

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

J. MICHAEL McCONNELL,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 04-2711 (JNE/JGL)
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

UNITED STATES' BRIEF IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

Plaintiff J. Michael McConnell seeks a federal income tax refund based on an alleged tax overpayment attributable solely to his claimed return-filing status of “married filing jointly.” McConnell’s Complaint should be dismissed because he cannot establish any set of facts that would entitle him to the relief he seeks.

McConnell, who is male, alleges he is married to another male under the laws of Minnesota. But McConnell has previously litigated and lost all of the following issues: (1) whether his specific alleged marriage to another male is valid; (2) whether same-sex marriage in general is permitted under Minnesota law; (3) whether a prohibition of same-sex marriage comports with the United States Constitution; and (4) whether McConnell is entitled to jointly file federal income tax returns based on his claimed marriage. In prior litigation brought by McConnell, this Court and the Eighth Circuit held that McConnell’s alleged marriage was not valid because McConnell had previously litigated and lost *another* case before the Minnesota Supreme Court, which held that same-sex marriages are prohibited in Minnesota, and that such a prohibition does not violate the United States Constitution. McConnell’s appeal of that state court ruling to the U.S. Supreme Court was dismissed for want of a substantial federal question, a ruling on the merits. In McConnell’s later litigation in this Court, the Court specifically determined that McConnell cannot jointly file federal income tax returns based on a purported marriage to another male. Accordingly, McConnell cannot now relitigate either the validity of his alleged marriage or whether Minnesota permits same-sex marriages. He cannot relitigate whether a prohibition on same-sex marriages is consistent with the United States Constitution. And he also cannot now relitigate whether he can jointly file federal income tax returns based on a purported marriage to another male. Therefore, because he is barred from relitigating whether he can jointly file tax returns based on a claimed marriage to another male, and because his claimed marriage to another male is not recognized under Minnesota law, and he alleges no other

facts entitling him to file a joint federal income tax return, the Complaint should be dismissed for failure to state a claim.

In addition, even if McConnell were permitted to relitigate issues he has twice lost before, his effort to seek “married filing jointly” status for federal tax purposes fails as a matter of law. The Defense of Marriage Act, passed overwhelmingly by Congress and signed by President Clinton in 1996, requires, for federal law purposes, that marriage consist only of the union between one man and one woman, and clearly passes constitutional muster.

FACTS

McConnell’s Claimed Marital Status

1. McConnell, who is male, claims that he “contracted marriage to an adult male in the presence of two witnesses,” in Minnesota on September 3, 1971. Compl. ¶ 11.
2. A purported marriage license, issued by Blue Earth County, Minnesota, to James Michael McConnell and a Pat Lyn McConnell is attached to the Complaint as Exhibit A.¹

Minnesota Supreme Court’s Adverse Ruling Against McConnell and Baker

3. Before obtaining a purported marriage license from Blue Earth County, McConnell and Richard John Baker unsuccessfully sought a marriage license in Hennepin County, Minnesota. *Baker v. Nelson*, 191 N.W.2d 185, 185 (Minn. 1971).

¹ Although McConnell’s alleged spouse is described as “Pat Lyn McConnell” on the purported marriage license and certificate, Pat Lyn McConnell is also known as Richard John Baker. See *McConnell v. Nooner*, 547 F.2d 54, 55 (8th Cir. 1976) (“...appellants [James Michael McConnell and Richard John Baker] obtained a marriage license from the Blue Earth County Court Clerk. They were ‘married’ by a minister on September 3, 1971 . . .”). See also Complaint ¶¶ 9-11 (alleging that McConnell obtained a marriage license from the Blue Earth County Court Clerk and was married by a minister on September 3, 1971). McConnell fails to describe his purported spouse by name in this litigation. Richard Baker is the attorney representing McConnell in this suit.

4. The Hennepin County Clerk declined to issue the license, and McConnell and Baker sought a writ of mandamus from the Hennepin County district court to overturn that decision. *Id.*
5. That court denied the requested relief. *Id.*
6. McConnell and Baker appealed. The Minnesota Supreme Court held that Minnesota does not recognize or permit same-sex marriages, and that the United States Constitution did not require otherwise. *Id.*

The United States Supreme Court’s Adverse Ruling Against McConnell

7. Invoking the United States Supreme Court’s then-mandatory appellate jurisdiction, *see* 28 U.S.C. § 1257(2) (repealed 1980), McConnell and Baker sought Supreme Court review of the Minnesota Supreme Court’s decision that neither federal due process nor equal protection principles required the recognition of same-sex marriage. *See* Jurisdictional Statement in No. 71-1027, at 3 (filed herewith as Exhibit 1) (questions presented are whether denial of same-sex marriage “deprives appellants of their liberty to marry ... without due process of law under the Fourteenth Amendment” and “violates their rights under the equal protection clause of the Fourteenth Amendment”).
8. On review, the Supreme Court dismissed the appeal “for want of [a] substantial federal question.” *Baker v. Nelson*, 409 U.S. 810 (1972).

The Eighth Circuit’s Adverse Ruling Against McConnell and Baker

9. McConnell and Baker later sued the Veterans Administration, claiming that McConnell was Baker’s dependent spouse based on the purported “marriage” ceremony that took place on September 3, 1971, and seeking veterans benefits available to married veterans.

See McConnell v. Nooner, No. 4-75-Civ. 566 (D. Minn. Apr. 19, 1976) (filed herewith as Exhibit 2). *See also McConnell v. Nooner*, 547 F.2d 54 (8th Cir. 1976).

10. In that case, McConnell and Baker moved for leave to file a Second Amended Complaint, seeking to add a count for injunctive relief against the IRS. Specifically, McConnell and Baker sought an order allowing them to file joint federal income tax returns based upon their claimed marriage. *McConnell v. Nooner*, No. 4-75-Civ. 566, slip op. at 2 (D. Minn. Apr. 19, 1976). This Court granted the motion to amend. *Id.*
11. Defendants moved to dismiss, oral argument was held, and this Court dismissed the suit, finding *Baker v. Nelson* dispositive of the issues. *Id.*
12. The Eighth Circuit affirmed the dismissal, finding that McConnell and Baker were collaterally estopped from relitigating whether McConnell was Baker’s “dependent spouse,” because Minnesota neither permits nor recognizes same-sex marriage. *McConnell v. Nooner*, 547 F.2d 54 (8th Cir. 1976). In so holding, the Eighth Circuit noted that the Minnesota Supreme Court decision barred relitigating whether Minnesota state law permits or recognizes same-sex marriage. *Id.*
13. The Eighth Circuit also found that the U.S. Supreme Court’s dismissal of McConnell and Baker’s appeal for want of a substantial federal question was an adjudication of the merits that is binding on lower courts, establishing a precedent that prohibition of same-sex marriage does not violate the United States Constitution, which required dismissal of McConnell’s and Baker’s claim on grounds wholly distinct from issue preclusion. *Id.* at 55-56.

McConnell’s Requested Relief

14. McConnell timely filed a federal income tax return for 2000, reported his filing status as single, head of household, and paid the tax shown to be due, based on his reported income and deductions. By reporting his filing status as single, head of household, and neither married filing separately nor married filing jointly, plaintiff originally admitted that he was not married.² Compl. ¶ 13.
15. McConnell subsequently timely filed an amended federal income tax return for 2000, changing only his filing status, from head of household to married filing jointly, and requesting a refund of \$793.28 in taxes based on that change alone. Compl. ¶ 14.
16. The IRS denied McConnell's refund claim. Compl. ¶ 15.

ARGUMENT:

McConnell's Complaint Should be Dismissed for Failure to State a Claim.

² See 26 U.S.C. § 2(b) ("For purposes of this subtitle, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year...").

Rule 12(b)(6) dismissals eliminate actions that are fatally flawed in their legal premises, thereby sparing litigants the burden of unnecessary pretrial and trial activity.³ A cause of action “should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief.”⁴ In analyzing the adequacy of a complaint’s allegations, courts must construe the complaint liberally and afford the plaintiff all reasonable inferences to be drawn from those allegations.⁵

³ *Young v. City of St. Charles*, 244 F.3d 623, 627 (8th Cir. 2001).

⁴ *Schaller Tel. Co. v. Golden Sky Sys., Inc.*, 298 F.3d 736, 740 (8th Cir. 2002) (internal citations omitted) (citing *Kohl v. Casson*, 5 F.3d 1141, 1148 (8th Cir. 1993)).

⁵ *See Turner v. Holbrook*, 278 F.3d 754, 757 (8th Cir. 2002).

While affidavits or other matters outside the pleadings generally result in converting a 12(b)(6) motion to a Rule 56 motion, reliance on court opinions and public records does not require such conversion.⁶ Numerous courts have applied preclusion principles in dismissing for failure to state a claim.⁷

⁶ *Brackett v. State Highways and Transp. Comm'n*, 163 F.R.D. 305 (W.D. Mo. 1995) (citing 9 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure: Civil* § 2363 at 259 (2d ed. 1995)); *Aamot v. Kassel*, 1 F.3d 441 (6th Cir. 1993); *Nix v. Fulton Lodge No. 2 of the Int'l Assoc. of Mach. and Aerospace Workers*, 452 F.2d 794 (5th Cir. 1971), *cert. denied*, 406 U.S. 946 (1972). *See also Henson v. CSC Credit Services*, 29 F.3d 280 (7th Cir. 1994); *Erickson v. Horing*, 2001 WL 1640142 (D. Minn. 2001) (dismissing claim as barred by collateral estoppel based on state court's opinion); 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1357 (2d ed. 1990) ("In determining whether to grant a Rule 12(b)(6) motion, the court primarily considers the allegations in the complaint, although matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint, also may be taken into account."). By moving to dismiss on the grounds of issue and claim preclusion, the United States reserves, and does not waive, any defense to the claims asserted in

the Complaint, which it will assert in an answer if for any reason its motion to dismiss is denied.

⁷ *Gubernik v. McCormick & Co., Inc.*, 894 F.2d 320 (8th Cir. 1990); *Jenson v. Olson*, 353 F.2d 825, 829 (8th Cir. 1965) (affirming dismissal for failure to state a claim on res judicata grounds where state supreme court ruled on issue and United States Supreme Court denied certiorari); *Thomas v. Consol. Coal Co.*, 380 F.2d 69, 74 n.2 & 75 (4th Cir.), *cert. denied*, 389 U.S. 1004 (1967) (affirming dismissal for failure to state a claim under res judicata); *Terrell v. DeConna*, 877 F.2d 1267, 1270 (5th Cir. 1989) (issue preclusion appropriately raised on motion to dismiss); *Nix v. Fulton Lodge No. 2*, 452 F.2d 794, 797 (affirming dismissal for failure to state a claim and res judicata); *Scott v. Kuhlmann*, 746 F.2d 1377 (9th Cir. 1984) (affirming dismissal under res judicata where the defense raised no factual dispute).

McConnell's Complaint should be dismissed because he cannot establish any set of facts that would entitle him to the relief claimed in his Complaint. That is, McConnell seeks a federal income tax refund for the year 2000 based on an alleged tax overpayment attributable solely to a change of filing status from single head of household to married filing jointly. The latter filing status is not available to non-married individuals. McConnell has already litigated whether he can file joint income tax returns based on his purported marriage to another male, and lost. McConnell has also litigated whether same-sex marriage is permitted under Minnesota law, and lost that as well. McConnell has litigated whether a prohibition of same-sex marriage comports with the United States Constitution, and he lost that, too. And, finally, McConnell has also already litigated whether he is *entitled to relitigate* these issues, and lost that case as well. As the Eighth Circuit said, "The appellants have had their day in court on the issue of their right to marry under Minnesota law and under the United States Constitution. They, therefore, are collaterally estopped from relitigating these issues once more."⁸

As we explain below, McConnell's claim is barred by both claim preclusion and issue preclusion. McConnell is thus doubly estopped from reasserting his claim here. His claimed marriage to another male is not recognized under Minnesota law, this Court has already determined that he cannot file joint income tax returns based on that purported marriage, and he alleges no other facts entitling him to file a joint federal income tax return. McConnell's Complaint should therefore be dismissed for failure to state a claim.

A. Claim Preclusion Bars Relitigating Whether McConnell Can File Joint Income Tax Returns Based on His Claimed Same-Sex Marriage.

⁸ *McConnell v. Noonan*, 547 F.2d at 56.

McConnell is bound by the doctrine of claim preclusion from seeking to have this Court determine anew, in this litigation, whether he can jointly file federal income tax returns based on his claimed marriage to another male. This Court has already determined, in a suit filed by McConnell and his purported spouse, that he is not entitled to file joint income tax returns because his September 3, 1971 “marriage” to Baker is not valid under Minnesota law.

Claim preclusion bars repetitive suits involving the same claim or cause of action.⁹ Final judgment on the merits precludes the same parties from relitigating issues that were or could have been raised in that action.¹⁰ Courts consider three factors in determining whether claim preclusion will bar a party from asserting a claim: whether the prior judgment was entered by a court of competent jurisdiction, whether the prior decision was a final judgment on the merits, and whether the same cause of action and the same parties or their privies were involved in both

⁹ See *Montana v. United States*, 440 U.S. 147, 153-54 (1979) (explaining that under res judicata, or claim preclusion, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action, while under collateral estoppel, or issue preclusion, once an issue is actually and necessarily determined, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation); *Lundquist v. Rice Memorial Hosp.*, 238 F.3d 975, 977 (8th Cir. 2001) (citing *Commissioner v. Sunnen*, 333 U.S. 591, 597 (1948)).

¹⁰ See *Lundquist v. Rice Memorial Hosp.*, 238 F.3d 975, 977 (8th Cir. 2001) (citing

cases.¹¹ If the three elements are met, the parties are barred from relitigating issues that were raised or could have been raised in that earlier action.

Application of these factors to the present case conclusively establishes that McConnell cannot relitigate his ability to jointly file federal tax returns based on his claimed marriage to Baker. McConnell and Baker previously sued the United States seeking the ability to file joint tax returns based on their claimed marriage, and their Complaint was dismissed by this Court. Thus, the first requirement to establish claim preclusion, that the prior judgment was entered by a court of competent jurisdiction, is established. Second, the decision was a decision on the merits: this Court addressed whether McConnell and Baker were legally married under Minnesota law, found that they were not, and dismissed their Complaint because joint returns can only be filed by married couples. Finally, the cause of action and parties are identical between this suit and McConnell's previous litigation. McConnell previously sought the ability to jointly file income tax returns based on a purported marriage to another male. And he is seeking that same relief here.

Because McConnell previously litigated whether he could file joint federal income tax returns based on his claimed marriage to another male, and lost, he is bound by the adverse ruling entered against him. Claim preclusion bars McConnell from relitigating in this case whether he can file joint federal income tax returns with another male. Therefore, based on the

Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398-99 (1981)).

¹¹ See *Murphy v. Jones*, 877 F.2d 682, 684 (8th Cir.1989).

allegations in the Complaint, McConnell cannot file joint tax returns based on his “marriage” to another male, and his Complaint should be dismissed for failure to state a claim.

B. Issue Preclusion Bars Relitigating McConnell’s Marital Status.

McConnell is also bound by the doctrine of issue preclusion from seeking to have this Court determine anew, in this litigation, whether he is legally married to another male. The Minnesota Supreme Court has already determined, in a suit filed by McConnell and his purported spouse, that Minnesota does not permit or recognize same-sex marriage. Furthermore, this Court and the Eighth Circuit later determined that the state court decision, and the United States Supreme Court’s dismissal of the appeal for lack of a substantial federal question, collaterally estop McConnell from litigating in federal court the legitimacy of his claimed September 3, 1971 marriage.

Where a court directly determines an issue, that issue cannot be disputed in a separate suit between the same parties.¹² The initial “determination of that issue is conclusive in a subsequent action between the parties, whether on the same or a different claim.”¹³ Issue preclusion serves multiple functions: it conserves judicial time and resources by avoiding duplicative litigation, protects litigants from unnecessary expenses and potential harassment by lawsuit, and avoids conflicting rights and duties arising from inconsistent judgments.¹⁴

Five factors determine whether issue preclusion applies:

¹² *Montana v. United States*, 440 U.S. 147, 153-54 (1979); *Anderson v. Genuine Parts Co., Inc.*, 128 F.3d 1267 (8th Cir. 1997) (noting that the doctrine of issue preclusion was formerly known as collateral estoppel).

¹³ *Tyus v. Schoemehl*, 93 F.3d 449 (8th Cir.), *cert. denied*, 520 U.S. 1132 (1997).

¹⁴ *Oldham v. Pritchett*, 599 F.2d 274, 278 (8th Cir. 1979).

- i. The party sought to be precluded in the second suit must have been a party, or in privity with a party, to the original lawsuit;
- ii. The issue sought to be precluded must be the same as the issue involved in the prior action;
- iii. The issue sought to be precluded must have been actually litigated in the prior action;
- iv. The issue sought to be precluded must have been determined by a valid and final judgment; and
- v. The determination in the prior action must have been essential to the prior judgment.¹⁵

¹⁵ *Anderson v. Genuine Parts Co., Inc.*, 128 F.3d at 1273. *See also Tyus v. Schoemehl*, 93 F.3d at 453.

Application of these five requirements to the present case conclusively establishes that McConnell and Baker are not legally married under Minnesota law. First, the parties are identical. McConnell was a party to the Minnesota Supreme Court case holding that same-sex marriages are neither permitted nor recognized under Minnesota law,¹⁶ and to the federal court litigation finding his claimed marriage to Baker was invalid.¹⁷ Further, the United States Supreme Court's dismissal of the appeal from the Minnesota Supreme Court for want of a substantial federal question constitutes an adjudication on the merits, which is binding on the lower federal courts.¹⁸ In other words, the U.S. Supreme Court has already held that a prohibition against same-same sex marriage comports with the United States Constitution.¹⁹

Second, the issue determined by the Minnesota Supreme Court is identical to the issue sought to be precluded before this Court: whether Minnesota law permits same-sex marriage,

¹⁶ *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971).

¹⁷ *McConnell v. Nooner*, 547 F.2d at 54.

¹⁸ *Baker v. Nelson*, 409 U.S. 810 (1972). See *McConnell v. Nooner*, 547 F.2d 54, 55 (8th Cir. 1976) (citing *Hicks v. Miranda*, 422 U.S. 332, 343-45 (1975)).

¹⁹ *Id.*

and whether a prohibition on same-sex marriage is constitutional.²⁰ This issue was the sole basis for the state court decision.²¹ And that is the issue sought to be precluded before this Court.

²⁰ *McConnell v. Nooner*, 547 F.2d at 55.

²¹ *Baker v. Nelson*, 191 N.W.2d 185 (holding that the Minnesota statute authorizing marriage does not authorize same-sex marriage so that same-sex marriage is prohibited, and also holding that such prohibition does not violate the First, Eighth, Ninth, or Fourteenth Amendments to the United States Constitution).

The third factor, whether the issue to be precluded was actually litigated, is also established in the government's favor. Whether Minnesota recognizes same-sex marriages was the primary issue before the Hennepin County district court, and was the issue argued before the Minnesota Supreme Court.²² The Eighth Circuit found that because McConnell and Baker's claims were reviewed by both the Minnesota Supreme Court and the United States Supreme Court, collateral estoppel barred revisiting their right to marry under Minnesota law:

[McConnell and Baker] have had their day in court on the issue of their right to marry under Minnesota law and under the United States Constitution. They, therefore, are collaterally estopped from relitigating these issues once more.²³

As such, McConnell actually litigated whether Minnesota law permits same-sex marriage.

Fourth, the issue was determined by a valid and final judgment. The Hennepin County district court quashed McConnell and Baker's petition for writ of mandamus.²⁴ This decision was appealed to the Minnesota Supreme Court, which affirmed, and was further appealed to the United States Supreme Court, which dismissed the appeal for want of a substantial federal question.²⁵ As such, the issue was determined by a valid and final judgment.²⁶

Fifth, the determination of whether Minnesota law permits same-sex marriage was essential to the decision.²⁷ The trial court ruled that the Hennepin County clerk was neither required nor permitted to issue a marriage license to McConnell and Baker. And the Minnesota

²² *Id.*

²³ *See McConnell v. Nooner*, 547 F.2d 54.

²⁴ *Baker v. Nelson*, 191 N.W.2d 185.

²⁵ *Id.*; *Baker v. Nelson*, 409 U.S. 810 (1972).

²⁶ *See McConnell v. Nooner*, 547 F.2d 54.

²⁷ *See id.*; *Baker v. Nelson*, 191 N.W.2d 185.

Supreme Court held that Minnesota law does not authorize same-sex marriage, which consequently is prohibited.

Because McConnell previously litigated whether Minnesota law permits same-sex marriage, and lost, he is bound by the adverse ruling entered against him. Issue preclusion bars McConnell from relitigating in this case the Minnesota Supreme Court's decision holding that same-sex marriages are not permitted under Minnesota law.²⁸ Moreover, issue preclusion also bars McConnell from relitigating in this case the constitutionality of that holding.²⁹ Therefore, based on the allegations in the Complaint, McConnell is an unmarried individual under Minnesota law.

C. As an Unmarried Individual Under Minnesota Law, McConnell Cannot File a Joint Federal Income Tax Return.

²⁸ *McConnell v. Nooner*, 547 F.2d 54 (8th Cir. 1976) (McConnell and Baker collaterally estopped from relitigating marital status by means of suit for increased veterans benefits).

²⁹ *Id.*

McConnell cannot properly file a joint federal income tax return for the year 2000 because he was not married at the close of that year under Minnesota law. Section 6013(a) of the Internal Revenue Code (“I.R.C”), provides that a “husband and wife may make a single return jointly of income taxes under subtitle A”³⁰ By its terms, Section 6013 contemplates marriage between a man and a woman. Under Section 1 of the I.R.C., the rate structure that applies for determining a taxpayer’s tax liability varies depending upon the taxpayer’s appropriate filing status, *i.e.*, either married filing jointly, head of household, unmarried, or married filing separately. Section 1(a)(1) of the I.R.C. provides that a taxpayer’s marital status is determined in accordance with I.R.C. § 7703, which in turn provides that the determination of whether an individual is married is to be made at the close of the individual’s taxable year—here, 2000.³¹

For federal tax purposes, and with exceptions not relevant to the ground of issue preclusion raised by this motion, the marital status of taxpayers is normally determined under the laws of the state of their residence.³² Because McConnell’s marital status has already been conclusively determined, in prior, binding litigation, to be unmarried, and he does not allege to be married other than through the purported marriage this Court previously found invalid, he is

³⁰ I.R.C. § 1(a)(1); *see also* I.R.C. § 6013(a); *Martinez v. Commissioner*, 75 T.C.M. (CCH) 2394, 2396 (1998); *Collins v. Commissioner*, 68 T.C.M. (CCH) 484, 487 (1994).

³¹ *See* I.R.C. § 7703(a)(1); *see also* I.R.C. § 6013(d)(1)(A).

³² *Druker v. Commissioner*, 77 T.C. 867, 872, *aff’d*, 697 F.2d 46 (2d Cir.), *cert. denied*, 461 U.S. 957 (1983). *See also* *Boyer v. Commissioner*, 732 F.2d 191, 194 (D.C. Cir. 1984) (marital status for federal tax purposes determined by state law domicile of taxpayer); *Boyer v. Commissioner*, 668 F.2d 1382, 1384 (4th Cir.), *cert. denied*, 461 U.S. 1114 (1985) (same). For the reasons stated below, the Defense of Marriage Act makes clear that “the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.” 1 U.S.C. § 7.

not entitled to file federal income tax returns as “married filing jointly,” and his refund claim was properly denied. Accordingly, McConnell can allege no set of facts that could entitle him to relief, and dismissal of the Complaint is appropriate.

D. Even if McConnell’s “Marriage” to Baker Were Valid Under Minnesota Law, that Marriage Is Irrelevant for Federal Tax Purposes.

“If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality ... unless such adjudication is unavoidable.”³³ Here the Court need not reach McConnell’s argument regarding the constitutionality of allowing only married couples consisting of a man and a woman to file joint income tax returns, because he has already lost that claim in prior litigation. If it does reach McConnell’s constitutional argument, this Court too should reject it on the merits.

In 1996, Congress overwhelmingly enacted, and President Clinton signed into law, the Defense of Marriage Act (“DOMA”).³⁴ DOMA’s provisions are two-fold: Section 2 allows states to determine for themselves whether to recognize same-sex marriages granted by other states;³⁵ and Section 3 defines the terms “marriage” and “spouse,” for

³³ *Rescue Army et al. v. Mun. Court of Los Angeles*, 331 U.S. 549, 570 (1947) (citation omitted). *See also Elk Grove Unified Sch. Dist. v. Newdow*, 124 S. Ct. 2301, 2308-09 (2004).

³⁴ Pub. L. No. 104-199, 110 Stat. 2419 (1996).

³⁵ 28 U.S.C. § 1738C.

purposes of federal law, to include only the union of one man and one woman.³⁶

McConnell's claim appears to challenge the constitutionality of Section 3 of DOMA.

- 1. The U.S. Supreme Court Has Already Held that the Constitution Does Not Require Recognition of Same-Sex Marriages.**

³⁶ 1 U.S.C. § 7.

Regardless of any challenge that McConnell may raise against DOMA, the Supreme Court has already determined that state laws limiting marriage to one man and one woman comport with both the Due Process Clause and the Equal Protection Clause of the United States Constitution. Plaintiff's own Supreme Court appeal, claiming that Minnesota's prohibition of same-sex marriage violates both the Due Process Clause and the Equal Protection Clause, was dismissed for want of a substantial federal question.³⁷ And as the Supreme Court has explained, dismissals "for want of a substantial federal question" are binding precedents.³⁸ This principle has been applied by the Eighth Circuit, the Ninth Circuit, and numerous state courts in recognizing that state laws limiting marriage to one man and one woman comport with both the Due Process Clause and the Equal Protection Clause of the United States Constitution.³⁹ Moreover, "dismissals for want of a substantial federal question without doubt reject the specific challenges presented in the statement of jurisdiction."⁴⁰ Accordingly, *Baker* definitively establishes that neither the Due Process Clause nor the Equal Protection Clause bars the states from limiting marriage to one man and one woman. *A fortiori*, *Baker* definitively establishes that the federal government, in defining

³⁷ *Baker v. Nelson*, 191 N.W.2d 185, 186-87 (Minn. 1971), *appeal dismissed*, 409 U.S. 810 (1972).

³⁸ *Hicks v. Miranda*, 422 U.S. 332, 344 (1975) ("until the Supreme Court should instruct otherwise, inferior federal courts had best adhere to the view that ... the Court has branded a question as unsubstantial").

³⁹ *McConnell v. Nooner*, 547 F.2d 54, 56 (8th Cir. 1976) (*Baker* is "binding on the lower federal courts"); *Adams v. Howerton*, 673 F.2d 1036, at 1039 n.2 (9th Cir. 1982).

⁴⁰ *Mandel v. Bradley*, 432 U.S. 173, 176 (1977).

marriage for purposes of federal benefits statutes, may likewise incorporate the traditional opposite-sex definition.

2. DOMA Does Not Impinge Upon Any Fundamental Rights.

Even were *Baker* not dispositive, however, DOMA clearly meets constitutional requirements. The substantive component of the Due Process Clause protects fundamental rights that are “implicit in the concept of ordered liberty,”⁴¹ or “deeply rooted in this Nation’s history and tradition.”⁴² While the right to marry qualifies as “fundamental” under these standards,⁴³

⁴¹ *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

⁴² *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977) (plurality).

these standards do not, however, encompass the right to marry someone of the same sex.⁴⁴

Moreover, DOMA does not directly or substantially interfere with the ability of anyone, including homosexuals, to marry the individual of his or her choice. Instead, it simply addresses how couples who have already married will be treated for various federal-law purposes. And statutes that allocate benefits and burdens based on marital status are routinely subjected only to rational basis review—and upheld under that standard.⁴⁵

3. DOMA Does Not Make Any Suspect Classification.

⁴³ See *Zablocki v. Redhail*, 434 U.S. 374, 383-87 (1978).

⁴⁴ *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (substantive due process analysis requires “ ‘careful description’ of the asserted fundamental liberty interest”) (citation omitted); *Baker v. Nelson*, 191 N.W.2d at 186 (“The institution of marriage as a union of man and woman, uniquely involving the procreation and rearing of children within a family, is as old as the book of Genesis.”).

⁴⁵ See *Zablocki* 434 U.S. at 386. See also *Califano v. Jobst*, 434 U.S. 47, 54 (1977) (loss of federal social security benefits upon marriage does not “interfere with the individual’s freedom to make a decision as important as marriage”); *Druker v. Commissioner*, 697 F.2d 46, 50 (2d Cir. 1982) (same for “marriage penalty” in federal tax code).

DOMA cannot be subjected to heightened scrutiny on the theory that it draws any suspect classification. Under settled precedent, classifications based on sexual orientation are neither suspect nor quasi-suspect, and thus do not trigger heightened scrutiny.⁴⁶ DOMA also does not discriminate on the basis of sex. DOMA on its face makes no “detrimental ... classification,” that disadvantages either men or women.⁴⁷ Moreover, DOMA cannot be “traced to a ... purpose” to discriminate against either men or women.⁴⁸ Finally, DOMA does not reflect “the baggage of sexual stereotypes.”⁴⁹

4. DOMA Easily Survives Rational Basis Review.

Because DOMA neither burdens fundamental rights nor makes suspect classifications, it is subject only to rational-basis review.⁵⁰ Under rational-basis review, statutes are afforded “a strong presumption of validity,” and “[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.”⁵¹ Courts “are compelled under rational-basis review to accept a legislature’s generalizations even when there is an imperfect fit between means and ends.”⁵² Accordingly, classifications may be “both

⁴⁶ See *Richenberg v. Perry*, 97 F.3d 256 (8th Cir. 1996); *Montgomery v. Indep. Sch. Dist. No. 709*, 109 F. Supp. 2d 1081 (D. Minn. 2000).

⁴⁷ *Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464, 478 (1981) (plurality).

⁴⁸ *Personnel Administrator v. Feeney*, 442 U.S. 256, 272 (1979).

⁴⁹ *Orr v. Orr*, 440 U.S. 268, 283 (1979).

⁵⁰ See, e.g., *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997); *Heller v. Doe*, 509 U.S. 312, 319 (1993).

⁵¹ *Id.* See also *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 314 (1993) (rational basis review is a paradigm of judicial restraint).

⁵² *Heller v. Doe*, 509 U.S. at 321.

underinclusive and overinclusive,” and “ ‘perfection is by no means required.’ ”⁵³ Moreover, under rational-basis review, courts cannot invalidate statutes that they deem “unwise, improvident, or out of harmony with a particular school of thought.”⁵⁴ Instead, any arguable or even conceivable justification will suffice.⁵⁵

⁵³ *Vance v. Bradley*, 440 U.S. 93, 108 (1979) (citation omitted).

⁵⁴ *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 488 (1955).

⁵⁵ *Minnesota Senior Fed’n v. United States*, 273 F.3d 805, 808 (8th Cir. 2001).

DOMA is rationally related to the legitimate government interest in encouraging the development of relationships optimal for procreation and childrearing. As the House Judiciary Committee explained, the benefits and obligations of marriage are rooted in the inescapable fact that only two people, not three, only a man and a woman, can beget a child.⁵⁶ In this case, it is beyond dispute that procreation requires one man and one woman; Congress reasonably concluded that children ideally should be raised by their biological parents; and DOMA is rationally related to Congress's plainly legitimate interests in encouraging the optimal social arrangements for procreation and childrearing. Under settled principles of rational-basis review, nothing more is required.⁵⁷

CONCLUSION

Because McConnell cannot establish any set of facts that would entitle him to the relief he seeks, his Complaint should be dismissed. Only married individuals can jointly file tax returns. McConnell has previously litigated and lost all of the issues he raises in this suit: whether his specific alleged marriage to another male is valid, whether same-sex marriage in general is permitted under Minnesota law, whether a prohibition of same-sex marriage comports with the United States Constitution, and whether McConnell is entitled to jointly file federal income tax returns based on his claimed marriage. McConnell cannot now relitigate those issues. Therefore, because he is barred from relitigating whether he can jointly file tax returns

⁵⁶ H.R. Rep. No. 104-664, at 13, *reprinted in* 1996 U.S.C.C.A.N. 2905, 2906.

⁵⁷ *See, e.g., Heller v. Doe*, 509 U.S. at 319-20; *Beach Communications*, 508 U.S. at 314-15.

based on a claimed marriage to another male, and because his claimed marriage to another male is not recognized under Minnesota law, and he alleges no other facts entitling him to file a joint federal income tax return, he is not entitled to the tax refund he seeks, and his Complaint should be dismissed. Finally, even if McConnell were permitted to litigate issues he has repeatedly litigated and lost before, DOMA establishes that, for purposes of federal law, marriage consists only of unions between one man and one woman, and that statute easily meets standards of constitutionality.

For the foregoing reasons, the motion of the United States to dismiss the Complaint should be granted.

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