



May 9, 2012

Dear Representative:

RE: ACLU Urges NO Vote on Huelskamp Amendment to H.R. 5326, the Fiscal Year 2013 Commerce, Justice, Science, and Related Agencies Appropriations Act

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of individual liberty and justice embodied in the U.S. Constitution and Bill of Rights, we urge you to oppose and vote NO on the Huelskamp (R-KS) Amendment to H.R. 5326 the FY 2013 CJS Appropriations Act.

The Huelskamp Amendment would hinder Department of Justice (DOJ) attorneys from advising federal courts in ongoing DOMA litigation that heightened scrutiny is the appropriate standard of review for classifications based on sexual orientation and that, consistent with that standard, Section 3 of DOMA may not be constitutionally applied to same-sex couples whose marriages are legally recognized under state law.

In February 2011, DOJ, following a careful review and at the direction of President Obama, concluded that based on a number of factors, including a well-documented history of discrimination against lesbian, gay, and bisexual individuals in the U.S., classifications based on sexual orientation should be subject to heightened legal scrutiny. President Obama and DOJ concluded that Section 3 of DOMA, as applied to legally married same-sex couples, failed to meet the heightened scrutiny standard and was therefore unconstitutional and would no longer be defended by the Department.

At the time, Attorney General Holder explained "the Department has a longstanding practice of defending the constitutionality of duly-enacted statutes if reasonable arguments can be made in their defense, a practice that accords the respect appropriately due to a coequal branch of government. However, the Department in the past has declined to defend statutes despite the availability of professionally responsible arguments, in part because the Department does not consider every plausible argument to be a 'reasonable' one. . . . This is the rare case where the proper course is to forgo the defense of this statute. Moreover, the Department has declined to defend a statute 'in cases in which it is manifest that the President has concluded that the statute is unconstitutional,' as is the case here."¹

¹ Letter from Eric H. Holder Jr., Att'y Gen., to Hon. John A. Boehner, Speaker, U.S. House of Representatives, *Litigation Involving the Defense of Marriage Act* (Feb. 23, 2011), available at <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>.

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This decision propelled gay rights into the 21st century. The government's action recognized what organizations like the ACLU saw from DOMA's beginning in 1996 – that it is a gross violation of the Constitution's guarantee of equal protection before the law and a betrayal of American values of fairness, justice and dignity for all.

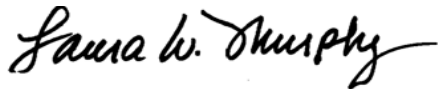
While the determination was made by President Obama and DOJ to no longer defend the constitutionality of Section 3 of DOMA, Congress was given a full opportunity to participate in the DOMA litigation, which the Republican majority on the Bipartisan Legal Advisory Group of the House of Representatives has since done. Further, while there are multiple legal challenges to DOMA working their way through the federal courts, it is still binding. To that end, the President has instructed Executive agencies to continue to comply with Section 3 of DOMA, consistent with the Executive's obligation to take care that the laws be faithfully executed, and there is no evidence that they are not fulfilling their duty.

The Huelskamp Amendment serves absolutely no purpose other than to score political points at the expense of gay and lesbian couples. We urge you to oppose and vote NO on this amendment. For questions, please contact Ian Thompson at (202) 715-0837 or ithompson@dcaclu.org.

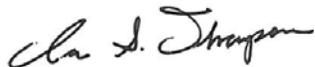
You may also find it helpful to read Attorney General Holder's letter to Congress on the administration's decision to no longer defend the constitutionality of Section 3 of DOMA at:

<http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>

Sincerely,



Laura W. Murphy
Director, Washington Legislative Office



Ian S. Thompson
Legislative Representative