "spouse" and was not entitled to any federal estate tax deductions. The plaintiff argued that section 3 of DOMA was unconstitutional as applied to her because it violated her equal protection rights and singled out her legally valid marriage.[53]

The Supreme Court accepted the plaintiff's argument, and held that section 3 of DOMA was unconstitutional because it "violate[d] basic due process and equal protection principles applicable to the federal government."[54] Specifically, the *Windsor* court determined that DOMA singled out specific unions, such as those between same-sex couples solely in an attempt to discriminate. Further, the *Windsor* court stated the section 3 was invalid because "no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect."[55]

As a result of *Windsor*, legally married same-sex couples are "spouses" for the purposes of federal law. Nonetheless, the *Windsor* court did not address the constitutionality of section 2

[50] United States v. Windsor, 133 S.Ct. 2675, 2693 (2013).
[51] *In re* Matson, 509 B.R. 861, 862 (Bankr. E.D. Wis. 2014).
[52] *Id.*
[53] *Id.*
[54] United States v. Windsor, 133 S.Ct. 2675, 2693 (2013).
[55] *Id.*

of DOMA,[56] which carves out an exception to the Full Faith and Credit Act, stating that "no state shall be required to give any effect to any public act, record, or judicial proceeding respecting a relationship between persons of the same sex."[57] Consequently, the *Windsor* courts holding effectively resolved the split over whether same-sex couples are barred from filing a joint petition due to the invalidation of section 3 of DOMA. However, since the *Windsor* court's holding did not address whether a state that does not permit same-sex marriages must recognize a same-sex marriage conducted in a state that permits such marriages, the issue of whether a same-sex couple that was legally married in one state, but resided in a state that does not recognize the marriage remained open, because the Bankruptcy Code does not indicate which state's law applies when determining whether a same-sex couple are spouses for the purposes of section 302(a) of the Bankruptcy Code.

III. *In re Matson* – Same Sex Couple Deemed "Spouses" For Purposes of The Bankruptcy Code

In *In re Matson,* a Bankruptcy court in Wisconsin held that same-sex couples were "spouses" for purposes of the Bankruptcy Code.[58] In so holding, the *Matson* court needed to determine whether the debtors, who were legally married in Iowa, a state that recognized same-sex marriage as valid, and resided in Wisconsin, a state that did not recognize their marriage, were "spouses" for purposes of section 302(a) of the Bankruptcy Code. Unlike *Windsor*, the parties in this case were not married in Wisconsin, nor were they living in a state that recognized and protected same-sex marriage.[59] Nonetheless, after the couple filed their joint petition, the creditor moved to dismiss the debtors' case. In so arguing, the creditor cited that a joint petition

[56] *In re* Matson, 509 B.R. 861, 862 (Bankr. E.D. Wis. 2014).
[57] 28 U.S.C. § 1738C (2012).
[58] Matson, 509 B.R. at 861.
[59] *Id.* (stating under the narrow ruling in Windsor, those individuals married in a jurisdiction recognizing same-sex marriage and currently living in a state that recognizes same-sex marriage are entitled to have their marriage federally recognized).

may only be commenced "by an individual that may be a debtor under such chapter and such individual's *spouse,"*[60] the creditor also noted that traditionally "the definition and regulation of marriage … has been treated as being within authority and realm of the separate States[.]"[61] Therefore, the creditor argued that, since Wisconsin does not allow or recognize same-sex marriages,[62] the debtors were not "spouses" for purposes of section 302(a) of the Bankruptcy Code.[63] In response, the debtors relied on Supreme Court's holding in *Windsor*, which stated that section 3 of DOMA and its definition of spouse "violate[d] basic due process and equal protection principles applicable to the Federal Government."[64] Further, the debtors claimed the state of Wisconsin "does not have any authority to deny a lawfully wedded couple any federal benefits, which would include the right to file as spouses in a joint bankruptcy case."[65]

In response, the court stated that Wisconsin was not required to recognize same-sex marriages, which is a stance currently allowable under section 2 of DOMA,[66] however, section 2 applies to states, but it does not apply to Federal courts. Therefore, the court determined the right of same-sex spouses, married in a state that allows them to do so, to file a joint bankruptcy case in a state that does not recognize their union as a marriage requires a choice of laws analysis.[67]

A. Choice of Laws – Place of Celebration Governs Validity of Marriage

Specifically, the *Matson* court stated, the Bankruptcy Code is silent as to which state law applies when determining the validity of a marriage.[68] The *Matson* court opined, that "it is well established that the law of the place where the marriage is celebrated governs the validity of the

[60]United States v. Windsor, 133 S.Ct. 2675, 2689 (2013).; *see also* 11 U.S.C. § 302(a) (2012) (emphasis added).
[61] Windsor, 133 S.Ct. 2675, at 2689—90
[62] Wis. Const. art. XII, § 13.
[63] *In re* Matson, 509 B.R. 860, 861 (Bankr. E.D. Wis. 2014).
[64] United States v. Windsor*,* 133 S.Ct., 2675, 2693 (2013).
[65] Matson, 509 B.R. at 861.
[66] *Id* at 863.
[67] *Id.*
[68] *Id.*

marriage."[69] Further, the *Matson* court stated, "it is the majority view and the historical view that the law of the place of celebration governs the capacity of parties to marry."[70] The general concept of "lex celebrationis" means that a marriage is valid if it was valid according to the law of the place where it is celebrated.[71] The *Matson* court believed this rule made practical sense and stated, "[t]his rule guarantees that a married couple will not lose their marital status because they travel or move their domicile from state-to-state."[72] Therefore, as applied to same-sex couples, the *Matson* court held that the law of where the couple was married governs, not the law of the couple's domicile.[73]

B. Full Faith and Credit Requires Recognition of Legally Valid Marriages

Further, the court stated, although a state is not required to recognize the debtors' marriage if their constitution and laws do not, they are still bound by the Full Faith and Credit Act.[74] Thus, under the Full Faith and Credit Act for purposes of federal law a state that does not recognize same-sex marriage must recognize and apply the laws of the state where the marriage was celebrated. So, if a same-sex couple's marriage was legally valid where the marriage was originally performed, it will be deemed valid in another state.[75] Here, the Wisconsin court was required to apply Iowa's same-sex marriage law for purposes of federal law.[76] Further, because the debtors' marriage was lawful where originally performed, and since *Windsor*[77] invalidated DOMA's requirement that the word "spouse" referred to only opposite-sex couples, same-sex

[69] *Id.* at 862.
[70] *Effect in Third State of Marriage Where Celeberated But Void By Law of Domicil of Parties* 51 A.L.R. 1412 (1927) (meaning that the place of celebration also governs whether same-sex couples can enter into a valid marriage).
[71] *In re* Matson, 509 B.R. 860, 863 (Bankr. E.D. Wis. 2014).
[72] *Id.*
[73] *Id.*
[74] *See id.; see also* 28 U.S.C. § 1738 (2012).
[75] Matson, 509 B.R. at 863.
[76] *Id.*
[77] *See Generally* United States v. Windsor, 133 S.Ct. 2675 (2013).

couples will be considered spouses for purposes of federal law and the Bankruptcy Code. Accordingly, the court held that same-sex couples will fulfill the Code's requirement that, "a joint bankruptcy petition may only be filed by an individual and the individual's spouse."[78]

IV. Implications of *In re Matson*

In re Matson was significant because it allows same-sex couples who were legally married in one state to file joint bankruptcy petitions regardless of where they live. This is important because a same-sex couple who was legally married will not be deprived of their marital status if they relocate to another state. A couple's right to file a joint bankruptcy petition has many practical benefits. Allowing a couple to file a joint petition not only makes practical sense for the couple, but also promotes both judicial economy and consistency. The practical benefits of a joint petition include ensuring that one judge will hear the couple's case, which provides consistent decisions. Further, judicial economy is promoted by organizing, and if necessary liquidating the couple's assets without requiring judicial oversight by multiple courts. Further, a joint petition allows a couple who is already short on money to obtain one lawyer, rather than spend money on two lawyers. So, by extending this right not only to "traditional" couples, but also to same-sex couples will immediately improve the efficiency of bankruptcy proceedings. After *Matson*, it is likely that more same-sex couples will be able to file joint petitions. Moreover, it will be less likely that same-sex couples' joint petitions are dismissed, or in the alternative bifurcated. This provides stability to same-sex couples around the country knowing that they can organize and liquidate their assets with their spouse and enjoy the same rights as opposite-sex couples under The Bankruptcy Code.

[78] *See* 11 U.S.C. § 302(a) (2012).

Soon the Supreme Court will decide whether same-sex marriage should be recognized on both the State and Federal level. This comes at a time where a decision from the Supreme Court is necessary. A ruling would ensure both consistency amongst the circuits, and provide same-sex couples with the same rights as traditional couples. Whether it is the right to joint filing, or any other right provided to opposite-sex marriages, it is evident that the Supreme Court needs to address the issue of whether a state is required to recognize a marriage between two people of the same-sex when their marriage was lawfully licensed and performed out-of-state.

Conclusion

The issue in *In re Matson* required the *Matson* court to determine whether a same-sex couple who were legally married in one state, but submitted a joint petition in a state that did not recognize same sex-marriage would still have a right to file a joint bankruptcy petition. After *Windsor* invalidated section 3 of DOMA, which restricted marriage to only those of opposite-sex, a decision on whether same-sex couple's could petition jointly under section 302(a) of the Bankruptcy Code was imminent. However, the Bankruptcy Code was silent as to which state law applied in determining the validity of a marriage. The *Matson* court relied on the "place of celebration" rule, which states if a couple is legally married in one state, they will be deemed married for purposes of federal law and the Bankruptcy Code. Further, under the Full Faith and Credit Act, a state that does not recognize same-sex marriages must recognize a same-sex marriage if it was valid where performed. Therefore, a same sex couple could file a joint petition in any state they reside in if they were legally married in another state. In so holding, the *Matson* court ensured that same-sex couples would be treated the same as "traditional" couples for purposes of the Bankruptcy Code, which included their right to file a joint bankruptcy petition.