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

On November 9, 2010, Gay & Lesbian Advocates & Defenders (GLAD) filed *Pedersen et al. v. Office of Personnel Management et al.* in Federal District Court in Connecticut, a new challenge to the federal Defense of Marriage Act and its mandated non-recognition of marriages of same-sex couples. This new case involves 5 couples and one widower from the states of CT, VT and NH. Go to <http://www.glad.org/doma> for more information.

What is this lawsuit about?

This lawsuit challenges the federal government’s denial of marriage-related protections in the areas of federal Family Medical Leave Act benefits, federal laws for private pension plans, federal laws concerning state pension plans, as well as the same core issues addressed in GLAD’s earlier case of *Gill v. OPM* – federal income taxation, social security benefits, and employment benefits for federal employees and retirees.

All of the couples and widower in question were married in their home states, were qualified for a particular program, but were denied those protections solely because of DOMA. Only married couples of the same sex are singled out for federal non-recognition, depriving them of federally-created economic safety nets that couples count on when they marry and that help them take care of each other and their children.

DOMA creates a system of first and second class marriages, where most receive all federal legal protections, but same-sex couples are denied all protections across the board, even while taking on the responsibilities of marriage.

In GLAD’s earlier case, *Gill v. Office of Personnel Management*, the Federal District Court in Boston ruled that DOMA Section 3 is unconstitutional as applied to married couples in Massachusetts. That case is now on appeal in the First Circuit Court of Appeals in Boston,

What is “DOMA”?

The “Defense of Marriage Act” or DOMA, was passed by Congress in 1996 and signed into law by then-President Bill Clinton. The part at issue in our lawsuit, codified in law as 1 U.S.C. section 7, is a “definition” of “marriage” and “spouse” that applies to 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.”

DOMA’s Section 3 operates to trump the state’s determination that a same-sex couple is married and says, to the contrary, that they are *not married* for purposes of *all* federal laws and programs. Accordingly, DOMA requires all federal departments and agencies to disrespect the valid state-

licensed marriages of same-sex couples (but not marriages of other couples) when dealing with federal legal protections in which marital status matters.

DOMA sweeps through the breadth of the United States Code. The General Accounting Office issued a report in 2004 concluding that 1,138 federal laws use marital status as a factor for specific federal protections, benefits and responsibilities. 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?

As in GLAD's earlier *Gill* case, GLAD claims that DOMA violates the Equal Protection guarantee of the 5th Amendment of the United States Constitution. In each of the states of Connecticut, Vermont and New Hampshire, DOMA divides married couples into two groups, and then denies only married gay and lesbian couples the protections otherwise typically available to married couples.

For our nation's entire history, the federal government has deferred to a state's determination that a couple is married for purposes of federal protections and responsibilities. In 1996, Congress changed the rules when it looked like same-sex couples would marry, and for the first time ever created a federal definition of marriage for the purpose of excluding same-sex couples from those federal protections. GLAD believes there is no adequate justification for the federal government's unprecedented non-recognition of the valid state marriages of same-sex couples.

Who are the plaintiffs in the case?

The plaintiffs are five couples and a widower from Connecticut, Vermont, and New Hampshire, 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 and state employees and retirees, a widower, and taxpayers. Two of the plaintiff couples are the parents of children under the age of 18.

Doesn't GLAD already have another lawsuit challenging DOMA in Massachusetts? Why another case?

Yes, GLAD is on appeal in *Gill v. Office of Personnel Management*, in which the Federal District Court ruled in July 2010 that DOMA is unconstitutional as applied to couples married in Massachusetts.

Since filing *Gill* in March 2009, marriage has become a reality for same-sex couples in several more states. While DOMA stands, more and more couples – including those in Connecticut, Vermont, and New Hampshire – are discovering the ways that they and their families are harmed. GLAD is committed to educating the public about the range of harms imposed by DOMA on married couples and using every available legal tool – including this new lawsuit - to end its mandated discrimination.

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 is the remedy you seek?

As in *Gill*, GLAD seeks a ruling that DOMA Section 3 is unconstitutional as applied to the plaintiffs in Federal Income Tax law, Social Security benefits, and federal employee and retiree benefits. This case also addresses DOMA’s invalidity in the context of the Family Medical Leave Act, state retiree health insurance benefits regulated by federal tax law, and survivor benefits in private pension plans under federal pension laws. 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. Despite President Obama’s support of DOMA repeal, and as much as we should press the Congress to repeal it, a repeal is unlikely to happen any time soon. Families are being harmed now, and we have the constitutional tools at hand to challenge DOMA in the courts.

Is GLAD trying through this lawsuit to “export” marriage equality 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 own states. 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?

This case deals with important questions of equal protection and the respective roles of the states and 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 *Pedersen* as important 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?

A favorable ruling for the plaintiffs will apply to people living in Connecticut, Vermont and New Hampshire. If we win on appeal, the case will benefit more people in states that license or respect marriages of same-sex couples.

Who are the attorneys in the case?

GLAD's legal team in *Pedersen* is led by Mary L. Bonauto and GLAD Legal Director Gary Buseck, with Staff Attorney Janson Wu and legal fellows Liz Monnin-Browder and Ashley Dunn. Co-operating counsel on the case include Jenner & Block LLP (Washington, DC), and Horton, Shields & Knox (Hartford), and Sullivan & Worcester LLP (Boston).

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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