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## First Circuit Holds DOMA Unconstitutional

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Acting as pro bono co-counsel with the Massachusetts Attorney General's Office, a team of WilmerHale lawyers recently achieved a significant victory in the First Circuit on behalf of the Commonwealth of Massachusetts when the court unanimously held the federal Defense of Marriage Act ("DOMA") unconstitutional.

The Commonwealth challenged DOMA's constitutionality in 2009 in a complaint alleging that DOMA violates the 10th Amendment and constitutional principles of federalism by intruding on the Commonwealth's sovereign power to define marriage, and the Spending Clause by conditioning funding of federal programs on a violation of the Equal Protection Clause. The District of Massachusetts (Tauro, J.) held DOMA unconstitutional in 2010, and the First Circuit affirmed that judgment.

The court accepted the Commonwealth's argument that DOMA—which defines marriage as between one man and one woman for purposes of all federal law—"burden[s] the choice of states like Massachusetts to regulate the rules and incidents of marriage" and carries "potentially serious adverse consequences" for states that have legalized same-sex marriage.

Writing for the unanimous panel, Judge Michael Boudin also acknowledged

that “DOMA intrudes extensively into a realm that has from the start of the nation been primarily confided to state regulation – domestic relations and the definition and incidents of lawful marriage,” and explained that “in areas where state regulation has traditionally governed, the [Supreme] Court may require that the federal government interest in intervention be shown with special clarity.” After reviewing the purported justifications for DOMA, the court concluded that “Congress’ denial of federal benefits to same-sex couples lawfully married in Massachusetts has not been adequately supported by any permissible federal interest.”

The decision marks the first ruling by a federal appeals court that DOMA is unconstitutional.

The WilmerHale team included Partner Mark Fleming, Counsel Felicia Ellsworth, Senior Associates Alan Schoenfeld and Rachel Gurvich, and Associate Brian Boyle.