



## Bonauto, Mary (b. 1961)

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Mary L. Bonauto at the 2010 Spirit of Justice dinner.

A leading American lawyer, Mary Bonauto has served as the civil rights project director at Gay & Lesbian Advocates & Defenders (GLAD) for more than two decades. In that capacity, she has won major rulings that have brought the promise of equal rights nearer to reality in the lives of glbtq citizens. She is widely regarded as among the country's best litigators in the cause of marriage equality.

Bonauto was born on June 8, 1961 into a Roman Catholic family of modest means in Newburgh, New York. The only daughter of a pharmacist and a teacher, she grew up with three brothers.

When Bonauto was growing up and attending public schools, Newburgh was a depressed factory town riven by racial and class divisions. A good athlete who played tennis, basketball, softball, and volleyball, she had the opportunity to mingle with a wide variety of individuals. This interaction led her to distrust stereotypes of all kinds.

Bonauto received her undergraduate education at Hamilton College, where she majored in history and comparative literature. There she also came to terms with her lesbianism, though she did not come out to her parents until she entered law school at Northeastern University in 1984.

Bonauto's acceptance of her homosexuality caused her to abandon the Roman Catholic Church, though she says she is still guided by the Catholic values that helped form her commitment to social justice.

Following her graduation from law school, Bonauto joined a small law firm in Portland, Maine. She was one of only three openly gay lawyers in private practice in the state.

She soon met and fell in love with Jennifer Wriggens, who became her life partner (and since 2008, her spouse). Wriggens is now a professor at the University of Maine School of Law.

The law firm that Bonauto worked at in Portland, Mittel Asen LLC, had a reputation for pursuing social justice. Most of the attorneys who worked at the firm were former legal services lawyers. There she handled a wide variety of cases, from commercial transactions to custody disputes. As she became known in the gay and lesbian community, she began to attract business to the firm.

In 1989, Bonauto accepted a job with GLAD, and she and Wriggens moved for a while to Boston.

Massachusetts had recently passed a law prohibiting discrimination on the basis of sexual orientation in employment, housing, and public accommodations. It was Bonauto's job to help enforce the new law.

She was soon involved in litigation, lobbying, and public education throughout the six New England states that GLAD principally serves.

After her initial focus on enforcing the anti-discrimination law, Bonauto then concentrated on cases

involving gay and lesbian families, including cases to establish the rights of non-biological parents who participate in raising children with their partners.

Bonauto told *New York Times* reporter David Garrow in 2004 that her work for GLAD in the early 1990s taught her "how to build, brick by brick, protections for gay folks."

GLAD's policy at the time was not to accept cases involving same-sex marriage because the likelihood of prevailing seemed so slim. However, Bonauto was deeply cognizant that many of the cases that she worked on--child custody and adoption, health-benefits coverage, inheritance, and Social Security survivor benefits--would be easily solved if same-sex couples enjoyed the legal protections and benefits of marriage.

Some of the cases she received then, Bonauto told Garrow, are "seared into my soul" because they came from "people who are calling me sobbing from a pay phone because their partner of 24 years has just died and the so-called family is in the house cleaning it out."

"I would have loved to have been married myself and would have loved to have filed a marriage case," she reminisced, but at the time pursuing marriage equality seemed at best quixotic.

However, she soon encountered Evan Wolfson, who was then working for Lambda Legal Defense and Education Fund (and is now president of Freedom to Marry). He was the most articulate proponent of the idea that marriage equality should be the glbtq movement's top priority. He soon convinced her that "marriage was something that needed to be fought for in the courts."

The decision by the Hawaii Supreme Court in *Baehr v. Lewin* in 1993, a marriage challenge for which Wolfson served as co-counsel, was also crucial in convincing her that marriage equality might be secured in the courts. The Hawaii Supreme Court held that denying same-sex couples marriage licenses would violate the state's equal rights amendment unless the state could show a compelling interest. It returned the case to the trial court for a hearing to allow the state to present evidence of a compelling interest.

In 1996, the trial court ruled that the state had not met its burden under the compelling interest standard, but stayed enforcement of its decision pending appeal to the Hawaii Supreme Court. Unfortunately, the Supreme Court sat on the appeal for over two years, which gave the legislature time to pass a proposed constitutional amendment reserving marriage to opposite-sex couples, and in the end no marriage licenses were ever issued to same-sex couples.

Still, the Hawaii court provided encouragement to Bonauto. In July 1997, she and two other lawyers, Beth Robinson and Susan Murray, filed suit in Vermont, challenging the state's prohibition of same-sex marriage. Vermont seemed promising because the state Supreme Court had issued a pioneering opinion in 1994 approving second-parent adoption for same-sex couples. In addition, Vermont's state Constitution is difficult to amend.

The case, *Baker v. State*, was finally decided by the Vermont Supreme Court in December 1999. The ruling is a gay rights landmark, yet it left the attorneys "crushed." Instead of ordering the state to issue marriage licenses to same-sex couples, the high court left it up to the legislature to devise a solution to the problem of inequality. The result was "civil unions," in which the legal benefits of matrimony were extended to gay and lesbian couples, but they were denied the term *marriage*.

Bonauto soon decided to try again. In April 2001, she filed suit on behalf of seven Massachusetts gay and lesbian couples who had been denied marriage licenses.

The case, known as *Goodridge v. Department of Public Health*, reached Massachusetts' highest court in March 2003. Bonauto told the court that civil unions would not satisfy the requirements of the Massachusetts Constitution.

"The Vermont approach is not the best approach for this Court to take," she emphasized, for "when it comes to marriage, there really is no such thing as separating the word 'marriage' from the protections it provides. The reason for that is that one of the most important protections of marriage is the word, because the word is what conveys the status that everyone understands as the ultimate expression of love and commitment."

Five months later, the Massachusetts Supreme Judicial Court handed down the ruling for which Bonauto had been waiting: an unparalleled 4-3 decision ending the exclusion of gay couples from marriage. The court concluded that "a person who enters into an intimate, exclusive union with another of the same sex is arbitrarily deprived of membership in one of our community's most rewarding and cherished institutions. That exclusion is incompatible with the constitutional principles of respect for individual autonomy and equality under law."

After a great deal of wrangling, the Massachusetts Legislature approved a proposed constitutional amendment that would ban gay marriage but institute civil unions. However, notwithstanding the efforts of Governor Mitt Romney to block implementation of the Supreme Judicial Court's mandate, on May 17, 2004, for the first time in American history gay and lesbian couples entered into legal matrimony.

Although the victory in Massachusetts was shadowed by the possibility that it might be reversed by a constitutional amendment, Bonauto remained confident that once the public saw that marriage strengthens gay families, support for marriage equality would increase.

Bonauto's prediction was vindicated in June 2007, when the Legislature, acting as a constitutional convention, voted down an amendment to ban same-sex marriage by a vote of 45 to 151. Today large majorities in Massachusetts support marriage equality and it is in no danger of being reversed by popular vote.

Bonauto also played a prominent role in securing marriage equality in Connecticut. GLAD filed suit in 2004 seeking marriage rights for gay and lesbian couples. The Connecticut Legislature responded in 2005 by establishing civil unions.

However, in 2008, the Connecticut Supreme Court declared unconstitutional both the state's prohibition of same-sex marriage and its civil union law. The court's majority, in a 4-3 decision, declared that "Interpreting our state constitutional provisions in accordance with firmly established equal protection principles leads inevitably to the conclusion that gay persons are entitled to marry the otherwise qualified same-sex partner of their choice. To decide otherwise would require us to apply one set of constitutional principles to gay persons and another to all others."

In 2009, Bonauto was instrumental in the successful effort to pass a marriage equality law in Maine, where she and Wriggins live. She helped organize an influential public hearing on the question, where both opponents and proponents of marriage equality were allowed to express themselves.

The legislature concluded its work on May 6, 2009, both houses having voted in favor of marriage equality. Within minutes of the bill reaching Governor John Baldacci's desk, the Governor signed it, ending intense speculation as to whether he might exercise his veto power.

Maine thus became the second state (after Vermont, which months earlier replaced civil unions with

marriage) to enact an equal marriage law without being forced to do so by a court decision. However, despite the legislative victory, the new law never went into effect.

Soon after Governor Baldacci signed the bill, opponents announced that they would begin the process of gathering signatures to subject the new law to a "people's veto," or public referendum. They soon submitted more than 100,000 signatures. The marriage equality law was suspended pending the results of the referendum in November 2009.

Despite an effective and well-financed campaign to retain marriage equality in Maine, in which Bonauto was a prominent spokesperson and debater on behalf of equal rights, the referendum to veto the law passed by a margin of 53% to 47%.

The defeat sent shock waves through the glbtq community, raising the question of whether it would ever be possible for marriage equality to prevail at the polls, at least until the most homophobic demographic-- those over 65 years of age--died off.

However, instead of despairing over the defeat, Maine activists, including Bonauto, went about the work of attempting to convince voters to change their minds. In 2012, they began collecting signatures to place another referendum on the Maine ballot. For the first time, marriage equality activists took the offensive and qualified a referendum that would authorize same-sex marriage.

After the electoral loss in Maine in 2009, Bonauto returned to litigating marriage equality cases. Although she had earlier counseled against challenging the Defense of Marriage Act (DOMA), which effectively bars federal recognition of legal same-sex marriages, she decided the time had come to launch an assault against it.

In order to challenge DOMA, Bonauto filed a lawsuit on behalf of individual plaintiffs, *Gill et al. v. Office of Personnel Management*, which was tried together with a lawsuit brought by the Office of the Attorney General of the Commonwealth of Massachusetts that also challenged DOMA.

In July 2010, Judge Joseph L. Tauro declared Section 3 of DOMA unconstitutional, ruling that this section, which limits federal recognition of marriage to heterosexual couples, violates the Fifth Amendment's equal protection principles and the Tenth Amendment's reservation of unenumerated powers to the states.

Bonauto reacted to the decision by saying, "Today the court simply affirmed that our country won't tolerate second-class marriages." Characteristically, she added: "This ruling will make a real difference for countless families in Massachusetts."

In November 2010, Bonauto filed another lawsuit challenging Section 3 of DOMA, *Pedersen v. Office of Personnel Management*. The plaintiffs are five couples and a widower from Connecticut, Vermont, and New Hampshire, who solely because of DOMA have been denied legal protections for which they are otherwise eligible.

On May 31, 2012, a unanimous three-judge panel of the U.S. Court of Appeals for the First Circuit upheld the decision of Judge Tauro and declared section 3 of DOMA unconstitutional in the combined cases of *Gill v. Office of Personnel Management* and *Massachusetts v. United States*. These cases were thought likely to be accepted by the Supreme Court of the United States for review during the 2012-2013 term, but the Court decided to accept another case, *Windsor v. United States*, which the U.S. Court of Appeals for the Second Circuit had declared unconstitutional.

On July 31, 2011, the U.S. District Court for the District of Connecticut found DOMA unconstitutional in *Pedersen v. Office of Personel Management*.

The *Pedersen* case is currently pending in the U.S. Court of Appeals for the Second Circuit. Its outcome will depend on the U.S. Supreme Court's decision on the constitutionality of DOMA, which is likely to be issued in June 2013 in connection with its review of *Windsor v. United States*.

Bonauto's success as a litigator in the marriage equality cases has cemented her reputation as one of the country's most capable gay rights attorneys. But Bonauto is not only an attorney, she is also an activist and a political tactician.

Tobias Wolff, a law professor at the University of Pennsylvania who is an informal advisor to President Obama, has described Bonauto as "among a handful of lawyers in the inner circle of gay rights advocates, one with a rare gift to make her case in public, using measured tones rather than heated rhetoric."

Bonauto is motivated by her conviction that her work matters not just theoretically but in the lives of real people. "This is not a chess game," she insists. Not surprisingly, when talking about her cases, she characteristically spotlights the stories of those affected by the cases.

As she recently told reporter Trevor Maxwell, "I'm dealing with people who have real problems, who are dealing with discrimination. If anyone should be recognized for the court rulings, it should be the plaintiffs and the judges, not the lawyers."

In a profile on her published by the Northeastern University School of Law, she said, "What keeps me going is that we are making progress. In 2003, I was lead counsel in *Goodridge v. Department of Public Health*, the first case to end marriage discrimination against same-sex couples in the United States. That case broke a historic barrier and forever changed the standard by which future efforts to treat lesbian and gay citizens will be judged. Today, 18 states have non-discrimination laws, and I hope the day for a federal non-discrimination law is at hand. I want to help take this movement over the finish line so that there is a single standard of justice in this country regardless of sexual orientation or gender identity."

In another interview, she said, "I do this work because I believe in the bedrock American promise of liberty and justice for all. The story of America is that we keep trying to live up to that promise, embracing as full citizens people who were once outsiders."

Bonauto's advocacy for gay rights has earned her a number of awards. In 2005, she received an honorary degree from Hamilton College. In the citation she was lauded for her "tenacity of purpose" and for the success of her work to extend "for the first time all the legal benefits of marriage to same-sex couples in the form of civil unions in Vermont, and to end the exclusion of such couples from civil marriage in Massachusetts."

In 2010, Bonauto received Yale University's Brudner Award, "which is awarded annually to an accomplished scholar or activist whose work has made significant contributions to the understanding of LGBT issues or furthered the tolerance of LGBT people."

In addition, Bonauto has been described as the Thurgood Marshall of the marriage equality movement. As David Garrow noted in 2004, "Bonauto's patient, quietly passionate yet self-effacing advocacy may have as far-reaching an effect on America as did that of Thurgood Marshall."

Kate Kendell, executive director of the National Center for Lesbian Rights, told Garrow that "Massachusetts has had the success it did because of Mary Bonauto." Beth Robinson added that while the marriage-equality movement "doesn't stand on the shoulders of any one person," there is no doubt that "the one individual person who's done the most for marriage is Mary."

Arthur Leonard, a professor at New York Law School, described Bonauto as "one of the dynamos in the gay rights movement." He added, "She goes out there and wins these impossible-to-win cases."

Bonauto herself disavows the title of "architect" of marriage equality, saying "I'm happy to be a bricklayer " in the movement.

In 2011, Bonauto was named one of the "50 Most Powerful Women in Boston" by *Boston Magazine*.

Despite the accolade, Bonauto, although she spends a lot of time in Boston, lives in Portland with Wriggins and their twin daughters. Bonauto gave birth to the twins while she was litigating Goodridge.

Ironically, Bonauto and Wriggins were not able to marry in Massachusetts immediately after the state achieved marriage equality. Then Governor Romney invoked a largely forgotten 1913 law that restricted marriage to Massachusetts residents.

The couple were finally able to marry in Massachusetts in 2008, but, Bonauto noted wryly at the time that, "I live in a state where my marriage is legally void."

However, in November 2012, the voters of Maine ratified marriage equality at the polls, thanks in part to Bonauto's hard work as lobbyist and litigator.

As the United States Supreme Court heard arguments about the constitutionality of California's Proposition 8 and the Defense of Marriage Act on March 26 and 27, 2013, Mary Bonauto was not one of the attorneys answering questions or making arguments. She was, rather, in the audience. Still, her presence was palpable as one of the principal architects of the legal strategy designed to invalidate the pernicious laws that discriminate against same-sex couples. If the Court declares DOMA and Proposition 8 unconstitutional, Mary Bonauto will certainly deserve part of the credit.

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