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## Congress Enacts Respect for Marriage Act

In the ordinary course, we would not be advising clients that a statute that a Supreme Court held unconstitutional nine years ago was being removed from the United States Code. However, since the Dobbs decision overturning *Roe v. Wade*, there has been a concern, whether or not justified, that events in the judicial sphere may not be proceeding in the ordinary course, and that matters thought to have been fully resolved by the Supreme Court in the past might be revisited. The specific concern, based in large part on statements made by Justice Thomas in his concurring opinion in Dobbs, was that three Supreme Court decisions could be the subject of reconsideration: *Loving v. Virginia*, in which the Supreme Court held that state laws barring interracial marriages were unconstitutional; *United States v. Windsor*, which held the provisions of the Defense of Marriage Act that defined marriage, for purposes of federal law, as between a man and a woman and defined spouse as a person of the opposite sex, were unconstitutional; and *Obergefell v. Hodges*, in which the Supreme Court held in 2015, that state laws barring same sex marriages were unconstitutional.

Specifically, the Respect for Marriage Act repeals Section 2 of the Defense of Marriage Act and replaces it with provisions that recognize any marriage between two individuals that is valid under state law.

(Polygamous marriages will not be recognized under federal law). From a substantive basis, the statutory definition will not affect the manner in which any employee benefit plan operates, because the Federal definition follows the approach that the IRS has taken in regulations, including the rules for determining the validity of marriages entered into in a foreign jurisdiction. The Respect for Marriage Act also replaces provisions that do not require states to recognize same-sex marriages from other states with provisions that



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prohibit the denial of full faith and credit, or any right or claim relating to out of state marriages, on the basis of sex, race, ethnicity, or national origin. The Respect for Marriage Act also allows the Department of Justice to bring a civil action and establishes a private right of action for violations.

The Respect for Marriage Act also includes a series of provisions designed to address the relationship between religious freedom and same sex marriage. The Respect for Marriage Act does not (i) affect religious liberties or conscience protections that are available under the Constitution or federal law, such as the Religious Freedom Restoration Act; (ii) require religious organizations to provide goods or services to formally recognize or celebrate a marriage; or (iii) affect any benefits or rights that do not arise from a marriage, such as an organization's tax-exempt status.

Hopefully, the Respect for Marriage Act will provide reassurance that interracial and same sex marriages entered into in reliance on prior Supreme Court precedents will remain valid for all purposes, regardless of any further developments in the thinking of the Court members who reversed *Roe v. Wade*.

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