

Office of the Attorney General
Washington, D. C. 20530

October 22, 2013

The Honorable John Boehner
Speaker
U.S. House of Representatives
Washington, DC 20515

Re: Cooper-Harris, et al. v. United States, No. 2:12-00887-CBM (C.D. Cal.)

Dear Mr. Speaker:

In accordance with 28 U.S.C. § 530D, I write to inform you that the Department of Justice has decided not to appeal the decision of the United States District Court for the Central District of California in the above-captioned case. A copy of the court's decision is enclosed.

Plaintiffs in this case are a same-sex couple legally married in the State of California, one of whom is a veteran. The Department of Veterans Affairs denied them certain spousal benefits, in accordance with three federal statutes—1 U.S.C. § 7, 38 U.S.C. § 101(3), and 38 U.S.C. § 101(31)—limiting the definitions of “spouse” and “surviving spouse” to “a person of the opposite sex.” Plaintiffs filed suit challenging the constitutionality of those statutes under the equal-protection component of the Fifth Amendment.

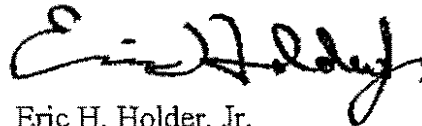
On February 24, 2012, Assistant Attorney General Weich sent you a letter informing you that, while the Department of Justice would remain in the case to represent the interests of the United States, it would not defend the constitutionality of the statutes against plaintiffs' equal-protection challenge. As I had previously explained in letters dated February 23, 2011, and February 17, 2012, the President and I had determined that 1 U.S.C. § 7 was unconstitutional as applied to same-sex couples legally married under state law, and I had made a corresponding determination that 38 U.S.C. §§ 101(3) and (31) were likewise unconstitutional as applied to such couples. The Bipartisan Legal Advisory Group (BLAG) intervened in this case to defend the constitutionality of the challenged statutes.

While plaintiffs' suit was pending, the Supreme Court considered a materially identical challenge to 1 U.S.C. § 7 and held that statute to be unconstitutional. See *United States v. Windsor*, 133 S. Ct. 2675 (2013). BLAG subsequently withdrew from this case, explaining to the district court that *Windsor* had resolved the merits of plaintiffs' challenge to 1 U.S.C. § 7 and that, in light of the opinion in *Windsor*, BLAG no longer would defend the challenged Title 38 provisions.

On August 29, 2013, the district court entered an order permanently enjoining the government "from relying on 38 U.S.C. §§ 101(3), (31) or . . . 1 U.S.C. § 7 to deny recognition of Plaintiffs' marriage recognized by the state of California." On September 4, 2013, I informed you by letter that the President had directed the Executive Branch to cease enforcement of the Title 38 provisions. In explaining the President's action, the letter observed that the district court in this case had concluded that "the exclusion of legally married same-sex spouses from veterans benefits is not rationally related to any military interest or other identified governmental purpose."

In light of the Supreme Court's decision in *Windsor*, the President's directive not to enforce the Title 38 provisions, and BLAG's withdrawal from the case, the Department of Justice has determined not to seek further review of the district court's decision. The time within which to file a notice of appeal is currently set to expire on October 28, 2013. Please do not hesitate to contact me if you have any questions.

Sincerely yours,



Eric H. Holder, Jr.
Attorney General

Enclosure