

# Mass. is 1st state to sue feds over marriage law

by DENISE LAVOIE  
AP Legal Affairs Writer

BOSTON—Massachusetts, the first state to legalize gay marriage, sued the US government last Wednesday, July 8 over a federal law that defines marriage as a union between a man and a woman.

The federal Defense of Marriage Act interferes with the right of Massachusetts to define and regulate marriage as it sees fit, Massachusetts Attorney General Martha Coakley said. The 1996 law denies federal recognition of gay marriage and gives states the right to refuse to recognize same-sex marriages performed in other states.

Massachusetts is the first state to challenge the federal law. Its lawsuit, filed in federal court in Boston, argues the act "constitutes an overreaching and discriminatory federal law." It says the approximately 16,000 same-sex couples who have married in Massachusetts since the state began performing gay marriages in 2004 are being unfairly denied federal benefits given to heterosexual couples.

"They are entitled to equal treatment under the laws regardless of whether they are gay or straight," Coakley said at a news conference.

Besides Massachusetts, five other states—Connecticut, Vermont, New Hampshire, Maine and Iowa—have legalized gay marriage. Gay marriage opponents in Maine said Wednesday that they had collected enough signatures to put the state's pending law on the November ballot for a possible override.

The lawsuit focuses on the section of the law that creates a federal definition of marriage as "a legal union between one man and one woman as husband and wife."

Before the law was passed, Coakley said, the federal government recognized that defining marital status was the "exclusive prerogative of the states." Now, because of the U.S. law's definition of marriage, same-sex couples are denied access to benefits given to heterosexual married couples, including federal income tax credits, employment benefits, retirement benefits, health insurance coverage and Social Security payments, the lawsuit says.

The lawsuit also argues that the federal law requires the state to violate the constitutional rights of its citizens by treating married heterosexual couples and married same-sex couples differently when determining eligibility for Medicaid benefits and when determining whether the spouse of a veteran can be buried in a Massachusetts veterans' cemetery.

"In enacting DOMA, Congress overstepped its authority, undermined states' efforts to recognize marriages between same-sex couples, and codified an animus towards gay and lesbian people," the lawsuit states.

The defendants named in the suit include the U.S. Department of Health and Human Services, U.S. Department of Veterans Affairs and the federal government.

Brian Camenker, leader of MassResistance, a group opposed to gay marriage, criticized Coakley for challenging the federal law.

"The federal government has a perfectly legal right to define marriage," he said.

The Defense of Marriage Act was enacted when it appeared Hawaii would soon legalize same-sex marriages and opponents worried that other states would be forced to recognize them.

President Barack Obama has pledged to work to repeal the law, although gay rights activists criticized the administration last month after Justice Department lawyers defended it in a court brief. White House aides said they were doing their jobs to support a law that is on the books.

Charles Miller, a Justice Department spokesman, declined comment on the lawsuit itself, saying the department plans to review it. He noted Obama "supports legislative repeal of the Defense of Marriage Act because it prevents (lesbian, gay, bisexual and transgender) couples from being granted equal rights and benefits."

Supporters of gay marriage predicted that other states where same-sex marriage is legal will also challenge the federal law.

"Every state has the right to determine who it will allow to marry, and the federal government always respects those decisions by states... except in this case," said Arline Isaacson, co-chair of the Massachusetts Gay and Lesbian Political Caucus.

"(Coakley) is going right for that vulnerability in the law," she said.

This is the second lawsuit filed in Massachusetts challenging the law.

In March, the Boston-based Gay & Lesbian Advocates & Defenders claimed the law discriminates against gay couples and is unconstitutional because it denies them access to federal benefits that other married couples receive, such as health insurance and pensions.

In Maine, the Stand for Marriage Maine coalition said it took only four weeks to gather more than the 55,087 signatures necessary to put gay marriage to a vote.

The Maine law to legalize gay marriage had been scheduled to go into effect Sept. 12. It will be put on hold after the signatures are submitted and certified by the secretary of state's office. Voters will then decide in November whether the law should stand.



Massachusetts State Attorney General Martha Coakley speaks to members of the media, Wednesday, July 8, 2009 in Boston about a lawsuit filed Wednesday that says that the federal Defense of Marriage Act interferes with the right of Massachusetts to define marriage as it sees fit.

AP Photo/Lisa Poole

## Pro-marijuana ad pushes pot as Calif. budget fix

by MARCUS WOHLSEN  
AP Writer

SAN FRANCISCO—A pro-marijuana group launched a television advertisement Wednesday in California advocating legalization and taxation of the drug to help solve the state's budget woes.

The 30-second spot, airing Wednesday, July 8 and paid for by the Marijuana Policy Project, features a retired 58-year-old state worker who says state leaders "are ignoring millions of Californians who want to pay taxes."

"We're marijuana consumers," says Nadene Herndon of Fair Oaks, who says she began using marijuana after suffering multiple strokes three years ago. "Instead of being treated like criminals for using a substance safer than alcohol, we want to pay our fair share."

State lawmakers are bitterly debating how to close a \$26.3 billion budget deficit that likely means cuts to state services.

In February, Assemblyman Tom Ammiano, D-San Francisco, introduced a bill to tax and regulate marijuana like alcohol. Bill supporters estimate the state's pot industry could bring in more than \$1 billion in taxes.

The ad will air on several cable news channels and network broadcast affiliates in Los Angeles, Sacramento and the San Francisco Bay area, according to the Marijuana Policy Project.

The group said that four California stations—KABC-TV and KTTV-TV in Los Angeles, KGO-TV in San Francisco and KNTV-TV in San Jose—re-

fused to air the ad.

In an e-mail to the group, a KNTV account executive said the station's standards department had rejected the ad. A senior account executive at KGO said the station would not comment on its decision.

Messages left with KABC and KTTV were not immediately returned.

Marijuana Policy Project spokesman Bruce Mirken said the ad was meant to promote conversation about the issues, not to encourage pot use.

"It was consciously unsensational," Mirken said. "It's time to talk about this, and we feel very frustrated that some of these stations have taken it upon themselves to stifle the discussion."

In a phone interview, Herndon said that before filming the ad, she had not told very many people about her marijuana use. But she said her concern over the state's fiscal crisis and her support of medical marijuana led her to go public.

"I came out of the closet with this ad," she said.

Herndon said she worked as a policy analyst for several state social services departments during a 38-year career.

She said she was approached to star in the ad while her husband was taking classes at Oakland University, an Oakland trade school that trains students to grow medical marijuana.

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