



Pending Cases Challenging the Defense of Marriage Act (DOMA)
Updated July 18, 2012

<u>Case name</u>	<u>Court/Venue</u>	<u>Counsel</u>	<u>Status</u>
<i>Gill v. OPM</i> (consolidated with <i>Commonwealth v.</i> <i>Department of Health &</i> <i>Human Services</i>)	Nos. 12-13 & 12-15, United States Supreme Court No. 10-2207, 10-2214, U.S. Court of Appeals for the First Circuit	For <i>Gill</i> : GLAD , Foley Hoag, Sullivan & Worcester, and Jenner & Block	Judgment for plaintiffs was affirmed on May 31, 2012. The mandate is stayed. BLAG's and DOJ's separate petitions for certiorari were docketed at the United States Supreme Court on July 3, 2012. The last day for any party to support the petition is July 23. The last day to respond or file a conditional cross- petition is August 2.
<i>Commonwealth of</i> <i>Massachusetts v.</i> <i>Department of Health &</i> <i>Human Services</i>	No. 10-2204, 1 st Circuit	MA Attorney General and Wilmer Hale	Same.
<i>Hara v. OPM</i>	No. 2009-3134, U.S. Court of Appeals for the Federal Circuit	GLAD and Kator, Parks & Weiser, PLLC	Stayed in light of <i>Gill</i> .
<i>Pedersen v. OPM</i>	No. 3:10-cv- 01750-VLB (D. Conn.)	GLAD , Sullivan & Worcester, Horton, Shields & Knox, and Jenner & Block	BLAG intervened. Plaintiffs' motion for summary judgment and defendants' motion to dismiss are fully briefed as of October 5 and awaiting decision. On July 4, 2012, the Court denied BLAG's motion to stay the case.
<i>Windsor v. United States</i>	No. 12-63, United States Supreme Court BLAG's appeal is No. 12-2335 (2d Cir.)	ACLU, NYCLU, Paul Weiss	On June 6, 2012, the district court granted plaintiff's motion for summary judgment and denied BLAG's motion to dismiss. The court declares that section 3 of the Defense of Marriage Act, 1 U.S.C.

	<p>DOJ's appeal is No. 12-2435 (2d Cir.)</p> <p>No. 1:10-cv-8435 (S.D.N.Y.)</p>		<p>Section 7, is unconstitutional as applied to Plaintiff. Plaintiff is awarded judgment in the amount of \$353,053.00, plus interest and costs allowed by law.</p> <p>House counsel filed an appeal June 8.</p> <p>Appellant's (BLAG) brief is due August 10. Appellee's brief is due August 31. Appellant's reply brief is due September 14. BLAG has a conflict with an argument on September 24. Ms. Windsor's counsel has proposed September 20, 21 or 28.</p> <p>Ms. Windsor's petition for certiorari before judgment was docketed at the United States Supreme Court on July 17, 2012.</p> <p><i>The last day for any party to support the petition is August 6. The last day to respond or file a conditional cross-petition is August 16.</i></p>
<p><i>Golinski v. U.S. Office of Personnel Management</i></p>	<p>No. 12-16, United States Supreme Court</p> <p>Nos. 12-15388 & 12-15409 (9th Cir.)</p> <p>No. 3:10-cv-0257-JSW (N.D. Cal.)</p>	<p>Lambda Legal and Morrison & Foerster</p>	<p>On 2/22/12, the Court granted plaintiff's motion for summary judgment, denied BLAG's motion to dismiss and granted OPM's motion to dismiss (to the extent the complaint made a statutory argument).</p> <p>Motion for initial <i>en banc</i> review denied.</p> <p>Briefing is on-going in the 9th Circuit. Upcoming deadlines:</p> <ul style="list-style-type: none"> - July 31: The government may file a reply in DOJ's appeal. - Sept. 10 9 a.m. Oral

			<p>argument before a three judge panel.</p> <p>Department of Justice petition for certiorari before judgment was docketed at the United States Supreme Court on July 3, 2012. The last day for any party to support the petition is July 23. Responses and conditional cross-petitions are due August 2.</p>
<p><i>Dragovich v. United States Department of Treasury</i></p> <p>Public employees and their spouses of the same-sex and registered domestic partners brought action against federal and state defendants, challenging the constitutionality of provisions of DOMA and Internal Revenue Code that limited their participation in the long-term care insurance program as in violation of equal protection and substantive due process.</p>	<p>No. 12-16461 (9th Cir.)</p> <p>No. 4:10-01564 CW (N.D. California)</p>	<p>Legal Aid Society-Employment Law Center and Zelle Hofmann Voelbel & Mason LLP</p>	<p>Motion to dismiss denied.</p> <p>BLAG's motion to intervene granted.</p> <p>Class certified 7/15/11: Present and future CalPERS members who are in legally recognized same-sex marriages and registered domestic partnerships together with their spouses and partners, who as couples and families are denied access to the CalPERS Long-Term Care Program on the same basis as similarly situated present and future CalPERS members who are in opposite-sex marriages, and their spouses.</p> <p>The court found on May 24, 2012 that DOMA section 3 violates the equal protection rights of plaintiff same-sex spouses and that and 26 U.S.C. § 7702B(f) violates the rights of plaintiff registered domestic partners. Summary judgment for plaintiffs. A stay will enter upon the occurrence of a timely appeal.</p> <p>BLAG filed a notice of appeal on June 26, 2012.</p>

			<p>Upcoming deadlines:</p> <ul style="list-style-type: none"> - October 4: Last day for appellant to file an opening brief. - November 5: Last day for appellees to file an answering brief <p>November 19 to 26: Appellant may file an optional reply brief 14 days after service of November 5 brief.</p>
<p><i>Cardona v. Shinseki</i></p> <p>Whether denial of spousal benefits to a disabled, service-connected veteran in a same-sex marriage violates the Fifth and Tenth Amendments to the Constitution.</p>	<p>No. 11-3083, United States Court of Appeals for Veterans Claims</p> <p>(A loss would be appealed to the Federal Circuit.)</p>	<p>Jerome N. Frank Legal Services Organization (The Yale Law School clinic)</p>	<p>The CAVC stayed the briefing schedule pending a decision on whether BLAG could get access to the Record Before the Agency. Plaintiff and the VA have contested BLAG's request.</p>
<p><i>McLaughlin v. Panetta</i></p> <p>Defendants are Secretary of Defense, Secretary of Veterans Affairs, Attorney General & the United States</p>	<p>D. Mass. No. 11-cv-11905 (Stearns)</p>	<p>Servicemembers Legal Defense Network</p> <p>Chadbourn & Parke LLP</p>	<p>Filed October 27, 2011.</p> <p>Based on service, one defendant's response to the complaint should be due December 26 and the rest December 27 (another report said responses are due December 30).</p> <p>On November 21, plaintiffs moved for summary judgment. Defendants' response due, after extensions, April 28, 2012.</p> <p>February 17, 2012 the AG notified Congress that DOJ will not defend Section 3 of DOMA or the provisions of Title 38 challenged in this case.</p> <p>BLAG moved to intervene. Plaintiffs' opposed the</p>

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			<p>motion.</p> <p>The court stayed the matter until 30 days after the First Circuit issues its mandate in <i>Gill/Massachusetts</i>.</p>
<i>Blesch v. Holder</i>	No. 12-1578 E.D.N.Y.	Paul, Weiss, Rifkind, Wharton & Garrison LLP Immigration Equality	<p>Immigration rights challenge.</p> <p>Filed April 2, 2012. Click here for the filing press release.</p>
<i>Bishop v. United States</i> This lawsuit challenges on equal protection and substantive due process grounds two provisions of the Oklahoma Constitution – Okla. Const. art. II, § 35(A) & (B) – and two provisions of the Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996): Section 2, codified at 28 U.S.C. § 1738C, and Section 3, codified at 1 U.S.C. § 7.	No. 04-CV-848-TCK-TLW (N.D. Ok.)	Holladay & Chilton PLLC	<p>Plaintiffs moved for summary judgment on 9/28/2011. The USA moved to dismiss on 10/19/2011. The House cross moved for summary judgment on the same date.</p> <p>On March 30, 2012 the Court granted BLAG’s motion to suspend all deadlines pending further order of the court.</p>
<i>Cozen O’Connor, P.C. v. Tobits</i> David and Joan Farley, the parents of the late Sarah Ellyn Farley, are fighting with Ms. Farley’s wife, Jennifer Tobits, about who should get the \$41,000 or so left from Ms. Farley’s profit-sharing plan with the law firm Cozen O’Connor. The parents argue the ERISA-qualified plan implicates federal law, meaning DOMA would not allow the term "spouse" in the plan to be considered a person of the same sex.	No. 2:11-cv-00045, E.D. Pa.	National Center for Lesbian Rights	<p>Pending motions, which include the spouse’s motion for judgment on the pleadings and the parents’ motion to dismiss argued March 12, 2012.</p> <p>The United States has intervened.</p> <p>BLAG has intervened.</p> <p>Several amicus briefs have been filed.</p> <p>Awaiting decision from the court.</p>

<p>Ms. Tobits argues that because ERISA doesn't define the term "spouse," the parties need only look to the plan itself and don't have to reach whether DOMA applies.</p>			
<p><i>Revelis v. Napolitano</i></p> <p>Immigration: This as applied DOMA challenge seeks to allow a U.S. citizen spouse to petition for his foreign national spouse to become a permanent resident of the United States.</p>	<p>1:11-cv-01991, N.D. Ill.</p>		<p>BLAG's motion to intervene granted. BLAG moved to dismiss on February 2, 2012.</p> <p>The last docket entry was May 10, 2012. The court heard Defendants moved to stay Proceedings Due to Agency Action and took the matter under advisement. A ruling is to be mailed.</p>
<p><i>Frances Herbert and Takako Ueda</i></p>		<p>Immigration Equality</p>	<p>Dummerston, VT residents denied a green card December 1. The decision leaves Ueda without lawful immigration status.</p> <p>Appealing of the U.S. Citizenship and Immigration Service's decision to deny a spousal green card.</p>
<p><i>Tracy & Maggie Cooper-Harris v. USA, Attorney General Holder & Eric Shinseki, Secretary of Veterans Affairs</i></p>	<p>Filed 2/1/2012</p> <p>C.D. Cal. No. CV12-0887 CBM</p>	<p>Southern Poverty Law Center and WilmerHale attorneys</p>	<p>This is an action by a disabled and decorated United States Army veteran and her same-sex spouse, who seek recognition by the U.S. Department of Veterans Affairs ("VA") of their lawful marriage so that they may receive the same benefits afforded to other married veterans and their spouses.</p> <p>February 24, 2012 the AG notified Congress that DOJ will not defend Section 3 of DOMA or the provisions of Title 38 challenged in this case.</p> <p>BLAG moved to intervene on April 2. Neither the plaintiffs nor DOJ oppose BLAG's</p>

			<p>motion.</p> <p>BLAG has moved to stay the matter (pending a decision by the Ninth Circuit in Golinski). The motion is set for hearing on July 23.</p>
<p><i>Jane Roe & Jane Doe v. Empire Blue Cross Blue Shield & St. Joseph's Medical Center</i></p> <p>An employee of St. Joseph's brought this class action "pursuant to Section 502 of the Employment Retirement Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1132, against Empire Blue Cross Blue Shield ("BCBS") and St. Joseph's Medical Center ("St. Joseph's") as sponsors and/or administrators of the Direct POS Plan for Saint Joseph's Medical Center (the "Plan"), for unlawful interference with the rights accorded to Plaintiffs by ERISA, by denying benefits in a discriminatory manner based on their status as partners in a legally recognized same sex marriage."</p> <p>Raises whether DOMA Section 3 is unconstitutional.</p>	<p>1:12-cv-04788-PKC, S.D.N.Y.</p>	<p>Newman Ferrara LLP</p>	<p>Filed June 19, 2012.</p> <p>Initial scheduling conference set for September 18, 2012, 12:30 p.m.</p>
<p><i>Martin R. Aranas, Irma Rodriguez, & Jane DeLeon v. Janet Napolitano, Secretary of the Department of Homeland Security; Department of Homeland Security; Alejandro Mayorkas, Director, United</i></p>	<p>SACV12-1137-JVS(MLGx), C.D. Cal. – Western Division</p>	<p>Center for Human Rights and Constitutional Law</p> <p>Additional counsel for plaintiff Mr. Aranas: Public Law Center & Asian Law Center</p>	<p>Filed July 12, 2012.</p>

<p><i>States Citizenship and Immigration Services; and United States Citizenship & Immigration Services</i></p> <p>Proposed immigration class action. Proposed class: "All members of lawful marriages whom the Department of Homeland Security pursuant to § 3 of the Defense of Marriage Act, 1 U.S.C. § 7, refuses to recognize as spouses for purposes of conferring lawful status and related benefits under the Immigration and Nationality Act, 8 U.S.C. §§ 1101 et seq."</p>		<p>Additional counsel for Ms. Rodriguez & Ms. DeLeon: Law Offices of Manulkin & Bennett</p>	
<p><i>Lui v. Holder, et al.</i></p> <p>Immigration</p>	<p>(a) No. 09-72068 (9th Cir.)</p>	<p>Center for Human Rights and Constitutional Law</p>	<p>(a) Appeal of an asylum claim and a denial of a motion to reopen the case in order to apply for a green card.</p> <p>AG's February letter to Boehner reported:</p> <ul style="list-style-type: none"> • Case stayed pending administrative action and no impending deadlines
	<p>(b) No. 2:11-cv-01267 (C.D. Cal.)</p>		<p>(b) Complaint was filed on 2/10/11 challenging the denial of the I-130. BLAG's motion to dismiss was granted September 28, 2011. Lui filed a motion to file an amended complaint. On November 3 the court entered an order explaining that his prior order terminated the case but that, because it was without prejudice, plaintiffs were free to file a new action. BLAG has appealed that the dismissal was without prejudice. DOJ moved to</p>

			dismiss on 1/26/2012.
<i>In re Balas and Morales</i>	2:11-bk-17831 TD (C.D. California Bankruptcy Court)		Concluded. 20 of the 24 judges who comprise the U.S. Bankruptcy Court for the Central District of California signed an opinion finding that Section 3 is unconstitutional (under heightened scrutiny or rational review) and would not prevent these two debtors from filing a joint petition and seeking relief as joint debtors under Title 11. No appeal.
<i>Torres-Barragan v. Holder</i>	No. 10-55768 (9 th Cir.) , consolidated with Nos. 08- 73745 & 09- 71226 for purposes of calendar		Cases involving appeal of asylum claim and denial of I-130. 4/10/12: The unopposed motion of the Bipartisan Legal Advisory Group of the United States House of Representatives to intervene on behalf of appellees is granted. The motion for voluntary dismissal of this appeal is granted. These appeals are dismissed.