

Windsor v. The United States Of America

Doc. 124

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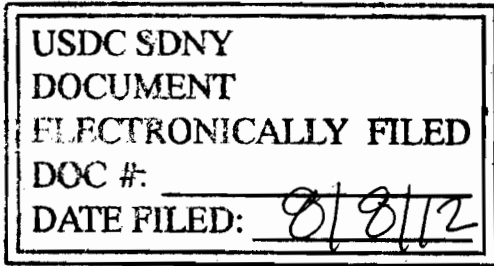
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*NOT ADMITTED TO THE NEW YORK BAR

November 22, 2010



BY HAND

The Honorable Barbara S. Jones
United States District Court
Southern District of New York
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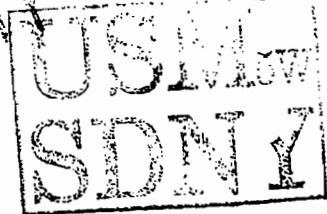
Windsor v. United States, 10 Civ. 8435 (BSJ)

Dear Judge Jones:

Together with the American Civil Liberties Union and the New York Civil Liberties Union, we represent plaintiff Edith ("Edie") Schlain Windsor in the above-captioned action. Edie filed her complaint (a copy of which is attached for Your Honor's convenience) on November 9, 2010 and her case has been assigned to Your Honor. We write today to inform the Court about several matters relevant to scheduling in this case and to request a conference with the Court as soon as possible.

In 2007, Edie legally married her lifelong love Thea Spyer (after a more than 40-year engagement) in Toronto, Canada. When Thea died of a heart condition after a long battle with multiple sclerosis in 2009, Edie, as executor of Thea's estate, was forced to pay more than \$350,000 in federal estate tax in connection with Thea's estate, which significantly reduced Edie's inheritance. As a general matter, the transfer at death of money or property to a surviving spouse is not subject to the federal estate tax. However, because of the so-called Defense of Marriage Act (DOMA), 1 U.S.C. § 7-

ATTACHED SECURITY



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The Honorable Barbara S. Jones

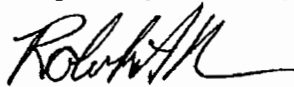
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which provides that for purposes of federal law, the term marriage “means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife”—the federal government refused to recognize Edie and Thea’s marriage. It is undisputed, however, that had Edie’s spouse been a man instead of a woman, Edie would not only have avoided the unfair burden of having to pay more than \$350,000 in federal estate tax, but also the indignity of having her own government treat her and Thea as legal strangers after Thea’s death. Accordingly, this action is an “as applied” equal protection challenge to DOMA in which Edie seeks recovery of the federal estate tax that she was required to pay unjustly and unconstitutionally as a result of what we contend is the operation of a clearly unconstitutional statute.

Edie is now 81 years old and lives on a fixed income. After emergency cardiac bypass surgery in 1996, she did well on medication for 13 years until six weeks after Thea’s death, when she suffered a heart attack and was hospitalized. Given that the fraction of blood pumped by the ventricles of Edie’s heart (or her ejection fraction) is very low (40%), her ongoing coronary disease, as well as the fact that she has a rapid heartbeat (or ventricular tachycardia), the decision was made to surgically implant an AICD (or an automatic insertable cardioverter defibrillator) in her chest to prevent sudden cardiac arrest. The AICD applies an electric shock to Edie’s heart to restore normal rhythm and to correct arrhythmias that can lead to sudden death. Edie also carries nitroglycerine tablets with her at all times in order to deal with periodic attacks of angina. Given the circumstances, Edie understandably seeks to pursue this action as expeditiously as possible.

Although the government has 60 days in which to either answer or make a motion to dismiss with respect to the complaint under Fed. R. Civ. P. 12(a)(2), we respectfully request that the Court schedule a conference with the parties to discuss scheduling as soon as practicable so that this case can be expedited to the extent possible given the very significant issues involved as well as our client’s advanced age and serious medical condition.

Respectfully submitted,



Roberta A. Kaplan

cc: James D. Esseks
Preet Bharara