

**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,)
v.) Civil Action No. 10-CV-8435 (BSJ)(JCF)
THE UNITED STATES OF AMERICA,)
Defendant.)

)

**INTERVENOR-DEFENDANT'S
NOTICE OF RECENT DECISIONS**

Intervenor-Defendant the Bipartisan Legal Advisory Group of the U.S. House of Representatives (the “House”) respectfully submits this notice of two recent decisions, each relevant to both its motion to dismiss and its opposition to Plaintiff’s motion for summary judgment.

First, on September 29, 2011 (after the close of briefing on the House’s motion to dismiss in this matter and after the House’s final submission in opposition to Plaintiff’s motion for summary judgment), the United States Court of Appeals for the Ninth Circuit issued the decision attached at Exhibit A. *See Log Cabin Republicans v. United States*, --- F.3d ----, Nos. 10-56634 & 10-56813, 2011 WL 4494225 (9th Cir. Sept. 29, 2011) (per curiam); *see also id.* at *5-10 (O’Scannlain, J., concurring). The *Log Cabin Republicans* decision and the concurring opinion thereto are relevant to the House’s arguments, including regarding the propriety of leaving political issues to the elected branches of government and the ability of homosexuals to

achieve gains through those branches. *See, e.g.*, Mem. of Law . . . in Supp. of . . . Mot. to Dismiss at 1-2, 43-45 (Aug. 1, 2011) (ECF No. 53); Mem. of Law in . . . Opp'n to Pl.'s Mot. for Summ. J. at 1, 12-21 (Aug. 1, 2011) (ECF No. 50).

Second, on September 28, 2011 (also after the close of briefing on the House's motion to dismiss in this matter and after the House's final submission in opposition to Plaintiff's motion for summary judgment), the United States District Court for the Central District of California issued the decision attached at Exhibit B, which dismisses a complaint that, like the instant one, challenged on equal protection grounds the constitutionality of Section 3 of the Defense of Marriage Act, 1 U.S.C. § 7. *See* In Chambers Order, *Lui v. Holder, et al.*, No. 2:11-cv-01267-SVW (JCGx) (C.D. Cal. Sept. 28, 2011). The *Lui* decision is relevant to the House's arguments regarding the applicable standard of equal protection scrutiny. *See, e.g.*, Mem. of Law in . . . Opp'n to Pl.'s Mot. for Summ. J. at 5-7 (Aug. 1, 2011) (ECF No. 50); Mem. of Law . . . in Supp. of . . . Mot. to Dismiss at 22-26 (Aug. 1, 2011) (ECF No. 53).

Respectfully submitted,

/s/ Paul D. Clement

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October 20, 2011

CERTIFICATE OF SERVICE

I certify that on October 20, 2011, I served one copy of Intervenor-Defendant's Notice of Recent Decisions by CM/ECF and by electronic mail (.pdf format) on the following:

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