

A gay man fights for equal rights

By Conor Berry, Berkshire Eagle Staff
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SANDISFIELD — The couple met decades ago as college students in Michigan, where their shared passion for music blossomed into a loving, lasting relationship.

After 60 years together, half of the couple succumbed to illness, leaving a grieving partner alone and without the normal spousal benefits one might expect during life's golden years.

At first, this story might sound like a routine anecdote about love, loss and remembrance. But what distinguishes Herb Burtis' story from others is gender-based: The married musician's longtime companion was a man.

Rather than be rewarded for his 60-year commitment to John Ferris — who died last summer due to complications from Parkinson's disease — Burtis is being punished by the federal government because he's gay, according to an advocacy group fighting for equal rights for gays and lesbians.

"For any other married (heterosexual) couple, you have all these rights," Burtis, 79, said recently at his Sandisfield home, a refurbished 18th-century farmhouse. "I hate having to beg for the same rights that anybody else can just go up and get because they're not gay."

Burtis, an accomplished concert pianist and voice instructor, is battling the government for access to the same federal benefits extended to heterosexual couples.

He is among 19 plaintiffs — including the widower of the first openly gay member of Congress — and is the only Berkshire County resident to join a lawsuit challenging the federal Defense of Marriage Act (DOMA), a 1996 law prohibiting married same-sex couples from receiving the same benefits granted to married heterosexual couples, according to officials with Gay and Lesbian Advocates and Defenders.

There is no timetable for resolution of the lawsuit, which was filed last month in Federal District Court in Boston. But GLAD officials said they hope the suit makes it to the U.S. Supreme Court and that the court declares DOMA to be unconstitutional.

"We think the case could reach the Supreme Court in about four years," said Carisa Cunningham, GLAD's director of public affairs.

DOMA has triggered other legal challenges since its passage, but the GLAD lawsuit represents the first time married same-sex couples were denied access to rights and benefits they applied for in the states in which they were legally married.

GLAD is the same Boston-based civil rights group that successfully argued for same-sex marriage in Massachusetts, which became legal in 2004 after the Massachusetts Supreme Judicial Court deemed it illegal to deny same-sex couples the right to marry.

That decision paved the way for Connecticut, Iowa and Vermont to legalize gay marriage. Vermont's legalization was a result of legislative action, however, while court-ordered rulings led to legalization in Massachusetts, Connecticut and Iowa.

Regardless of those states' legal recognition of same-sex marriage, DOMA forbids the federal government from recognizing the unions. As a result, legally married gay couples routinely are denied access to many federal rights and privileges that straight couples receive, according to Mary L. Bonauto, a staff attorney for GLAD, which was heavily involved in the fight to legalize gay marriage in Massachusetts.

Because of DOMA, the surviving spouse in a gay marriage cannot gain access to his or her partner's Social Security benefits, for example, nor can he or she collect a partner's federal pension if the deceased was a government worker.

Those are just two of the 1,138 federal rights and benefits that married same-sex couples are ineligible to receive because they're gay, Bonauto said.

"Herb's situation illustrates the basic different treatment of (gay and straight) married couples," she said. "(Burtis and Ferris) were working people, they paid into the Social Security system for many years, yet they can't get what they deserve."

Burtis said his motivation to become a plaintiff had less to do with money — though he estimates he would receive another \$700 a month in Social Security if he were eligible to collect Ferris' benefits — than it did with discrimination.

Before filing the lawsuit on March 3, GLAD officials approached Burtis and asked him if he wanted to join the suit. Burtis agreed to be a plaintiff, and GLAD officials informed him what he needed to do to be included.

Simply put, GLAD needed evidence that Burtis was denied a federal benefit that a surviving spouse in a heterosexual relationship would have received. With that, Burtis went to the Social Security office in Pittsfield, where he applied to receive Ferris' benefits and was denied.

Meanwhile, the Massachusetts Family Institute continues to characterize gay marriage as a "radical social experiment" that was foisted upon unwilling Bay State residents. The Boston-based conservative organization, which fought against the legalization of same-sex marriage in Massachusetts, recognizes marriage only as "the union of one man and one woman" and "steadfastly maintains that no other relationship is legitimately a marriage."

The GLAD lawsuit specifically challenges Section 3 of DOMA, which overrides the ability of individual states to decide what constitutes a marriage. DOMA declares that legally wed same-sex couples "are not married for purposes of all federal laws and programs."

Rather than challenge the validity of the federal government's legal definition of marriage — the union of a man and a woman — GLAD officials said they concentrated on combating a system that creates second-class marriages.

But Kris Mineau, president of the Massachusetts Family Institute, has expressed doubt about the lawsuit's viability, particularly since it aims to strike down only one section of the federal act, which he believes may not be possible.

Burtis, meanwhile, said he has had a tough time adjusting to life without Ferris, whom he cared for prior to his death on Aug. 1, 2008, at the age of 82.

Burtis and Ferris had turned their home in the Sandisfield woods into a sanctuary from their busy careers as music teachers — Burtis in New Jersey and Ferris in Boston. The couple married in 2004, as soon as gay marriage became legal in Massachusetts. Burtis jokes that he and Ferris had the world's longest engagement — 55 years — before they tied the knot.

Burtis never thought he'd legally be able to marry the man he loved, he said, noting that the next step is to ensure that gay couples get full access to all federal rights and benefits. Though Burtis said he doesn't think that will happen during his lifetime, he's optimistic the lawsuit will set the stage for future generations.

"The overriding issue, for me, is fairness," he said. "By participating in this, hopefully it will help others."

Bonauto said she hopes the suit will gain momentum now that Barack Obama is president.

Obama, who opposes same-sex marriage, has expressed support for repealing DOMA, which might bode well for the plaintiffs. Bonauto said DOMA was "a preemptive strike" to deter states from legalizing gay marriage.

"I'd like to think that Congress wouldn't pass this law today," Bonauto said, pointing out that some early supporters of the law have since voiced misgivings about DOMA.

However, Bonauto added, "I also don't believe that there's the political will to repeal it right now. ... It's our hope that this case will shine a light on discrimination and help educate Congress."

One of the 19 plaintiffs is Dean Hara, the 51-year-old widower of Gerry E. Studds, a former U.S. Representative from Massachusetts and the first openly gay member of

Congress who died in 2006. Because that union was not sanctioned by federal law, however, Hara was denied Studds' Congressional pension and other benefits normally granted to surviving spouses of federal employees.

Some plaintiffs attempted to file joint tax returns and were turned down, while others who are married to federal workers tried to sign up for federal health benefits and were rejected. The denials were wholly expected, according to GLAD, which needed the rejections for the lawsuit.

Meanwhile, GLAD officials view the suit as their own preemptive strike for when more states eventually legalize gay marriage. And when that happens, they say, the obstacles to obtaining federal benefits will be gone.

Like Bonauto, Burtis is optimistic the Obama administration will "knock down DOMA," he said.

"It's really the unfairness of DOMA that inspired me to get involved," Burtis said. "That it just, out of hand, throws a large group of people aside because we don't matter."

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