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## **GLAD DEFENDS ITS WIN IN *GILL* CASE AND ATTACKS BLAG'S JUSTIFICATIONS FOR DOMA**

### ***Filing in First Federal Appeals Court Moves Case Closer to Hearing Date***

Today Gay & Lesbian Advocates & Defenders (GLAD) filed a vigorous attack on the constitutionality of the federal "Defense of Marriage Act" (DOMA). In a legal brief submitted to the First Circuit Court of Appeals in Boston, GLAD defended an earlier District Court ruling finding DOMA unconstitutional. GLAD's brief counters the appeal brief seeking to justify DOMA by the Bipartisan Legal Advisory Group of the U.S. House of Representatives (BLAG), which is now defending the law.

This challenge, known as [\*Gill v. Office of Personnel Management\*](#), was the first strategic case in the nation to be filed against DOMA. In July 2010, GLAD won the [first-ever ruling at the district court level](#) that the Defense of Marriage Act (DOMA) is unconstitutional, and GLAD's case is the first to reach a federal appellate court.

Mary L. Bonauto, Civil Rights Project Director for GLAD said, "BLAG doesn't seem to understand that our plaintiffs are already married. They keep arguing against the right to marry and raising issues about why same-sex couples should be denied government marriage licenses. But the federal government doesn't issue marriage licenses; states do, and Massachusetts did. As a result, BLAG fails to justify why the Congress singled out one group of married people and denied them alone the same federal rights and responsibilities available to all other married people."

In its brief today, GLAD argues:

- DOMA reflects prejudice rather than good public policy, and therefore should be considered under heightened scrutiny standards. It is undisputed that gay men and lesbians have been subject to discrimination historically and yet participate fully in and contribute to society – the two key factors courts look to in making a decision about applying heightened scrutiny. This case also marks the first time that the Department of Justice has made this same argument in a United States Court of Appeals.
- Same-sex couples are now lawfully married in Massachusetts. None of the justifications

advanced by Congress in 1996, or those invented by BLAG in litigation, support the double standard for federal recognition of marriages imposed by DOMA.

The brief itself can be read [here](#).

”When all is said and done, everyone knows what was going on in 1996. Some members of Congress were openly hostile to gay people and same-sex relationships,” said Bonauto. “The official House Report admits DOMA’s purpose was to express ‘moral disapproval of homosexuality.’ Others reacted instinctively against people who seemed different and an issue that seemed unfamiliar. Since there are no policy justifications that make any sense, all that remains is dislike and discomfort. That’s why DOMA fails – dislike and discomfort are not neutral policy reasons for singling out same-sex married couples for blatantly disadvantageous treatment.”

The plaintiffs represented in the *Gill* case are:

**Nancy Gill and Marcelle Letourneau** of Bridgewater: Nancy has been a postal worker for more than 23 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 high-school age children.

**Dean Hara** 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 and Beatrice Hernandez** of Boston: Beatrice’s parents immigrated to the United States from Cuba before she was born. Melba came to the U.S. from Cuba herself in 1979. The couple have been together since 1987 and married since 2004. Unable to file federal tax returns jointly, they have lost about \$25,359 since they married.

**Mary Ritchie and Kathy Bush** of Framingham: Mary and Kathy are mothers of two school-age boys. Mary, a state trooper, and Kathy, a stay-at-home mom, have paid an extra \$30,000 in federal taxes since marrying in 2004 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** of Sandisfield: Herb, an 81-year-old musician and teacher, lost his spouse after 60 years together, including the last 14 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 and Mary 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.

**Randell Lewis-Kendell** 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 a survivor Social Security benefit based on Rob's earnings record.

**Martin (Al) Koski and Jim Fitzgerald** 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 and Jo Ann Whitehead** of Jamaica Plain: Bette Jo is a retired labor and delivery nurse, and Jo Ann is a 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 and Jonathan Knight** of Hyde Park: Young, married, 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.

*Amici* briefs supporting the district court judge's ruling on DOMA's unconstitutionality are due on Thursday, November 3. BLAG then has one more chance to file a brief seeking reversal of the lower court ruling. Oral arguments before the appeals court could occur as early as in January 2012.

GLAD's second case challenging DOMA, *Pedersen et al. v. Office of Personnel Management* was filed in the Second Circuit in November 2010, is fully briefed and awaiting decision from Judge Vanessa Bryant.

GLAD's legal team is led by Mary Bonauto and GLAD Legal Director Gary Buseck, Staff Attorney Janson Wu, and Senior Staff Attorney Vickie Henry. Co-operating counsel 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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