

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

EDITH SCHLAIN WINDSOR, in her)
capacity as Executor of the Estate of THEA)
CLARA SPYER,)
Plaintiff,) Case No. 1:10-cv-8435 (BSJ) (JCF)
vs.) ECF Case
THE UNITED STATES OF AMERICA,)
Defendant.)

)

**UNOPPOSED MOTION OF THE BIPARTISAN LEGAL ADVISORY GROUP
OF THE U.S. HOUSE OF REPRESENTATIVES
TO INTERVENE FOR A LIMITED PURPOSE**

Pursuant to Rule 24(a), (b) of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 530D(b)(2), 2403, and for the reasons set forth in the accompanying Memorandum of Points and Authorities, the Bipartisan Legal Advisory Group of the U.S. House of Representatives (hereinafter “the House”) respectfully moves for leave to intervene as a party defendant in this matter for the limited purpose of defending the constitutionality of Section III of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (Sept. 21, 1996), codified at 1 U.S.C. § 7 (“DOMA”), from attack on the ground that it violates the equal protection component of the Fifth Amendment Due Process Clause.¹ The Department of Justice has stated that it will

¹ The United States House of Representatives has articulated its institutional position in litigation matters through a five-member bipartisan leadership group since at least the early 1980’s (although the formulation of the group’s name has changed somewhat over time). Since 1993, the House rules have formally acknowledged and referred to the Bipartisan Legal Advisory Group, as such, in connection with its function of providing direction to the Office of the General Counsel. *See, e.g.*, Rule I.11, Rules of the House of Representatives, 103rd Cong.

“continue to represent the interests of the United States” in this litigation, Letter from Tony West, Assistant Attorney General, to the Honorable Barbara S. Jones (Feb. 24, 2011), attached to Notice to the Court by Defendant United States of America (Feb. 25, 2011), and we understand that to mean that the Department will take full responsibility for litigating issues other than Section III’s constitutionality under the equal protection component of the Due Process Clause.

Counsel for the House has conferred with Roberta A. Kaplan, Esq., counsel for plaintiff, who has (i) advised that plaintiff does not oppose the relief sought by this motion, and (ii) agreed that the House should not be required to file an Answer or other “pleading” in conjunction with this motion. The Department of Justice has also informed us that the United States does not oppose this motion to intervene for purposes of presenting arguments in support of the constitutionality of Section 3 of DOMA, but will be filing a response to explain its position. In addition, the United States agrees that the motion need not be accompanied by a pleading.

(1993); Rule II.8, Rules of the House of Representatives, 112th Cong. (2011). While the group seeks consensus whenever possible, it functions on a majoritarian basis, like the institution it represents, when consensus cannot be achieved. The Bipartisan Legal Advisory Group is currently comprised of the Honorable John A. Boehner, Speaker of the House, the Honorable Eric Cantor, Majority Leader, the Honorable Kevin McCarthy, Majority Whip, the Honorable Nancy Pelosi, Democratic Leader, and the Honorable Steny H. Hoyer, Democratic Whip. The Democratic Leader and the Democratic Whip decline to support the filing of this motion.

A proposed Order is submitted herewith and oral argument is not requested.

Respectfully submitted,

/s/ Paul D. Clement

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² King & Spalding LLP has been “specially retained by the Office of General Counsel” of the House to litigate the constitutionality of Section III of DOMA on behalf of the House. Its attorneys are, therefore, “entitled, for the purpose of performing [that] function[], to enter an appearance in any proceeding before any court of the United States . . . without compliance with any requirement for admission to practice before such court” 2 U.S.C. § 130f(a).