



Gill v. Office of Personnel Management
GLAD Motion for Summary Judgment
November 17, 2009

Summary

GLAD responded to the Department of Justice's motion to dismiss *Gill v. Office of Personnel Management* by both opposing the government's motion and also filing our own motion for summary judgment for a ruling in our favor. If the motion for summary judgment is granted, the court will have decided the case in the plaintiffs' favor without further proceedings, such as "discovery" into the facts of the case or a trial.

GLAD argues in the motion for summary judgment that the plaintiffs' equal protection claim requires heightened review by the court and that in any event the federal government has no legitimate or rational interest in discriminating against married same-sex couples.

Q&A

What is summary judgment?

Summary judgment allows the court to review and decide the case based on legal precedents alone and without discovery or trial. Because there are no factual disputes in *Gill*, we are asking the court to declare that we win because we are right in the law.

What makes this filing so strong?

This is the first time we have laid out in detail why DOMA Section 3 violates equal protection principles. DOMA is a case about unequal treatment, and there are several permutations to that core problem. We also are moving to final resolution. We're meeting the government's motion to dismiss *Gill* with our own motion for summary judgment because the facts in this case are undisputed and we should have this case resolved on legal principles now, without discovery into the facts or a trial.

Why does this case require heightened review?

GLAD argues the federal government has no legitimate or rational interest in discriminating against married same-sex couples. But the standard governing the court's review of DOMA should be higher, for a few reasons:

- DOMA represents an unprecedented intrusion of the federal government into marriage law, an area historically governed by states.

- By prohibiting married same-sex couples from accessing the safety net the federal government provides for all other married couples, DOMA Section 3 unfairly burdens their ability to protect and care for their families.
- DOMA discriminates explicitly on the basis of sexual orientation, and that any discrimination based upon a person's sexual orientation be viewed with suspicion by the court.

What happens next?

There are a few possibilities.

- The government loses its motion to dismiss and GLAD wins its motion for summary judgment, meaning that GLAD wins the case in district court. The government most likely would appeal to the First Circuit.
- The government loses its motion to dismiss and the Court does not reach or GLAD loses its motion for summary judgment because there are factual issues to develop. The case would proceed in the District Court, with discovery and then final resolution either through further motions for summary judgment or trial.
- The government wins its motion to dismiss and the Court either denies or does not reach GLAD's motion for summary judgment, meaning that GLAD loses the case in district court. We would appeal to the First Circuit.

