

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KAREN GOLINSKI,

Plaintiff,

No. C 10-00257 JSW

v.

UNITED STATES OFFICE OF PERSONNEL
MANAGEMENT and JOHN BERRY, Director
of the United States Office of Personnel
Management, in his official capacity,

ORDER TO SHOW CAUSE

Defendants.

The Court takes judicial notice of the Statement of the Attorney General on Litigation Involving the Defense of Marriage Act (“DOMA”) released today, February 23, 2011 (“Statement”). *See* Fed. R. Evid. 201(b). On behalf of the Department of Justice, the Statement indicates that the Executive Branch has affirmatively determined that DOMA is unconstitutional and will not defend the legislation in pending litigation. However, the Statement also indicates that the Executive Branch intends to enforce the law.

Based on the Executive Branch’s determination that the legislation is affirmatively unconstitutional, the Court requires responses to the following questions: (1) does the Office of Personnel Management (“OPM”) intend to reassess its position on its original instruction to Plaintiff’s insurer to decline to extend benefits to her same-sex spouse? (2) How does the Executive reconcile the position that it intends to enforce a statute that it has affirmatively declared to be unconstitutional and deemed inappropriate to defend? (3) Should the Court remand this matter to the Ninth Circuit’s administrative process for proper adjudication of

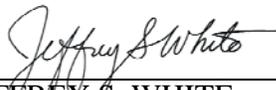
1 Plaintiff's access to benefits for her wife? (4) On what basis can OPM defend its position to
2 decline to extend benefits in a case in which such declination was based on the defense of
3 unconstitutional legislation?

4 The Court requires a written response to this Order indicating the parties' positions in
5 response to the Statement and its potential effect on the outcome of this matter. A response
6 shall be filed by Defendants by no later than February 28, 2011. Plaintiff may respond
7 thereafter, by no later than March 7, 2011.

8

9 **IT IS SO ORDERED.**

10 Dated: February 23, 2011



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28