

Seyfarth Shaw Signs on to Amicus Brief Against the Defense of Marriage Act

BOSTON (November 21, 2011) – Leading law firm Seyfarth Shaw LLP has signed on with 70 other companies, organizations and law firms to file an amicus brief in the United States Court of Appeals for the First Circuit, sitting in Boston, in opposition to the Defense of Marriage Act (DOMA).

DOMA, passed by Congress in 1996, defines marriage as between a man and a woman, and thus excludes legally married same-sex couples from receiving the same federal marital benefits and responsibilities that apply to heterosexual married couples. The brief in the case -- *Gill v. OPM* -- argues that “the burden of DOMA’s dual regime is keenly felt by enterprises that conduct operations or do business in jurisdictions that authorize or recognize same-sex marriage.” Because of DOMA, these employers must either treat one legally married employee differently from another legally married employee, or they must take on the cost and administrative burden to make up for the federal discrimination. Those in support of the brief want to advise the court of the “perspective of the American employer who must implement DOMA.”

Employers and/or those who represent them include financial institutions, medical centers, healthcare providers, insurance companies, energy and technology businesses, manufacturers, professional firms, retailers, marketers, nonprofit organizations and trade associations. Industry-leading signers include Microsoft Corp., Google Inc., Time Warner Cable Inc., New Balance Athletic Shoe Inc., Massachusetts Mutual Life Insurance Co., Xerox Corp., Bank of New York Mellon Corp., Aetna, Inc., Levi Strauss & Co., State Street Bank and Trust Co.

The amicus brief points out that of states in which same-sex marriage is legal, DOMA creates a non-uniform rule as employers are forced to treat one married employee differently from the other. The brief states that DOMA presents a burden of compliance to employers because workplace benefits and a workplace ethos of transparent fairness are critical to company success. DOMA strains the employer/employee relationship, affecting the following:

- Health insurance and related benefits
- Continuing health coverage and open enrollment periods
- Protections in times of family crisis and illness
- Retirement protections
- Visa rights

Additionally, according to the brief, DOMA forces employers to incur administrative burdens and expense by treating same-sex employees with same-sex spouses as single with regards to federal tax withholding, payroll taxes, and workplace benefits that turn on marital status, and as married for all other purposes.

In Massachusetts, because the marriages of same-sex couples are only recognized by the state and not federally, DOMA requires the employer to have dual systems capable of separately tracking married employees by referencing the spouse’s gender.

The amici also express that DOMA forces employers to affirm discrimination they regard as injurious to the corporate mission, leaving companies open to litigation while also decreasing workplace morale.

Seyfarth Shaw has over 750 attorneys located in 10 offices throughout the United States, including: Atlanta, Boston, Chicago, Houston, Los Angeles, New York, Sacramento, San Francisco and Washington, D.C., as well as internationally in London. Seyfarth Shaw provides a broad range of legal services in the areas of labor and employment, employee benefits, litigation, corporate and real estate. The firm's clients include over 300 of the *Fortune* 500 companies, and our practice reflects virtually every industry and segment of the economy. For more information, please visit www.seyfarth.com.

