

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Windsor v. The United States Of America

NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1996)
SIMON H. RIFKIND (1950-1995)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

UNIT 3601, FORTUNE PLAZA OFFICE TOWER A
NO. 7 DONG SANHUA ZHONGLU
CHAO YANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

MATTHEW W. ABBOTT
ALLAN J. ARFFA
ROBERT ATKINS
DAVID J. BALL
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JOHN E. LANGE
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XIAOYU GREG LIU
JEFFREY D. MARELL
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MARC E. PERLMUTTER
MARK F. POMERANTZ
VALERIE E. RADWANER
CARL L. REISNER
WALTER G. RICCIARDI
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RICHARD A. ROSEN
ANDREW N. ROSENBERG
JACQUELINE P. RUBIN
RAPHAEL M. RUSSO
JEFFREY D. SAFERSTEIN
JEFFREY B. SAMUELS
DALE M. SARNO
TERRY E. SCHIMEK
KENNETH M. SCHNEIDER
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STEPHEN J. SHIMSHAK
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MOSES SILVERMAN
STEVEN SIMKIN
JOSEPH J. SIMONS
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TARUN M. STEWART
ERIC ALAN STONE
AIDAN SYNNOTT
ROBYN F. TARNOWSKY
MONICA K. THURMOND
DANIEL J. TOAL
LIZA M. VELAZQUEZ
MARIAN T. VULLO
LAWRENCE G. WEE
THEODORE V. WELLS, JR.
BETH A. WILKINSON
STEVEN J. WILLIAMS
LAWRENCE I. WITDORCHIC
MARK B. WLAZLO
JULIA M. WOOD
JORDAN E. YARETT
KAYE N. YOSHINO
TONG YU
TRACEY A. ZACCONE
T. ROBERT ZOCHOWSKI, JR.

Doc. 108

WRITER'S DIRECT DIAL NUMBER

(212) 373-3086

WRITER'S DIRECT FACSIMILE

(212) 373-2037

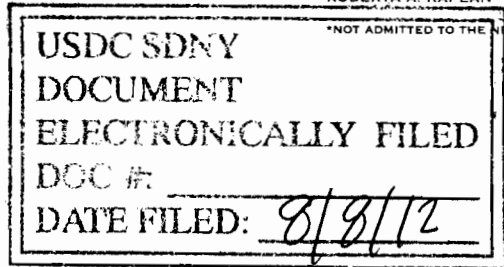
WRITER'S DIRECT E-MAIL ADDRESS

rkaplan@paulweiss.com

February 6, 2012

By Hand

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



\*NOT ADMITTED TO THE NEW YORK BAR

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

Dear Judge Jones:

On behalf of the plaintiff, Edith Schlain Windsor, we respectfully submit this letter to bring to the Court's attention a recent decision handed down by Judge Wilken of the Northern District of California concerning the constitutionality of the Defense of Marriage Act ("DOMA"). Dragovich v. United States Dep't of the Treasury, No. C 10-01564 (CW) (N.D. Cal. Jan. 26, 2012).

On January 26, 2012, Judge Wilken denied the motion to dismiss the plaintiffs' constitutional challenge to Section 7702B(f) of the Internal Revenue Code, which excludes legally married same-sex couples and registered domestic partners from certain federally qualified, state-maintained long-term care plans. In reaching that decision, Judge Wilken noted that "[t]he record of Congress' consideration of the [Defense of Marriage Act] . . . evidences animosity and moral condemnation of same-sex relationships." (Id. at 8.) Applying the rational basis test, the court held that there was no "plausible, legitimate rationale" for the exclusion at issue in the case. (Id. at 24-25.)

We enclose a copy of the *Dragovich* decision for the Court's reference.

Respectfully submitted,

*Roberta Kaplan/NPK*

Roberta A. Kaplan

Enclosure

cc (via email): Paul D. Clement, Esq.  
H. Christopher Bartolomucci, Esq.  
James D. Esseks, Esq.  
Jean Lin, Esq.