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Gill et al. v. Office of Personnel Management et al. **Frequently Asked Questions**

On March 3, 2009, Gay & Lesbian Advocates & Defenders (GLAD) filed Gill, et al. v. Office of Personnel Management, et al. in Federal District Court in Boston, to challenge Section 3 of the federal Defense of Marriage Act (DOMA.) Go to glad.org/doma for more information.

What is this lawsuit about?

This lawsuit challenges the federal government’s denial of marriage-related protections, benefits and responsibilities to legally married same-sex couples – federal protections that are available to all other legally married couples.

The law in question, DOMA Section 3, deprives families of federally-created economic safety nets that couples count on when they marry and that help them take care of each other, to the detriment of those couples and their children and other dependents. It creates a system of first and second class marriages, where the former receive all federal legal protections, and the latter are denied them, even while taking on the responsibilities of marriage.

What is “DOMA Section 3”?

The “Defense of Marriage Act” or DOMA, was passed by Congress in 1996 and signed into law by then-President Bill Clinton. It is codified at 1 U.S.C. section 7. This lawsuit challenges only Section 3 of the law, which excludes legally married same-sex couples from any federal law or program in which marriage is a factor. The General Accounting Office issued a report in 2004 concluding that 1,138 federal laws distinguish based on marital status. The Congressional Budget Office also reported in 2004 that if same-sex couples married nation-wide, the federal government would save \$1 billion a year through at least 2014.

What is the legal basis of the lawsuit?

GLAD believes that DOMA Section 3 violates the federal government's promise of equal protection of the laws contained in the 5th Amendment of the United States Constitution. It singles out just one class of marriages for disrespect and then denies those same-sex couples every single legal protection and responsibility otherwise available to married couples.

DOMA represents an extraordinary intrusion by the federal government into marriage law, an area of law that has always belonged to the states. We believe there is no adequate justification for the federal government's unprecedented non-recognition of valid state marriages.

Who are the plaintiffs in the case?

The plaintiffs are eight couples and three individuals who, solely because of DOMA Section 3, have been denied legal protections for which they are currently eligible and for which they have applied. They include federal employees, federal retirees, the surviving spouse of a U.S. Congressman, taxpayers, Social Security recipients, and U.S. passport holders (Since the original complaint was filed, the Passport Agency has begun accepting the marriage licenses of same-sex couples as proof of a name change, provided it can be used to effect a name change in that state that issues it. Therefore, GLAD has removed this issue from the amended complaint.) Several of the plaintiffs are the parents of children under the age of 18.

How exactly does DOMA Section 3 harm children?

Among other things, DOMA harms families financially. It forces most to pay more in federal income taxes, and denies many benefits like health insurance and pensions. Parents report being unable to save money for college or retirement, having to work more hours, and choose inferior health plans. When spouses are unable to take Family Medical Leave to care for each other during a serious illness, the stress affects the whole family. When military spouses are unable to use education benefits, they cannot advance professionally and help their families. And all parents object to the message their children receive that their families are second-class.

What are some of the 1138 federal laws and programs?

- Social Security spousal protections that enhance a family's economic security while living in old age, or upon disability or death;
- Protections that enable one spouse to stay in the family home when the other spouse needs Medicaid for nursing home care;
- The ability to have a family policy of health insurance, and also to receive family health insurance from an employer without an added tax burden that applies to the cost of coverage for unmarried families;

- Joint tax filing and deductions for married couples that can save families money;
- Family medical leave from a job to care for a seriously ill spouse;
- Disability, dependency or death benefits for the spouses of veterans and public safety officers;
- Employment benefits for federal employees, including access to family health benefits, as well as retirement and death benefits for spouses;
- Estate/death protections that allow a spouse to leave assets to the other spouse – including the family home – without incurring a tax penalty; and
- The ability to sponsor a non-resident spouse for purposes of immigration.

What exactly does DOMA Section 3 do?

Section 3 of DOMA trumps 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’ means only the legal union of a man and a woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.” It requires all federal departments and agencies to disrespect the valid state-licensed marriages of same-sex couples but not marriages of other couples.

What is the remedy you seek?

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. GLAD seeks a declaration that Section 3 violates the U.S. Constitution in that it requires the federal government to disrespect a class of valid state marriages in violation of equal protection guarantees of the 5th Amendment.

President Obama has said he supports the repeal of DOMA. Don’t you think DOMA will be dealt with legislatively?

It should be, but despite President Obama’s support of DOMA repeal, it is unlikely this will happen in the next four years. Most political experts agree that achieving the repeal of DOMA is likely to be a long-term proposition. The new President and Congress have many priorities; the LGBT community also has many priorities that probably rank ahead of DOMA repeal, including the passage of the Employment Non-Discrimination Act, a hate crimes bill, the Uniting American Families Act, and repeal of “Don’t Ask, Don’t Tell.”

Is GLAD trying through this lawsuit to “export” marriage equality from Massachusetts to the other states?

No. This case has no bearing on any state’s marriage licensing or recognition laws – whether those laws allow same-sex couples to marry or respect out-of-state marriages or

not. Rather, it is about the relationship between the federal government and a class of people who are married by their state (Massachusetts). The suit asks the federal government to go back to respecting state determinations of marital status. This is not a case seeking a federal constitutional right to marry that would override any state's marriage laws or amendments.

Will this case reach the Supreme Court, and when?

Long before this case reaches the Supreme Court, this discrimination could be rectified by the Congress. This case deals with important questions of equal protection and the role of the states versus the federal government. Those questions have consistently been part of the Supreme Court's case load in recent history, and, therefore, the Court will likely see this as an important case if, indeed, it is brought to them at some point in the future. That may not happen, but if it does, it will certainly not be decided by the Supreme Court any earlier than 2013.

If you win this case, will it apply to married same-sex couples in other states, like Connecticut and New York?

Yes. People living in states that license or respect marriage should no longer be denied the federal benefits litigated in GLAD's case.

Who are the attorneys in the case?

The plaintiffs are represented by Gay & Lesbian Advocates & Defenders, including Civil Rights Project Director Mary L. Bonauto, Legal Director Gary D. 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).

For more information about Gill et al. v. Office of Personnel Management et al., visit www.glad.org/doma. Members of the media can call Carisa Cunningham at (617) 426-1350, or email ccunningham@glad.org.

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