



Gay & Lesbian Advocates & Defenders
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Gill et al. v. Office of Personnel Management et al.

Case Filing: On March 3, 2009, Gay & Lesbian Advocates & Defenders (GLAD), the Boston based legal rights group, filed a lawsuit in Federal District Court in Boston on behalf of eight married same-sex couples and three surviving spouses from Massachusetts, each of whom was denied federal legal protections for which they are currently eligible because of Section 3 of the federal Defense of Marriage Act (“DOMA Section 3”). *Go to glad.org/doma for more information.*

DOMA Section 3 Denies Legal Rights and Protections: DOMA Section 3, codified as 1 U.S.C. section 7, overrides a state’s determination that a same-sex couple is married and says that they are not married for purposes of all federal laws and programs. Under this law, “the word ‘marriage’ in federal law means only the legal union of a man and a woman as husband and wife, and the word ‘spouse’ refers only to an opposite sex husband or wife.

DOMA Section 3 Violates Equal Protection Guarantees: By requiring all federal departments and agencies to disrespect the valid state-licensed marriages of same-sex couples but follow state determinations of marital status for all other married couples, DOMA Section 3 violates the federal government’s promise of equal protection of the laws contained in the 5th Amendment of the U.S. Constitution. DOMA Section 3 takes Massachusetts married couples and divides them into two groups – those who are respected and those who are effectively “unmarried” by the law and denied all federal legal protections and responsibilities. There is no adequate justification for the federal government to single out only one group of Massachusetts marriages for different treatment.

Federal Employee and Retiree Plaintiffs: All federal employees married to a spouse of the same sex are denied all spousal employment protections, which enable married people to take care of each other, such as the ability to add the spouse to a family health plan or name the spouse as a survivor on the employee’s pension. Among GLAD’s plaintiffs are a current postal worker, a retiree from the Social Security Administration, and a surviving spouse of a former Member of Congress.

Income Tax Plaintiffs: Several GLAD plaintiffs have been denied spousal protections available under the Internal Revenue Code – such as the ability to file returns as “married filing jointly,” and the ability to cover a spouse on a health plan without paying extra income taxes on that coverage – and thus pay more in federal taxes than other married couples. Each plaintiff family has applied for a refund and been denied by the IRS. For these families, the extra federal tax payments take away money that could be used for family expenses, caring for children, maintaining their homes, or savings for more difficult times.

Social Security Plaintiffs: Three GLAD plaintiffs are widowers, already aggrieved by the end of decades-long relationships, who seek the standard lump-sum death benefit normally available for funeral expenses upon a spouse’s death. One of the widowers also seeks the standard survivor benefit to substitute his deceased spouse’s higher benefit for his own lower benefit, and another will need this

benefit when he becomes age-eligible in a few years to avoid losing his home. Another retiree seeks to increase her social security payment to the standard one half of that of her higher earning spouse.

Passport Plaintiffs: A plaintiff, who legally changed his name by virtue of his marriage in 2004, seeks a passport issued in his correct name that will match his other identity documents. In a post-9/11 world, it is unsafe for him, his spouse, and his family for him to have identity documents with different names.

Ruling Sought: GLAD seeks a ruling that DOMA Section 3 is unconstitutional as applied to the plaintiffs in Federal Income Tax, Social Security, federal employment benefits, and the issuance of passports.

The federal rights and protections denied to committed gay and lesbian married couples and surviving spouses include some of the critical legal safety nets that couples count on when they marry and that help them fulfill their responsibilities to one another as they plan their lives and futures, have children, cope with the loss of a spouse, and for which they contribute their American tax dollars. It harms them, their children and their other dependents.

There are at least 1,138 federal laws in which marital status is a “factor” according to government reports issued in 1997 and 2004. Many of these laws enable married couples to take care of each other in crucial and lasting ways. In 2004, the Congressional Budget Office estimated the federal government would save \$1 billion each year through 2014 if same-sex couples were able to marry nation-wide.

DOMA Section 3 is an unprecedented federal intrusion into state law. States determine people’s marital status, but with DOMA Section 3 the federal government determines who is married and who is not, and overrides the state’s decision as to same-sex couples only.

Those who say DOMA Section 3 simply allows the federal government to define terms for its own programs are ignoring that the federal government follows state determinations, and that this law was passed simply to deny rights and protections to married gay and lesbian couples.

While President Obama supports the repeal of DOMA, given the current wars, economic conditions, and a host of other issues, including other GLBT issues, political experts believe that repeal of DOMA in the Congress is likely a longer term proposition. Repealing DOMA will take time and investment in public education and lobbying, something this lawsuit will facilitate.

This case is only about discrimination by the federal government against a class of people who are already married by their states, and seeks to have the federal government go back to its rule of recognizing a state’s marital status determinations. Unlike the federal government, states do not have to recognize each other’s marital status determinations.

This case has no bearing on state laws or amendments about marriage or marriage recognition. Because this lawsuit only involves the federal government, it has no impact on any state’s marriage licensing laws, or its laws about respecting or disrespecting marriages of same-sex couples.

This is not a case seeking a federal constitutional right to marry that would override any state marriage law or amendment. This case does not address Section 2 of DOMA and its “permission slip” to states to establish public policies regarding marriages of same-sex couples.