



Gay & Lesbian Advocates & Defenders
30 Winter Street, Suite 800
Boston, MA 02108
Phone: 617.426.1350 or 800.455.GLAD
Fax: 617.426.3594
Website: www.glad.org

Pedersen et al. v. Office of Personnel Management et al.
Frequently Asked Questions
(Updated: November 26, 2012)

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 challenge to Section 3 of the federal Defense of Marriage Act (DOMA), which prohibits the federal government from recognizing the legal marriages of same-sex couples.

On July 31, 2012, Judge Vanessa L. Bryant ruled in *Pedersen* that DOMA Section 3 is unconstitutional. Following her decision, GLAD and the U.S. Department of Justice (DOJ) filed a petition for “*certiorari* before judgment,” which asked the Supreme Court to immediately review Judge Bryant’s decision.

GLAD is representing five married couples and one widower from the states of Connecticut, New Hampshire and Vermont.

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, federal income taxation, social security benefits, and employment benefits for federal employees and retirees.

All of the couples and widower in question married in their home states, and 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.

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 a 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 are some of the 1,138 federal laws and programs impacted by DOMA?

- 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 legal basis of this lawsuit?

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 married 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 employees and retirees, a widower denied his late spouse's pension, and married couples who can't file their federal taxes jointly. Two of the plaintiff couples are the parents of children under the age of 18.

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 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.

If you win at the Supreme Court, will it apply to married same-sex couples in other states?

Yes. Should the Supreme Court affirm that DOMA Section 3 is unconstitutional, the federal government would return to its neutral role of allowing the states to determine who is married for the purposes of federal protections and responsibilities. This means the federal government would recognize the marriages of same-sex couples living in states where same-sex couples are allowed to legally marry: Connecticut, Iowa, New Hampshire, New York, Maine, Maryland, Massachusetts, Vermont, Washington State, and the District of Columbia.

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 Senior Staff Attorney Vickie Henry and Staff Attorney Janson Wu. Co-operating counsel on the case include Jenner & Block LLP (Washington, DC), Horton, Shields & Knox (Hartford), and Sullivan & Worcester LLP (Boston).

Is this case GLAD's only challenge to DOMA Section 3?

No. In GLAD's earlier case *Gill v. Office of Personnel Management*, the Federal District Court in Boston ruled on July 8, 2010 that DOMA Section 3 is unconstitutional as applied to married couples in Massachusetts. That decision was unanimously upheld by the First Circuit Court of Appeals in Boston on May 31, 2012.