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## Federal Judge Denies Government Motion to Dismiss in Defense of Marriage Act Case

(San Francisco, CA, January 26, 2012)— Today, the U.S. District Court for the Northern District of California rejected the federal government’s request to dismiss the constitutional claims of gay and lesbian state workers who, together with their registered domestic partners, are excluded from equal access to California’s Long-Term Care Program.

Judge Claudia Wilken issued the ruling in *Dragovich v. CalPERS*, a class action lawsuit challenging federal and state laws including the Defense of Marriage Act (DOMA) which regulate state-sponsored long-term care plans. These laws permit employees and an array of family members to join such plans, including opposite-sex spouses, but exclude the spouses and registered domestic partners of gay and lesbian workers

“Registering as domestic partners is the only legal status currently available to gay and lesbian couples in California,” said Claudia Center of Legal Aid Society–Employment Law Center. “These couples have agreed to take on all of the obligations of marriage, and are entitled to fair and equal treatment from the federal government.”

In finding that the exclusion may violate the equal protection and due process protections of the Constitution, the court noted a number of official actions taken by the federal government in opposition to the recognition of gay and lesbian couples in domestic partnerships in establishing discriminatory intent including the defunding of the District of Columbia’s registry, and the enactment of the DOMA. Although the federal defendants asserted that the plaintiffs could not show animus, the opinion quotes from Congressional leaders who described domestic partnerships for gay and lesbian couples as “an attack on the family” and “abhorrent.”

Last year the court rejected a similar motion to dismiss the claims of gay and lesbian state workers who were married in 2008 following the California Supreme Court’s ruling that the state constitution mandated marriage equality and before the enactment of Proposition 8. Today’s order considered for the first time the claims of couples who are in registered domestic partnerships with the state of California, but who did not marry in 2008.

Along with Claudia Center, Elizabeth Kristen and William C. McNeill, III, from Legal Aid Society–Employment Law Center, counsel for the plaintiffs include Dan Mason and Patrick Clayton of Zelle Hofmann Voelbel & Mason LLP.