

# Wiley Rein's Michael Toner Discusses DOMA Ruling's Impact on Campaign Financing

*Roll Call*

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Michael E. Toner, co-chair of Wiley Rein's Election Law & Government Ethics Practice, was quoted in a July 9, 2013 article in *Roll Call* about the impact of last month's Supreme Court decision to strike down the Defense of Marriage Act (DOMA), which could affect campaign finance laws. Because of the Court's decision, gay candidates and their spouses could face different guidelines depending on the state in which they live.

In early July, shortly after the DOMA ruling, the Democratic Senatorial Campaign Committee filed an advisory opinion request to the Federal Election Commission asking that same-sex married couples be given the same rights as heterosexual couples. The commission has 60 days to respond, and Mr. Toner says its decision could lead to different campaign finance rules between the states.

"The FEC is likely to conclude that it's governed by state law," said Mr. Toner, a former FEC Chairman. "Then you will have different fundraising rules for different states."

Should the FEC follow state law, married same-sex couples could use "jointly held assets" as "personal funds" just as their heterosexual couple counterparts already do. That would allow spouses of gay candidates to make much more significant campaign contributions than they are currently allowed. However, that would only be in states where same-sex marriage is already legal.

One complication, Mr. Toner noted to *Roll Call*, is that current FEC regulations don't define who is considered a spouse. While the commission could opt to set its own definition, Mr. Toner said that is

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an unlikely scenario. "The FEC historically has not tried to reinvent the wheel on property rights," he said.