

US Reps. Slam DOMA In 1st Circ. Same-Sex Benefits Fight

By **Maria Chutchian**

Law360, New York (November 16, 2011, 7:27 PM ET) -- Members of the U.S. House of Representatives on Tuesday threw their weight behind a challenge of the Defense of Marriage Act in the First Circuit, where three consolidated cases are disputing health benefits for federal workers in same-sex marriages.

The 133 U.S. representatives who signed the amicus curiae brief argued Section 3 of DOMA, which defines marriage as "between one man and one woman" is not only unconstitutional, it lacks any legitimate federal purpose.

The House Bipartisan Legal Advisory Group has involved itself in the case as well, throwing its support behind DOMA.

"Striving to portray DOMA as a benign definitional measure, [BLAG] fails to acknowledge that Congress explicitly sought through DOMA to express moral disapproval of lesbians, gay men, and their relationships; and that a clear aim and effect of the law was to disadvantage this class of citizens," the brief said.

The lawsuit arose after the U.S. Office of Personnel Management, which oversees the federal civil service, denied health benefits for legal same-sex spouses of government employees, including one who worked at the U.S. Postal Service and one who worked at the U.S. Social Security Administration.

The representatives — including House Minority Leader Nancy Pelosi and House Minority Whip Steny Hoyer — argued in their brief that the Fifth Amendment's equal protection guarantee renders Section 3 of DOMA invalid under any judicial standard and asked the court to enter a judgment in favor of the plaintiffs who are challenging the act.

"Section 3 unjustifiably harms married gay and lesbian couples and their children, undermining Congress's legitimate interest in respecting state-sanctioned marriages," the brief said.

In addition to health benefits, some of the plaintiffs are seeking certain Social Security benefits based on marriage to a same-sex spouse. Some also want to file their federal tax returns jointly with their same-sex spouses, which would give them a lower tax rate but is currently prohibited by DOMA.

BLAG contends that DOMA is justified by a federal interest in promoting "consistency" in eligibility for federal benefits, the brief said.

But the 133 representatives argued that inconsistencies in state marriage laws and any corresponding inconsistency in the administration of federal marriage-based benefits were not new phenomena when the act was passed in 1996, and don't provide a credible justification for Section 3.

The congressional members are represented by Miriam Nemetz, Kathleen Dawe and Michael Kimberly of Mayer Brown LLP and Heather Sawyer, Minority Counsel for the Committee on the Judiciary.

The plaintiffs are represented by Gay & Lesbian Advocates & Defenders, Foley Hoag LLP, Sullivan & Worcester LLP and Jenner & Block LLP.

The Bipartisan Legal Advisory Group is represented by Bancroft PLLC.

The consolidated cases are Commonwealth of Massachusetts v. U.S. Department of Health and Human Services et al., case number 10-2204; Nancy Gill et al. v. Office of Personnel Management et al., case number 10-2207; and Dean Hara et al. v. Office of Personnel Management et al., case number 10-2214, in the U.S. Court of Appeals for the First Circuit.

--Additional reporting by Roxanne Palmer and Erin Coe. Editing by John Quinn.

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