



## RESEARCH MEMO

### ***Defense of Marriage Act Declared Unconstitutional by First Circuit Court of Appeals***

---

A recent opinion from the First Circuit Court of Appeals concluded that the *Defense of Marriage Act* ("*DOMA*") is unconstitutional. The Court stayed the effect of its ruling pending any Supreme Court appeal. The First Circuit includes Maine, Massachusetts, New Hampshire, Rhode Island and Puerto Rico. The case is: *Massachusetts v. U.S. Dept. of Health and Human Services*, --- F.3d ----, 2012 WL 1948017 (C.A.1 (Mass.)) 2012. The opinion is available by "[clicking here](#)."

See [Benefit News Briefs 2004-51](#) and [61](#) for earlier reports on decisive *DOMA* cases. In the interim, we have not reported on the numerous cases filed since then concerning *DOMA* or state law versions of *DOMA* ("mini-*DOMA*" laws) under the premise that eventually the U.S. Supreme Court would settle the matter. It seems like that day is drawing near.

While the decision has no immediate impact as it is stayed pending resolution by the Supreme Court, if upheld by the Supreme Court it may eventually open up benefits under pension and health plans to same-sex spouses, at least in states that recognize same-sex marriages, and could pave the way for attacks on the constitutionality of state "mini-*DOMA*" laws.

If state "mini-*DOMA*" laws fall, then same-sex marriages would be recognized under state law; therefore health and pension plans that disallow coverage to same-sex spouses would be open for discrimination lawsuits and also may face federal pressure in the form of loss of tax-exempt status.

By way of background, the cases that spawned this decision were two district court cases:

- *Gill v. Office of Personnel Management* 699 F.Supp.2d 374 (D.Mass., 2010), where seven same-sex couples married in Massachusetts and three surviving spouses of such marriages brought suit in federal district court to enjoin pertinent federal agencies and officials from enforcing *DOMA* to deprive the couples (*as current or former federal employees or spouses/surviving spouses*) of federal benefits available to opposite-sex married couples in

Massachusetts, such as federal health benefits or surviving spouse benefits under Social Security; and

- *Commonwealth of Mass. v. Dep't of Health and Human Servs., et al.*, 698 F.Supp.2d 234 (D.Mass. 2010), which was based on Massachusetts' concern that *DOMA* would revoke federal funding for programs tied to *DOMA*'s opposite-sex marriage definition – such as Massachusetts' state Medicaid program and veterans' cemeteries.

The District Courts found *DOMA* unconstitutional for reasons discussed in the First Circuit's opinion.

The First Circuit court summed up the matter noting:

These appeals present constitutional challenges to Section 3 of the *Defense of Marriage Act ("DOMA")*, 1 U.S.C. Section 7, which denies federal economic and other benefits to same-sex couples lawfully married in Massachusetts and to surviving spouses from couples thus married. Rather than challenging the right of states to define marriage as they see fit, the appeals contest the right of Congress to undercut the choices made by same-sex couples and by individual states in deciding who can be married to whom.

Enacted in 1996, *the Defense of Marriage Act* recognizes marriage as the union of one man and one woman. The law effectively prevented gay federal employees from enrolling their spouses in government-sponsored health care plans and precluded other marriage benefits granted to opposite sex spouses.

Section 3 of *DOMA* defines "*marriage*" for purposes of **federal law**:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one 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.

Section 2 of *DOMA*, which is not at issue in the First Circuit appeal, does not require states which do not recognize same-sex marriages to recognize such marriages solemnized in states that allow same-sex marriages.

In spite of much of the rhetoric that flies around when the subject of same-sex marriages and *DOMA* is discussed, *DOMA* does not formally invalidate same-sex marriages in states that permit them, but it does have adverse consequences for individuals who enter into same-sex marriages. As the Court pointed out, *DOMA* prevents same-sex married couples from filing joint federal tax returns, which can lessen tax burdens, and prevents the surviving spouse of a same-sex marriage from collecting Social Security survivor benefits.

*DOMA* also leaves federal employees unable to share their health insurance and certain other medical benefits with same-sex spouses. Apparently, according to a GAO study, *DOMA* affects a thousand or more generic cross-references to marriage in myriad federal laws. In most cases, the laws operate to the disadvantage of same-sex married couples in the half dozen or so states that permit same-sex marriage.

In addressing the appeal, the Court recognized the case was difficult because it couples issues of *equal protection* and *federalism* with the need to assess the rationale for a congressional statute passed with minimal hearings and lacking in formal findings. In addition, Supreme Court precedent offers some help to each side, but the rationale in several cases is open to interpretation. The Court recognized its limitations, noting "*We have done our best to discern the direction of these precedents, but only the Supreme Court can finally decide this unique case.*"

Foreshadowing its conclusion holding *DOMA* unconstitutional, the Court stated that under current Supreme Court authority Congress' denial of federal benefits to same-sex couples lawfully married in Massachusetts has not been adequately supported by any permissible federal interest. We will not delve into the details of the reasoning behind the Court's decision, leaving that for the interested reader.

We will watch this First Circuit case and similar cases from the Ninth Circuit percolate through the appeals process on their way to the U.S. Supreme Court.

\* \* \*

**LEGAL DISCLAIMER:** Information contained in this publication is not legal advice, and should not be construed as legal advice. If you need legal advice upon which you can rely, you should seek a legal opinion from your attorney.