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**Contact: Carisa Cunningham**  
**(617) 426-1350**  
**cell: (617) 447-6500**

**Alison Cashin**  
**(617) 426-1350**  
**cell: (617) 913-6911**

## **GLAD Files Lawsuit Challenging Denial of Critical Federal Benefits to Married Same-Sex Couples**

### ***Married Same-Sex Couples Denied Critical Protections in the 1,138 Federal Laws in Which Marital Status Is a Factor***

(March 3, 2009) The first concerted, multi-plaintiff legal challenge to Section 3 of the federal Defense of Marriage Act (DOMA) was filed today by Gay & Lesbian Advocates & Defenders (GLAD).

*Gill et al. v. Office of Personnel Management et al.* targets the denial of certain federal rights and protections to married same-sex couples in Massachusetts. GLAD lawsuits brought marriage equality to Massachusetts (2004) and Connecticut (2008), the only states where same-sex couples can currently legally marry. This suit, filed today in federal District Court in Boston, addresses the use of DOMA Section 3 to deny spousal protections in Social Security, federal income tax, federal employees' and retirees' benefits, and in the issuance of passports.

“It’s time for the federal government to end its blatant double standard of providing rights and protections to all married couples except gay and lesbian married couples,” said Mary L. Bonauto, Civil Rights Project Director for GLAD. “Same-sex married couples have taken on the commitment of marriage, play by the rules, and pay into the system. But they are denied critical federal legal protections that form a safety net to support other married couples and their children.”

Passed in 1996, DOMA Section 3, now codified at 1 U.S.C. section 7, limits the marriages the federal government will respect to those between a man and a woman. Section 2 of DOMA, not at issue in this lawsuit, allows states to establish public policies about what marriages they will and will not respect.

GLAD argues that DOMA Section 3 violates the federal constitutional guarantee of equal protection as applied to federal income tax, Social Security, federal employees and retirees, and in the issuance of passports. GLAD also contends that DOMA Section 3 is an unprecedented intrusion by the federal government into marriage law, always considered the province of the states.

The plaintiffs are eight married couples and three widowers, each of whom is currently eligible for a federal program. Each has applied for a benefit under that program and was denied because of DOMA Section 3.

“After decades together, we were thrilled to be able to marry,” said Nancy Gill, a postal worker married to Marcelle Letourneau. “But we were shocked when I applied to put Marcelle on my family health plan, and we were rejected. My employer, the federal government, doesn’t protect my family the same way it does my co-workers’ families. That’s not right.”

Dean Hara, the surviving spouse of late Congressman Gerry Studds, said “Gerry and I spent 16 wonderful years together and I miss him. The federal government’s denial to me of Gerry’s pension and health insurance added insult to injury at the worst time of my life. These systems are set up to help married people with the sudden loss of their partner, but instead of helping me, it hurt me.”

The plaintiffs represented in the case are:

**Nancy Gill (51) and Marcelle Letourneau (47)** of Bridgewater: Nancy has been a postal worker for more than 21 years, but as a federal employee she is unable to provide for Marcelle the health benefits that her co-workers' spouses readily receive. Nancy and Marcelle have 2 children.

**Dean Hara (51)** of Boston: The spouse of former Congressman Gerry Studds who died suddenly in 2006, Dean is denied Gerry’s congressional pension, health insurance, and the other protections available to surviving spouses of federal employees. Studds was a public servant for 27 years, 24 of those in Congress.

**Melba Abreu (53) and Beatrice Hernandez (47)** of Boston: Both Cuban-Americans, they are unable to file federal tax returns jointly and lose thousands of dollars each year. Because of that inequity, their dream of owning their own business is deferred.

**Mary Ritchie (48) and Kathy Bush (49)** of Framingham: Mary and Kathy are mothers of two school-age boys. Mary, a state trooper, and Kathy, a stay-at-home mom, have a harder time making ends meet because they cannot jointly file federal taxes. Additionally, Kathy would not be eligible for the full line-of-duty benefit for surviving spouses should Mary die while on the job.

**Herbert Burtis (78)** of Sandisfield: Herb, a 78-year-old musician and teacher, lost his

spouse after 60 years together, including the last 13 when John battled Parkinson's disease. Herb's already limited income is severely reduced because he is denied the \$700 month that would come with Social Security survivor benefits.

**Dorene (43) and Mary (48) Bowe-Shulman** of Acton: Dorene and Mary are raising two children and trying to save for their future. Mary, a lawyer, covers Dorene, an acupuncturist, on her health insurance but they pay taxes on the plan because the federal government doesn't recognize their marriage. They also lose thousands each year because they can't jointly file federal tax returns.

**Randell Lewis-Kendell (52)** of Harwich Port: Randy lost Rob, his spouse and partner of 30 years, to cancer in 2007. A shopkeeper on Cape Cod, Randy struggled to pay for Rob's funeral expenses because the federal government denied him the \$255 benefit it provides all other bereaved spouses. When Randy turns 60, he will not be eligible for Rob's higher Social Security benefit.

**Martin (Al) Koski (66) and Jim Fitzgerald (57)** of Bourne: Al and Jim have been together for 33 years. Al has retired after working for Social Security for 22 years but unlike his fellow workers he's unable to provide Jim with health coverage or access to his pension. Jim has severe asthma and they both worry about his health and their security in their old age.

**Bette Jo Green (66) and Jo Ann Whitehead (67)** of Jamaica Plain: Bette Jo is a retired labor and delivery nurse, and Jo Ann is a semi-retired gardening educator. Their retirement income is smaller than it should be because even though they paid into Social Security throughout their lives, they aren't eligible for the standard spousal Social Security formula that results in higher payments to the lower earning spouse.

**Marlin Nabors (31) and Jonathan Knight (28)** of Hyde Park: Young marrieds and Mid-Western transplants to Boston, Marlin and Jonathan have just bought their first house together and talk about having children. Unable to jointly file federal tax returns, they have lost thousands of dollars. Yet they would happily pay more in taxes if they knew their marriage was respected by the federal government.

**Keith (37) and Al Toney (42)** of Worcester: The couple raised Al's now college-age daughter, and have been foster parents for several children. After choosing the family name "Toney" upon getting married, Keith has been unable to obtain a passport in his correct name because of DOMA, which makes him and the couple vulnerable when they travel in a security-conscious, post-9/11 world.

More than 10,000 couples residing in Massachusetts have married since 2004, and not one has received a single federal benefit or protection available to all other married couples. As soon as couples started marrying, GLAD started hearing from couples who have been harmed and whose children have been harmed because of DOMA.

While GLAD's case focuses on certain federal programs, DOMA Section 3 cuts across

virtually every area of federal law. Married same-sex couples cannot, for example, take family and medical leave to care for a seriously ill spouse; access the many family benefits associated with military service; or sponsor a foreign spouse to reside in this country.

GLAD's legal team is led by Mary Bonauto and GLAD Legal Director Gary Buseck, and Staff Attorneys Nima Eshghi and Janson Wu. Co-operating counsel on the case include Foley Hoag LLP (Boston), Sullivan & Worcester LLP (Boston), Jenner & Block LLP (Washington, DC), and Kator, Parks & Weiser, PLLC (Washington, DC).

Gay & Lesbian Advocates & Defenders is New England's leading legal organization devoted to ending discrimination based on sexual orientation, HIV status, and gender identity and expression.

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**EDITORS NOTES:**

· Full information about *Gill et al. v. OPM et al.* -- including plaintiff bios and photos, video of an interview with Mary Bonauto, slideshows, and the text of the complaint - is available at [www.glad.org/DOMA](http://www.glad.org/DOMA).

· To interview plaintiffs or attorneys, please contact Carisa Cunningham or Alison Cashin at (617) 426-1350, or [ccunningham@glad.org](mailto:ccunningham@glad.org), or [acashin@glad.org](mailto:acashin@glad.org).