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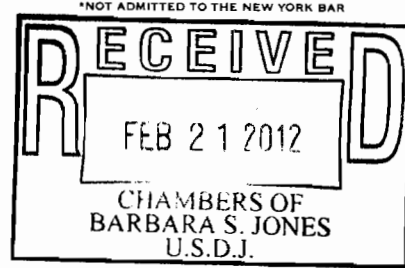
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February 21, 2012

By Hand

The Honorable Barbara S. Jones
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007



Windsor v. United States, 10 Civ. 8435 (BSJ) (JCF)

Dear Judge Jones:

As counsel for plaintiff Edith Schlain Windsor, we respectfully write to bring to the Court's attention a recent decision by the Attorney General and the Department of Justice to cease defending 38 U.S.C. §§ 101(3) and (31), which affect the eligibility of same-sex couples for military and veterans' benefits.

The Attorney General made this decision based on his determination that these provisions discriminate against same-sex couples in the same unconstitutional manner as Section 3 of the Defense of Marriage Act ("DOMA"), the statute at issue in this case. A copy of the Attorney General's letter to the Speaker of the House of Representatives, dated February 17, 2012, informing Congress of this decision is enclosed for Your Honor's reference.

As the Attorney General explained in his letter, provisions of Title 38 "like Section 3 [of DOMA], define the term 'spouse' (or 'surviving spouse') as 'a person of the opposite sex.'" (2/17 Ltr. at 1 (citations omitted).) As such, "[l]ike Section 3 [of

The Honorable Barbara S. Jones

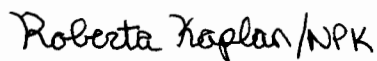
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DOMA], the provisions of Title 38 ... classify on the basis of sexual orientation[.]” (*Id.* at 2.)

The Attorney General, after consultation with the Department of Defense and the Department of Veterans Affairs, determined that “[a]lso like Section 3, these provisions as applied to legally married same-sex couples cannot survive heightened scrutiny because they are not ‘substantially related to an important government objective.’” (*Id.* (quoting *Clark v. Jeter*, 486 U.S. 456, 461 (1988)).) And the Attorney General concluded, once again, that it is heightened scrutiny that should apply to laws that classify on the basis of sexual orientation. (*Id.* at 1.)

Significantly, in reaching his decision, the Attorney General noted that “[t]he legislative record of these provisions contains no rationale for providing veterans’ benefits to opposite-sex spouses of veterans but not to legally married same-sex spouses of veterans.” (*Id.* at 2.) In its briefing in the above-captioned matter, the Bipartisan Legal Advisory Group of the House of Representatives cited to these very provisions from Title 38 as support for the proposition that “whenever Congress used terms connoting a marital relationship, it meant a traditional male-female couple.” (Mem. of Law in Supp. of Mot. to Dismiss at 3.) The Attorney General has now concluded, however, that whatever Congress “meant” at the time, the legislative record contains no rationale to support such a distinction. (2/17 Ltr. at 2.)

Respectfully submitted,



Roberta A. Kaplan

Enclosure

cc (via email): Paul D. Clement, Esq.
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Jean Lin, Esq.