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May 29, 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 a decision issued last week by Judge Claudia Wilken of the Northern District of California holding that Section 3 of the Defense of Marriage Act ("DOMA") is unconstitutional in a case that presents substantially similar facts and raises similar legal issues as the above-captioned matter currently pending before Your Honor. *See Dragovich* v. *Dep't of Treasury*, No. C 10-1564 (CW) (N.D. Cal. May 24, 2012).

In particular, after recounting the legislative history behind the denial of federal legal recognition for same-sex couples, *id.* at 6–10, the *Dragovich* court held that "animus toward, and moral rejection of, homosexuality and same-sex relationships are apparent in the Congressional record." *Id.* at 21. The court also dismissed each of BLAG's proffered rationales for Section 3 of DOMA as failing to satisfy rational basis scrutiny.

The court first held that "the preservation of marriage as an institution that excludes gay men and lesbians for the sake of tradition is not a legitimate governmental

interest" because "[u]nder equal protection jurisprudence, tradition is not a legally acceptable reason to prohibit a practice that historically has been the subject of social disapprobation." *Id.* at 22. Noting that DOMA "established an across-the-board federal definition of marriage limiting it to heterosexual couples, and preempt[ed] any opportunity to test the impact of state laws evolving to recognize same-sex marriage," the *Dragovich* court further held that Section 3 of DOMA was not "a cautious legislative step." *Id.* at 24. In addition, the court held that "[t]he desire to save money is not sufficient to justify § 3 of the DOMA" because "even crediting cost-savings as a conceivable policy goal, groups selected to bear the burden of legislative enactments to save money must be rationally, not arbitrarily, chosen." *Id.* at 26–27 (citations omitted). The court also rejected a purported interest in "uniformity in eligibility for federal benefits," holding that "[a]n enactment that precludes federal recognition of certain marriages because they involve same-sex couples cannot be justified as promoting uniformity where federal law otherwise accepts wide variation in state marriage law." *Id.* at 27–28. Finally, the court considered the purported rationale of encouraging "responsible procreation," and held that the relationship between DOMA and this supposed interest lacked a rational basis. *Id.* at 28–31.

The court also rejected BLAG's reliance on *Baker* v. *Nelson*, 409 U.S. 810 (1972), holding that "*Baker* does not foreclose Plaintiffs' equal protection claim." *Dragovich*, No. C 10-1564, at 15.

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), four federal district or bankruptcy courts have agreed that Section 3 of DOMA is unconstitutional for the very reasons asserted by Ms. Windsor. *See id.*; *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).

For the reasons stated in our letter to the Court dated March 29, 2012, in which we and the Department of Justice respectfully requested an expeditious decision on the pending dispositive motions, we respectfully renew our request that the Court decide this matter as soon as practicable.

Respectfully submitted,

Roberta Kaplan /NPK

Roberta A. Kaplan

Enclosure

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