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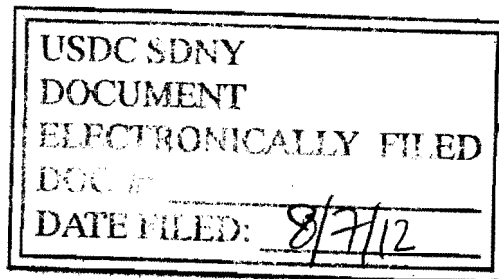
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May 31, 2012

VIA FACSIMILE AND HAND DELIVERY

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:

We write on behalf of plaintiff Edie Windsor to bring to the Court's attention the decision issued earlier today by the United States Court of Appeals for the First Circuit holding that Section 3 of the Defense of Marriage Act ("DOMA") is unconstitutional in a case that presents substantially similar facts and raises overlapping legal issues as the above-captioned matter. See *Massachusetts v. Dep't of Health and Human Servs.*, *Gill v. Office of Pers. Mgmt.*, Nos. 10-2204, 10-2207, 10-2214 (1st Cir. May 31, 2012).

In particular, in a unanimous opinion by Judge Boudin, the First Circuit held that the burdens imposed by Section 3 of DOMA "are comparable to those the [Supreme] Court found substantial in [*Dep't of Ag. v. Moreno*], 413 U.S. 528 (1973)], *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985)], and *Romer v. Evans*, 517 U.S. 620 (1996)]." *Id.* at 19. The First Circuit proceeded to reject each of the purported justifications for Section 3 of DOMA, holding "that the rationales offered do not provide adequate support for section 3 of DOMA." *Id.* at 28.

The Honorable Barbara S. Jones


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As a result of the enclosed opinion, as of today's date and since 2010 (the year in which the Complaint in the above-captioned matter was filed), every federal circuit, district, or bankruptcy court to have analyzed the constitutionality of DOMA has agreed that Section 3 of DOMA is unconstitutional for the very reasons asserted by Ms. Windsor. *See id.*; *Dragovich v. Dep't of Treasury*, No. C 10-1564 (CW), 2012 WL 1909603 (N.D. Cal. May 24, 2012); *Golinski v. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968 (N.D. Cal. 2012); *Gill v. Office of Pers. Mgmt.*, 699 F. Supp. 2d 374 (D. Mass. 2010); *In re Balas*, 449 B.R. 567 (Bankr. C.D. Cal. 2011).

As Your Honor is aware, and as addressed in the parties' respective cross-motions, the above decisions were issued in Circuits where precedent mandated that DOMA be evaluated under rational basis review. (*See Reply Mem. of Law in Supp. of Pl.'s Mot. for Summ. J. at 9-13.*) As Your Honor is also aware, no such precedent binds this Court, and as a result both the Department of Justice and Ms. Windsor have respectfully requested a decision from this Court finding that Section 3 of DOMA is subject to heightened judicial scrutiny. (*See id. at 13-24*; *Def. United States' Mem. of Law in Resp. to Pl.'s Mot. for Summ. J. and Intervenor's Mot. to Dismiss*; *Mem. of Law in Supp. of Pl.'s Mot. for Summ. J. at 10-31.*)

For the reasons stated in our letters to the Court dated March 29, 2012 and May 29, 2012, in which we and the Department of Justice respectfully requested an expeditious decision on the pending dispositive motions, which have been pending since September 15, 2011, with the utmost respect, we renew our request that the Court decide this matter as soon as practicable in light of the pressing nature of the issues of national concern before the Court.

Respectfully submitted,



Roberta A. Kaplan

Enclosure

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