PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K GARRISON (1946-1991)
RANDOLPH E PAUL (1946-1956)
SIMON H RIFKIND (1950-1995)
LOUIS S WEISS (1927-1950)
JOHN F WHARTON (1927-1977)

UNIT 3601, FORTUNE PLAZA OFFICE TOWER A
NO 7 DONG SANHUAN ZHONGLU
CHAO YANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U K
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE SUITE 200
POST OFFICE BOX 32
WILMINGTON DE 19899-0032
TELEPHONE (302) 655-4410

WRITER S DIRECT DIAL NUMBER
(212) 373-3086

WRITER'S DIRECT FACSIMILE
(212) 373-2037

WRITER'S DIRECT E-MAIL ADDRESS
rkaplan@paulweiss.com

MATTHEW W ABBOTT
ALLAN J ARFFA
ROBERT A ATKINS
DAVID J BALL
JOHN F BAUGHMAN
LYNN B BAYARD
DANIEL J BELLER
CRAIG A BENSON*
MITCHELL L BERG
MARK S BERGMAN
BRUCE BIRENBOIM
H CHRISTOPHER BOEHNING
ANGELO BONVINO
HENK BRANDS
JAMES L BROCHIN
RICHARD J BRONSTEIN
DAVID W BROWN
SUSANNA M BUERGEL
PATRICK S CAMPBELL*
JEANETTE K CHAN
YVONNE Y F CHAN
LEWIS R CLAYTON
JAY COHEN
KELLEY A CORNISH
CHRISTOPHER J CUMMINGS
CHARLES E DAVIDOW
DOUGLAS R DAVIS
THOMAS V DE LA BASTIDE III
ARIEL J DECKELBAUM
JAMES M DUBIN
ALICE BELISLE EATON
ANDREW J EHRLICH
GREGORY A EZRING
LESLIE GORDON FAGEN
MARC FALCONE
ANDREW C FINCH
BRAD J FINKELSTEIN
ROBERTO FINZI
PETER E FISCH
ROBERT C FLEDER
MARTIN FLUMENBAUM
ANDREW J FOLEY
HARRIS B FREIDUS
MANUEL S FREY
KENNETH A GALLO
MICHAEL E GERTZMAN
PAUL D GINSBERG
ADAM M GIVERTZ
ROBERT D GOLDBAUM
NEIL GOLDMAN
ERIC S GOLDSTEIN
ERIC GOODISON
CHARLES H GOOGE, JR
ANDREW G GORDON
NICHOLAS GROOMBRIDGE
BRUCE A GUTENPLAN
GAINES GWATHMEY, III
ALAN S HALPERIN
CLAUDIA HAMMERMAN
GERARD E HARPER
BRIAN S HERMANN
ROBERT M HIRSH
MICHELE HIRSHMAN
JOYCE S HUANG
DAVID S HUNTINGTON
MEREDITH J KANE
ROBERTA A KAPLAN
BRAD S KARP
JOHN C KENNEDY
ALAN W KORNBERG
DANIEL J KRAMER
DAVID K LAKHDHIR
STEPHEN P LAMB*
JOHN E LANGE
DANIEL J LEFFELL
XIAOYU GREG LIU
JEFFREY D MARELL
MARCO V MASOTTI
EDWIN S MAYNARD
DAVID W MAYO
ELIZABETH R McCOLM
MARK F MENDELSOHN
TOBY S MYERSON
JOHN E NATHAN
CATHERINE NYARADY
JOHN J O'NEIL
ALEX YOUNG K OH
BRAD R OKUN
KELLEY D PARKER
ROBERT P PARKER*
MARC E PERLMUTTER
MARK F POMERANTZ
VALERIE E RADWANER
CARL L REISNER
WALTER G RICCIARDI
WALTER RIEMAN
RICHARD A ROSEN
ANDREW N ROSENBERG
PETER J ROTHENBERG
JACQUELINE P RUBIN
RAPHAEL M RUSSO
JEFFREY D SAFERSTEIN
JEFFREY B SAMUELS
DALE M SARRO
TERRY E SCHIMEK
KENNETH M SCHNEIDER
ROBERT B SCHUMER
JAMES H SCHWAB
JOHN M SCOTT
STEPHEN J SHIMSHAK
DAVID R SICULAR
MOSES SILVERMAN
STEVEN SIMKIN
JOSEPH J SIMONS
MARILYN SOBEL
AUDRA J SOLOWAY
TARUN M STEWART
ERIC ALAN STONE
AIDAN SYNNOTT
ROBYN F TARNOFSKY
MONICA K THURMOND
DANIEL J TOAL
MARK A UNDERBERG
LIZA M VELAZQUEZ
MARIA T VULLO
LAWRENCE G WEE
THEODORE V WELLS, JR
BETH A WILKINSON
STEVEN J WILLIAMS
LAWRENCE I WITDORCHIC
MARK B WLAZLO
JULIA TM WOOD
JORDAN E YARETT
KAYE N YOSHINO
TONG YU
TRACEY A ZACCONE
T ROBERT ZOCHOWSKI, JR

*NOT ADMITTED TO THE NEW YORK BAR

July 18, 2011

BY FACSIMILE & HAND

Magistrate Judge James C. Francis
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 Francis:

Along with the American Civil Liberties Union and the New York Civil Liberties Union, we write on behalf of plaintiff Edith Schlain Windsor ("Ms. Windsor") in the above-captioned matter. As discussed with Your Honor last week, and as set forth below, we respectfully submit this letter in accordance with Fed. R. Civ. P. 37 to compel responses to certain of the interrogatories and requests for admission that we propounded on party-defendant, the Bipartisan Legal Advisory Group of the House of Representatives ("BLAG").

As Your Honor is aware, BLAG affirmatively sought to intervene in order to be a party in this case. Accordingly, the obligations that come with party status include good faith participation in and compliance with the discovery process. Indeed, BLAG served Ms. Windsor with its own document requests and interrogatories to which plaintiff has responded. Yet BLAG has refused to provide any meaningful response to 23 of plaintiff's 28 requests for admission and has provided no response whatsoever to any

of plaintiff's interrogatories. In attempting to justify its failure to respond, BLAG has not objected on the ground that plaintiff's requests seek information that is not relevant or is not reasonably calculated to lead to the discovery of admissible evidence. Nor has BLAG identified any substantial burden in responding to plaintiff's requests. Rather, BLAG appears to have simply made the tactical decision that it would prefer not to respond substantively to plaintiff's requests for written discovery. This, however, the Federal Rules of Civil Procedure do not permit. *See, e.g.*, Fed. R. Civ. P. 36(a)(4); 33(b)(4).

Although we have tried to resolve these issues without the assistance of the Court, BLAG has made it clear that it is not willing to provide further responses to Ms. Windsor's discovery requests. While plaintiff believes that responses are warranted to all of her requests for admission and interrogatories, Ms. Windsor moves now to compel responses only to certain of her discovery requests that are most relevant to this case because she does not wish to burden the Court and because she is eager to have this case resolved as expeditiously as possible in light of her advanced age and serious health concerns.[1]

Relevant Background

Ms. Windsor filed this action against the United States on November 9, 2010 asserting that the federal government's refusal to apply the estate tax marital deduction to the estate of her late spouse, Thea Spyer, due to the operation of the Defense of Marriage Act, 1 U.S.C. § 7 ("DOMA"), discriminates against her on the basis of her sexual orientation in violation of the equal protection component of the Fifth Amendment to the United States Constitution. (Am. Compl. at ¶¶ 84–85 (Feb. 2, 2011).) The Department of Justice (the "DOJ") appeared on behalf of the United States, but ultimately advised the Court on February 25, 2011 that it would "cease defending the constitutionality" of Section 3 of DOMA. (Notice to the Court by Def. United States of America (Feb. 25, 2011) ("2/25/11 Notice"), Doc No. 10, at 1.) As the DOJ stated in its letter, the Attorney General and the President have concluded that heightened scrutiny is the appropriate standard of review for classifications, like the one at issue here, based on sexual orientation, and that, consistent with that standard, Section 3 of DOMA is unconstitutional as applied to lesbians like Ms. Windsor whose marriages are legally recognized under state law.

Following the United States' submission of the 2/25/11 Notice, on April 18, 2011, BLAG filed a motion to intervene as a party for the "limited purpose of defending the constitutionality of Section [3] of the Defense of Marriage Act from attack on the ground that it violates the equal protection component of the Fifth Amendment Due Process Clause." (Mot. to Intervene at 1, Apr. 18, 2011, Doc. No. 12) (internal citation omitted).) While the DOJ asked that BLAG's involvement in the case be limited to making substantive arguments in defense of Section 3 of DOMA, BLAG opposed that

---

[1] As the Court is aware, discovery in this case closed on July 11 and BLAG is scheduled to file its opposition to Ms. Windsor's motion for summary judgment and its motion to dismiss on August 1, 2011.

request, arguing that doing so would "reduce [BLAG] to the status of *amicus curiae*," and sought status as a party-defendant. (Reply Mot. to Intervene at 2, (May 12, 2011, Doc. No. 23).) After briefing and argument between BLAG and the DOJ on this issue, this Court ultimately granted BLAG's motion to intervene as a party-defendant on June 2, 2011.

On May 11, 2011, this Court entered a revised scheduling order (the "Scheduling Order"), providing that BLAG could begin taking depositions of plaintiff's experts beginning May 23, 2011, that both parties could exchange written discovery requests by June 3, 2011, and that fact and expert discovery would be completed by July 11, 2011. In accordance with that Scheduling Order, plaintiff and BLAG exchanged discovery requests on June 3, 2011. Specifically, plaintiff served BLAG with Requests for Admission (the "RFAs") and Interrogatories (the "interrogatories"). Plaintiff served her written responses and objections and produced documents in response to BLAG's discovery requests on July 1, 2011.[2] BLAG served its written responses and objections to plaintiff's requests on July 8, 2011. Relying primarily on three boilerplate objections that plaintiff's requests were (1) vague, (2) involved "sweeping generalizations," and (3) sought legal conclusions, BLAG has refused to answer 23 out of 28 of plaintiff's RFAs and all of her Interrogatories. (Copies of BLAG's responses and objections to plaintiff's RFAs and Interrogatories are attached hereto as Exhibits A and B.)

On July 10, 2011, counsel for Ms. Windsor asked counsel for BLAG to participate in a meet-and-confer session regarding what plaintiff viewed as BLAG's inadequate discovery responses. On July 12, 2011, in advance of the parties' scheduled meet-and-confer, plaintiff sent BLAG a letter identifying the significant deficiencies in its written objections and responses to her discovery requests. (A copy of plaintiff's July 12 letter is attached hereto as Exhibit C.)[3] The parties participated in a telephonic meet-and-confer the following day, on July 13, 2011. During that discussion, counsel for BLAG stated that it had no intention of supplementing its responses and that BLAG would "stand by" its objections. It thus became clear that the parties were at an impasse, thereby necessitating this motion.

Through this motion, Ms. Windsor respectfully requests an order compelling BLAG to respond substantively to plaintiff's RFAs and interrogatories concerning the following five matters that plaintiff believes are clearly relevant to the constitutional issues presented in this case:

---

[2] Notably, much of the discovery BLAG sought—for example, plaintiff's divorce decree from her earlier, brief marriage to a man in Philadelphia in 1951—are entirely irrelevant to the issues in this case. Nevertheless, in an effort to avoid any discovery disputes, plaintiff in good faith responded to each of BLAG's requests and produced the documents requested.

[3] BLAG has not substantively responded to plaintiff's July 12 letter, except to contest plaintiff's characterization that it had granted BLAG an extension with respect to the date it submitted its discovery responses. (*See* A copy of H. Christopher Bartolomucci, Esq.'s email to Roberta A. Kaplan, Esq., dated July 12, 2011, attached hereto as Exhibit D.)

- whether, if Thea Spyer had been married to a man instead of a woman, her estate would have qualified for the estate tax marital deduction (RFA No. 1);
- the history of discrimination and unequal treatment experienced by lesbians and gay men (RFA Nos. 3, 4, 5, 8, & 9);
- the connection, if any, between sexual orientation and a person's ability to perform in or contribute to society (RFA Nos. 10, 11, & 12);
- the ability of lesbians and gay men as parents to care for their children (RFA Nos. 14, 15, 16, 17, & 18); and
- what, if anything, are either the compelling or legitimate justifications for the unequal treatment that results from Section 3 of DOMA (Interrogatory Nos. 1 and 3).

Argument

It is, of course, black letter law that a party is required to respond to discovery requests "reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). "Generally speaking, discovery is limited only when it is 'sought in bad faith, to harass or oppress the party subject to it, when it is irrelevant, or when the examination is on matters protected by a recognized privilege.'" *Trilegiant Corp.* v. *Sitel Corp*, No. 09 Civ. 6492, 2011 WL 2693299, at * 3 (S.D.N.Y. July 1, 2011) (quoting *In re Six Grand Jury Witnesses*, 979 F.2d 939, 943 (2d Cir. 1992)).

Thus, if a party has an objection to a request for admission or an interrogatory, it must state its grounds for objecting "in detail" and "with specificity." Fed. R. Civ. P. 36(a)(4); Fed. R. Civ. P. 33(b)(4); *see also United States* v. *Taylor*, 166 F.R.D. 356, 363 (M.D.N.C. 1996) ("Rule 36 requires substantial compliance. A party must give reasons for a claimed inability to respond.") Mere boilerplate objections are not sufficient. Rather, Rule 36(a)(4) requires that if a party refuses to admit an RFA, "the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it." Indeed, the fact that a party has objected to a request does not justify its refusal to answer the request; once the party has established the grounds for its objection, it must still make a good faith effort to answer the request. *See, e.g.*, *Audiotext Commc'ns Network, Inc.* v. *U.S. Telecom, Inc.*, NO. CIV. A. 94-2395-GTV, 1995 WL 625744, at *3 (D. Kan. Oct. 5, 1995) ("an ambiguous [request] should be answered as far as possible with appropriate qualification or explanation, rather than objected to entirely"). For this reason, "[t]he burden is upon the party opposing discovery to show that discovery should not be permitted." *In re Harcourt Brace Jovanovich, Inc. Sec. Litig.*, 838 F. Supp. 109, 114 (S.D.N.Y. 1993).

As set forth below, BLAG's objections to plaintiff's discovery requests do not satisfy its burden to show that it should somehow be excused from either admitting or denying Ms. Windsor's RFAs or answering her Interrogatories. Accordingly, while "[a] party should not have to resort to bringing a motion to compel in order to obtain

compliance with reasonable discovery requests," BLAG has given plaintiff no other choice here. *Factor* v. *Mall Airways, Inc.*, 131 F.R.D. 52, 54 (S.D.N.Y. 1990).

BLAG's Responses to Plaintiff's Requests for Admission

1. Whether the gender of Thea Spyer's spouse was dispositive of whether her estate qualified for the estate tax marital deduction. BLAG has refused to provide a complete answer to RFA No. 1, which seeks an admission that, if at the time of her death, Thea Spyer had been married to a man, instead of a woman, her estate would have qualified for the estate tax marital deduction pursuant to 26 U.S.C. § 2056(a).

This information, which lies at the heart of Ms. Windsor's claim, is hardly subject to legitimate dispute. Plaintiff alleges that the sole reason why Ms. Spyer's estate did not qualify for the marital deduction is because of DOMA, which prevents the federal government from respecting the marriages of lesbians and gay men. Indeed, the discovery BLAG has sought from plaintiff goes directly to this issue, including discovery relating to the validity of her marriage to Thea Spyer and her estate tax filing.

Nevertheless, BLAG claims to "lack[] sufficient knowledge or information" to admit or deny this RFA. This objection lacks merit. In response to BLAG's own document requests, plaintiff has produced documents concerning the estate tax filing for Ms. Spyer, including the Claim for Refund and Request for Abatement (Form 843) filed with the IRS, dated April 7, 2010. Those filings contain sufficient information for BLAG to determine the value of Ms. Syper's estate and the applicability of the estate tax marital deduction. BLAG has not provided any other reason, and plaintiff can think of none, why it cannot simply admit that the estate tax marital deduction would apply if Ms. Spyer had been married to a man, instead of a woman.

2. Whether lesbians and gay men have been subjected to unequal treatment and discrimination. BLAG has also improperly refused to provide any response to RFA Nos. 3, 4, 5, 6, 7, 8, and 9, which seek admissions that in the twentieth century and continuing to the present, lesbians and gay men have experienced unequal treatment and have been discriminated against because of their sexual orientation, including by having been denied jobs and having been terminated from jobs as a result of their sexual orientation.

Like the question of the estate tax marital deduction, the question of whether lesbians and gay men have suffered a history of discrimination is highly relevant to this case since, among other things, it pertains to the level of scrutiny that it is appropriate for the Court to apply in determining the constitutionality of DOMA. *See Kerrigan* v. *Comm'r of Pub. Health*, 957 A.2d 407, 426 (Conn. 2008) (explaining U.S. Supreme Court's jurisprudence); *see also United States* v. *Virginia*, 518 U.S. 515, 532–33 (1996); *Mass. Bd. of Ret.* v. *Murgia*, 427 U.S. 307, 313 (1976) (per curiam). Nonetheless, BLAG has refused to answer each of these RFAs on the purported ground that phrases like "history of unequal treatment," "subjected to discrimination," "perceived stereotyped characteristics associated with being lesbian or gay," "denied jobs and

opportunities," and "terminated from jobs and other opportunities" are somehow "undefined and vague." These objections, however, are difficult to credit.

As an initial matter, there is clearly nothing even remotely vague about terms like "discrimination" "unequal treatment," "stereotypes," "denied jobs," or "terminated from jobs." *See Roesberg* v. *Johns-Manville Corp.*, 85 F.R.D. 292, 298 (E.D. Pa. 1980) ("The requirement that interrogatories be definite is satisfied so long as it is clear what the interrogatory asks."). These phrases are not part of some technical or scientific jargon, are common English words, and mean precisely what their plain language indicates. *See, e.g.*, *Compagnie Francaise d'Assurance Pour le Commerce Exterieur* v. *Phillips Petroleum Co.*, 105 F.R.D. 16, 43 (S.D.N.Y. 1984) ("Defendant argues that the ambiguity of the interrogatories precludes it from responding. The Court directs defendant, in answering the interrogatories, to attribute to any terms which it thinks are ambiguous their common, everyday meaning."). BLAG cannot simply declare that these RFAs are vague, without explaining how or why, or what is supposedly so vague about them. *See, e.g. Doe* v. *Mercy Health Corp.*, Civ. A. No. 92-6712, 1993 WL 377064, at *13 (E.D.Pa. Sept. 15, 1993) (holding, that, absent a showing of "in what way the RFAs are vague," the RFAs require an admission, denial or qualified admission).

Second, because these concepts are central to the issues in this case, plaintiff has produced at least two expert witnesses who have testified about them at length. (*See, e.g.*, Segura Dep. 125:6–12; 22–24, July 8, 2011 (providing examples of "stereotypes of gays and lesbians"); Chauncey Dep. 12:17-13:11, July 12, 2011 ("[A]s I explain in the affidavit, there is a long history of vilification of and criminalization of homosexual behavior, or behavior that today we would call homosexual . . . . As a matter of singling out homosexuals as a group of people to classify and discriminate against on the basis of their status as homosexuals, that is primarily a product of the 20th century.") And counsel for BLAG has used these same terms in questioning these experts at their depositions. Segura Dep. 151:8–11 ("discrimination against gays and lesbians").[4] What is more, BLAG has used the very terms it now purports are "vague" in the briefings it recently submitted in a related case, *Golinski* v. *U.S. Office of Pers. Mgmt.*, No. 3:10-cv-00257-JSW (N.D. Cal.). (*See, e.g.*, Mem. in Supp. of Mot. to Dismiss Pl.'s Second Am. Compl. at 22 (N.D. Cal. June 3, 2011), 2011 WL 2284303 ("unequal treatment" (quoting *In re Kandu*, 315 B.R. 123, 143 (Bankr. W.D. Wash. 2004)).

Moreover, it is simply not plausible that the House of Representatives does not understand what the term "discrimination" means in light of the fact that there are numerous federal statutes directly addressed to prohibiting discrimination (albeit none that would protect gay men and lesbians). *See, e.g.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e. Indeed, as our expert witness has testified, the federal government has repeatedly singled out lesbians and gay men for unequal treatment: for example, the military began systematically to exclude persons from service on the basis of their identity as homosexuals during World War II; President Eisenhower signed an executive order banning lesbians and gay men from federal employment or employment

---

[4] Notably, BLAG has not designated any expert or fact witnesses to contest the history of discrimination against lesbians and gay men in this country.

by companies with federal contracts; and Congress formalized the exclusion of lesbians and gay men from military service under the "Don't Ask, Don't Tell" policy. Chauncey Aff., ¶¶ 39, 43, 45–48, 78, 99. Indeed, in response to plaintiff's RFA No. 6, even BLAG has admitted that "some lesbians and gay men have been subjected to violence in the United States because of their sexual orientation." (Ex. A at 4–5.)

BLAG has further asserted that RFA Nos. 3, 4, 5, 8, and 9 improperly require it to admit or deny a "sweeping generalization encompassing more than a century of American history." Plaintiff's RFAs are not abstract "generalizations," but instead seek information concerning actual events that occurred during the course of the twentieth century. Moreover, simply dismissing these RFAs as "sweeping generalizations" is not a proper objection given the fact that the discrimination against lesbians and gay men continued throughout the twentieth century. If, however, BLAG wants to admit that such discrimination occurred for shorter periods of time, for example, from 1900 through 1995, it is of course free to do so. *See In re Harcourt Brace Jovanovich, Inc. Sec. Litig.*, 838 F. Supp. 109, 114 (S.D.N.Y. 1993).

Finally, BLAG has objected to RFA Nos. 4, 5, 8, and 9 on the ground that they "seek admissions as to legal conclusions." However, these requests seek factual information concerning the history of discrimination suffered by lesbians and gay men, not legal conclusions. *See Miller* v. *Holzmann*, 240 F.R.D. 1, 4 (D.D.C. 2006) ("A request may be said to call for a legal conclusion when it purports to require a party to admit, for example, that a statute or regulation imposes a particular obligation."). The mere fact that an admission sought may bear on legal issues in this case does not render an RFA objectionable. "A party may serve on any other party a written request to admit . . . the truth of any matters within the scope of Rule 26(b)(1) relating to . . . *facts, the application of law to fact, or opinions about either*." Fed. R. Civ. P. 36(a)(1). *See also* Fed. R. Civ. P. 33(a)(2) ("[a]n interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact . . ."); *First Options of Chicago, Inc.* v. *Wallenstein*, No. CIV. A. 92-5770, 1996 WL 729816, at *3 (E.D. Pa. Dec. 17, 1996) ("Requests for admission are not objectionable even if they require opinions or conclusions of law, as long as the legal conclusions relate to the facts of the case." (internal citation omitted).)

3. Whether sexual orientation is unrelated to a person's ability to perform in or contribute to society. BLAG improperly has refused to respond to RFA Nos. 10, 11, and 12, which seek admissions that sexual orientation is unrelated to an individual's ability to perform in or contribute to society, and that in the absence of unequal treatment and discrimination, lesbians and gay men are generally no less able to achieve career and professional goals than heterosexual women and men.

Like the history of discrimination, information concerning the ability of lesbians and gay men to contribute to society is relevant to the type of scrutiny that the Court will apply to classifications based on sexual orientation. *See, e.g.*, *Frontiero* v. *Richardson*, 411 U.S. 677, 686 (1973) ("[W]hat differentiates sex from such non-suspect statuses as intelligence or physical disability, and aligns it with the recognized suspect criteria, is that the sex characteristic frequently bears no relation to ability to perform or

contribute to society."); *Mass. Bd. of Ret.* v. *Murgia*, 427 U.S. 307, 313 (1976) (heightened scrutiny is required when a group has "been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of [the] abilities [of the group's members]"). Once again, however, BLAG has objected to RFA Nos. 10, 11 and 12, and failed to provide any response to those RFAs on the ground that terms such as "ability to perform in society" and "ability to contribute to society" are so "vague and undefined" so as to render the questions unanswerable. For the reasons stated above, however, BLAG's objection does not justify its failure to provide any substantive response whatsoever. Moreover, BLAG's objection has no merit; these phrases have clear, unmistakable meanings as understood by the many courts that have used this language in discussing the heightened scrutiny standard. *See, e.g.*, *In re Balas*, No. 2:11-bk-17831 (TD), 2011 WL 2312169, at *8 (Bankr. C.D. Cal. June 13, 2011) (holding DOMA does not withstand heighten scrutiny in part because "[s]exual orientation is irrelevant to an individual's ability to contribute to society"); *City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 441 (1985) ("Because illegitimacy is beyond the individual's control and bears 'no relation to the individual's ability to participate in and contribute to society,' official discriminations resting on that characteristic are also subject to somewhat heightened review." (internal citation omitted).) Peplau Dep. 16:17–17:4, June 17, 2011 ("there is nothing inherent to sexual orientation that links it to psychopathology or to a person's ability to function in society").

BLAG has also objected to RFA Nos. 10 and 11, which asks BLAG to admit "that sexual orientation is unrelated to an individual's ability to perform in society" and "is unrelated to an individual's ability to contribute to society" on the ground that they "seek an admission as to a legal conclusion." However, plaintiff seeks factual, not legal information. And again, the fact that these issues bear on the legal issues in this case does not render these RFAs unanswerable. *See, e.g.*, *Rhone-Poulenc Rorer, Inc.* v. *Home Indem. Co.*, Civ. A. No. 88-9752, 1992 WL 394425, at *7 (E.D. Pa. Dec. 28, 1992) ("The application of law to fact is a perfectly acceptable matter of which to request an admission.").[5]

Once again, BLAG has a choice—it can either admit or it can deny that a person's sexual orientation has nothing whatsoever to do with that individual's ability to perform in or contribute to society. But what BLAG cannot do under the Federal Rules of Civil Procedure is what it has attempted to do here—simply ignore the question by asserting nothing more than boilerplate objections.

4. Whether lesbians and gay men are as capable of caring for their children as heterosexual parents. BLAG has refused to respond to RFA Nos. 14, 15, 16, 17, and 18, which seek admissions that lesbians and gay men are generally no less

---

[5] BLAG has also objected that RFA No. 12, which requests an admission that "in the absence of the kinds of unequal treatment, discrimination, harassment, and stereotyping referenced above, lesbians and gay men are generally no less able to achieve career goals and other forms of professional success than heterosexual men and women," requires it to "admit or deny a sweeping generalization." As discussed above, this objection provides no basis for BLAG's failure to respond.

capable of adequately caring for their children than heterosexual parents and that lesbians and gay men are just as capable of raising psychologically well-adjusted children as heterosexual parents.

The ability of lesbians and gay men to care for their children, as BLAG is no doubt aware, is one of the most widely-cited purported justifications for DOMA. H.R. Rep. 104-664, at 13 (1996). Indeed, in its brief in the *Golinski* case referenced above, BLAG itself made arguments about parenting as one of the key justifications for DOMA. *Golinski Mot. To Dismiss* at 5–6, 26–27.

BLAG has objected to RFA Nos. 14 through 18 and has provided no response on the ground that the phrases "generally no less capable of forming and maintaining close family relationships," "generally no less capable of loving, nurturing, and supporting," "generally no less able to adequately care for," "generally no less capable of making good decisions," "psychologically well-adjusted," and "child outcomes" are all either too "vague" or too "vague and undefined." To the contrary, however, these phrases are again clear, specific, in general usage in the English language, and have been defined and discussed extensively by plaintiff's expert witnesses. For example, Professor Michael Lamb testified at his deposition in this case that "there is no difference in children's adjustment depending upon the sexual orientation of their parents," Lamb Dep. 32:2–4, June 24, 2011, and "what determines whether or not children are adjusted is not the family structure but it's the process." Lamb Dep. 41:4–7; *see also* Lamb Dep. 46:22–23 ("capacity to care for and look after and nurture this young child"); 76:12–17 ("the adjustment of children is affected not by the sexual orientation of family structure but by the family process variables"). BLAG, too, has used this terminology in asking Professor Lamb questions at his deposition including "[a]re those the only factors that affect child adjustment?" Lamb Dep. 39:4–5; *see also*, Lamb Dep. 54:21–25 ("outcomes for children . . . adjustment outcomes"); 59:21–22 ("child adjustment").

BLAG has objected to RFA Nos. 14 through 18 on the ground that they call on it to admit or deny a "sweeping generalization." As set forth above, this too is an invalid objection.[6] Although, unlike plaintiff, BLAG has offered no expert testimony in this regard, if BLAG wants to somehow qualify its admission or denial of these RFAs by asserting that only *some* gay and lesbian parents are as good parents as heterosexual parents, it is of course free to do so.

---

[6] BLAG has objected to RFA No. 17, which seeks an admission that "lesbians or gay men are no less able to raise psychologically well-adjusted children," on the purported ground that it fails to indicate "the group(s) to which lesbians and gay men are to be compared." As is inferable from all of the other, related questions which explicitly state it—and indeed from the entire subject matter of the instant litigation—RFA No. 17 calls for a comparison of lesbian and gay men to heterosexual parents.

BLAG's Responses to Plaintiff's Interrogatories

5. The justifications for Section 3 of DOMA. BLAG has refused to respond to Interrogatory Nos. 1 and 3, which seek answers to what, if anything, BLAG contends are the compelling or legitimate justifications or government interests rationally advanced by or related to Section 3 of DOMA.[7]

As the Court is no doubt aware, these interrogatories go to the very heart of this case. In order to survive summary judgment and demonstrate that the unequal treatment suffered by Ms. Windsor does not offend the equal protection provisions of the U.S. Constitution, BLAG must demonstrate that Section 3 of DOMA is either rationally related to a legitimate government interest or that Section 3 of DOMA serves a compelling government interest and is narrowly tailored to further that interest. In order to do so, of course, BLAG will have to proffer at least some specific government interests that are allegedly related to or being advanced by DOMA. It simply cannot prevail in this case without identifying such interests. Plainly, therefore, the question of what interests are served by DOMA is directly relevant to the issues in this case. Furthermore, BLAG is uniquely positioned to provide this discovery since it purports to represent the U.S. House of Representatives, which, of course, enacted DOMA in the first place in 1996.

That is why BLAG's responses to Interrogatory Nos. 1 and 3 are so perplexing. BLAG has objected to Interrogatory No. 3, for example, on the grounds that "it would be unduly burdensome to identify every conceivable rational basis supporting Section 3 of DOMA." Plaintiff is hard pressed to think of any burden to BLAG in detailing in an interrogatory response the justifications for DOMA given that it has chosen to intervene in order to defend DOMA's constitutionality. And, even if there were some burden (which there is not), the fact that BLAG claims to be unable to identify every basis for DOMA certainly does not provide a basis for BLAG to refuse to provide *any* basis for DOMA that it intends to argue in this case.[8]

* * *

---

[7] BLAG objected to Interrogatories 1, 2 and 3 on the purported grounds that a "response is not required at this time, before the conclusion of discovery." During the meet-and-confer on July 13, 2011, counsel for plaintiff asked counsel for BLAG whether it would answer these discovery requests now since all discovery has ended, but was told that BLAG is relying on its other objections and will not supplement its response.

[8] BLAG has similarly objected to Interrogatory No. 1 on the purported grounds that the Interrogatory "assumed the legal conclusion that Congress required a compelling justification to enact Section 3." This objection is meritless. The interrogatory plainly contains no such assumption. BLAG also has refused to respond to these requests on purported grounds of vagueness and overbreadth. As discussed above, these objections are all without merit.

For the foregoing reasons, plaintiff respectfully requests that the Court grant its motion to compel BLAG to respond to plaintiff's RFAs 1, 3, 4, 5, 8, 9, 10, 11, 12, 14, 15, 16, 17, and 18 and to Interrogatories 1 and 3.

Respectfully submitted,

Roberta A. Kaplan

cc (by email): James Esseks, Esq.
H. Christopher Bartolomucci, Esq.
Paul D. Clement, Esq.
Jean Lin, Esq.

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EDITH SCHLAIN WINDSOR, Plaintiff, v. UNITED STATES, *et al.*, Defendants.	)	No. 10 Civ. 8435 (BSJ) (JCF)

THE BIPARTISAN LEGAL ADVISORY GROUP OF THE U.S. HOUSE OF REPRESENTATIVES' OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR ADMISSION

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Intervenor-Defendant The Bipartisan Legal Advisory Group of the U.S. House of Representatives ("Defendant") objects and responds to Plaintiff's First Requests for Admission ("Requests") as follows:

GENERAL OBJECTIONS AND RESPONSES

1. Defendant objects to the Requests to the extent that they purport to impose any requirement or discovery obligation on Defendant beyond those set forth in the Federal Rules of Civil Procedure.

2. Defendant objects to the Requests to the extent they seek information or documents protected by the attorney-client privilege, the attorney work-product doctrine, the Speech or Debate Clause of the United States Constitution, Art. I, § 6, cl. 1, or any other applicable protection or claim of privilege. The responses that follow encompass responsive, non-privileged, non-exempt information and documents. Any disclosure of privileged or

confidential information or documents is not intended to waive any applicable privileges or protections.

3. Defendant objects to the Requests to the extent that they seek information or documents not relevant to the claims or defenses in this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendant objects to the Requests to the extent they seek information or documents already known to Plaintiff, in the possession, custody or control of Plaintiff, previously filed with the Court in this litigation, or otherwise available through or from a more convenient, less burdensome, or less expensive source.

5. Defendant objects to the Requests to the extent they are unreasonably cumulative or duplicative; cause annoyance, embarrassment, oppression, undue burden or expense; or are onerous, uncertain, or vague. Defendant further objects to these interrogatories to the extent they use terms that are not defined or understood, or are vaguely or ambiguously defined, and therefore fail to identify with reasonable particularity the information sought. Defendant will not speculate as to the meaning to ascribe to such terms.

6. Defendant has conducted a reasonable investigation concerning the information sought by the Requests and objects to the extent they seek to require Defendant to maintain or obtain information beyond that available through reasonable investigation and/or in the time permitted for these responses. In addition, Defendant continues to search for additional information. Defendant reserves the right to amend, supplement, or modify these responses, if necessary, to reflect additional responsive information or documents as they become known or available.

7. Each of Defendant's responses to the Requests is subject to the General Objections set forth herein. The assertion of the same, similar, or additional objections in the specific responses set forth below, or the failure to assert any additional objections, does not waive any of Defendant's General Objections.

8. Defendant objects to Instruction No. 5, which purports to require a detailed explanation and the identification of factual bases and documents for each denial or qualification. Instruction No. 5 purports to impose requirements beyond those set forth in Rule 36 of the Federal Rules of Civil Procedure.

SPECIFIC OBJECTIONS AND RESPONSES

1. Admit that if, at the time of her, death, Thea Spyer had been married to a man instead of a woman, who was a U.S. citizen and who survived Thea Spyer's death, her estate would have qualified for the estate tax marital deduction, 26 U.S.C. § 2056(a), and would not have been liable for any federal estate tax.

Response: Subject to and without waiving its General Objections, Defendant admits that otherwise qualified opposite-sex spouses may qualify for the estate tax marital deduction in 26 U.S.C. § 2056(a). Defendant further responds that it is without sufficient knowledge or information to admit or deny whether this hypothetical estate would have been entitled to the estate tax marital deduction.

2. Admit that Exhibit A, attached hereto, is a true and correct copy of the Congressional Budget Office's report dated June 21, 2004 entitled "The Potential Budgetary Impact of Recognizing Same-Sex Marriages."

Response: Admit.

3. Admit that in the twentieth century and continuing to the present, lesbians and gay men have experienced a history of unequal treatment in the United States because of their sexual orientation.

Response: Defendant objects to the Request on the ground that the phrase "history of unequal treatment" is undefined and vague, and on the ground that the Request asks Defendant to admit or deny a sweeping generalization encompassing more than a century of American history.

4. Admit that in the twentieth century and continuing to the present, lesbians and gay men have been subjected to discrimination in the United States because of their sexual orientation.

Response: Defendant objects to this Request on the ground that the phrase "subjected to discrimination" is undefined and vague, and on the ground that the Request asks Defendant to admit or deny a sweeping generalization encompassing more than a century of American history. Defendant further objects to the Request to the extent it seeks an admission as to a legal conclusion.

5. Admit that in the twentieth century and continuing to the present, lesbians and gay men have been subjected to discrimination in the United States because of their perceived stereotyped characteristics associated with being lesbian or gay.

Response: Defendant objects to this Request on the ground that the phrases "subjected to discrimination" and "their perceived stereotyped characteristics associated with being lesbian or gay" are vague and on the ground that the Request asks Defendant to admit or deny a sweeping generalization encompassing more than a century of American history. Defendant further objects to the Request to the extent it seeks an admission as to a legal conclusion.

6. Admit that in the twentieth century and continuing to the present, lesbians and gay men have been subjected to violence in the United States because of their sexual orientation.

Response: Defendant objects to this Request on the ground that the Request asks Defendant to admit or deny a sweeping generalization encompassing more than century of American history. Subject to and without waiving the General Objections, Defendant admits that in the twentieth

century and thereafter, some lesbians and gay men have been subjected to violence in the United States because of their sexual orientation. Defendant does not admit that all or most lesbians and gay men in the United States have been subjected to violence because of their sexual orientation, in the twentieth century or at any other time. Nor does Defendant admit that the amount of violence against lesbians and gay men is the same in 2011 as it was in years or decades past.

7. Admit that in the twentieth century and continuing to the present, lesbians and gay men have been harassed in the United States because of their sexual orientation.

Response: Defendant objects to this Request on the ground that the term "harassed" is vague and undefined and on the ground that the Request asks Defendant to admit or deny a sweeping generalization encompassing more than century of American history. Defendant further objects to the extent the Request seeks an admission as to a legal conclusion.

8. Admit that in the twentieth century and continuing to the present, lesbians and gay men have been denied jobs and other opportunities in the United States as a result of their sexual orientation.

9. Admit that in the twentieth century and continuing to the present, lesbians and gay men have been terminated from jobs and other opportunities in the United States as a result of their sexual orientation.

Response: Defendant objects to Requests 8 and 9 on the ground that the terms "denied jobs and other opportunities" and "terminated from jobs and other opportunities" are vague and undefined and on the ground that the Requests ask Defendant to admit or deny sweeping generalizations encompassing more than century of American history. Defendant further objects to the extent the Requests seek admissions as to legal conclusions.

10. Admit that sexual orientation is unrelated to an individual's ability to perform in society.

Response: Defendant objects to this Request on the ground that the phrase "ability to perform in society" is vague. Defendant further objects to the extent that the Request seeks an admission as to a legal conclusion.

11. Admit that sexual orientation is unrelated to an individual's ability to contribute to society.

Response: Defendant objects to this Request on the ground that the phrase "ability to contribute to society" is vague and undefined. Defendant further objects to the extent that the Request seeks an admission as to a legal conclusion.

12. Admit that in the absence of the kinds of unequal treatment, discrimination, harassment and stereotyping referenced above, lesbians and gay men are generally no less able to achieve career goals and other forms of professional success than heterosexual men and women.

Response: Defendant objects to this Request on the ground that it references prior Requests containing vague and undefined terms, *see* Responses to Requests 3, 4, 5, and 7, and on the ground that the phrase "generally no less able to achieve career goals and other forms of professional success than heterosexual men and women" is vague. Defendant further objects on the ground that the Request asks Defendant to admit or deny a sweeping generalization.

13. Admit that same-sex couples are generally no less capable of forming and maintaining close family relationships than opposite-sex couples.

Response: Defendant objects to this Request on the ground that the phrase "generally no less capable of forming and maintaining close family relationships" is vague and on the ground that the Request asks Defendant to admit or deny a sweeping generalization.

14. Admit that lesbians and gay men are generally no less capable of loving, nurturing, and supporting their children than heterosexual men and women.

Response: Defendant objects to this Request on the ground that the phrase "generally no less capable of loving, nurturing, and supporting" is vague and on the ground that the Request asks Defendant to admit or deny a sweeping generalization.

15. Admit that lesbians and gay men are generally no less able to adequately care for their children than heterosexual men and women.

Response: Defendant objects to this Request on the ground that the phrase "generally no less able to adequately care for" is vague and on the ground that the Request asks Defendant to admit or deny a sweeping generalization.

16. Admit that same-sex couples are generally no less capable of making good decisions regarding child rearing than opposite-sex couples.

Response: Defendant objects to this Request on the ground that the phrase "generally no less capable of making good decisions" is vague and on the ground that the Request asks Defendant to admit or deny a sweeping generalization.

17. Admit that lesbians or gay men are no less able to raise psychologically well-adjusted children.

Response: Defendant objects to this Request on the ground that the term "psychologically well-adjusted" is vague and undefined and on the ground that the Request asks Defendant to admit or deny a sweeping generalization. Defendant further objects on the ground that Request fails to indicate the group(s) to which the lesbians and gay men are to be compared.

18. Admit that there is no difference in child outcomes for opposite-sex married couples with biological children and opposite-sex married couples with adoptive children.

Response: Defendant objects to this Request on the ground that the term "child outcomes" is vague and undefined and on the ground that the Request asks Defendant to admit or deny a sweeping generalization.

19. Admit that people, whether gay, heterosexual, or bisexual, generally cannot change their sexual orientation at will.

Response: Defendant objects to this Request on the ground that the phrase "generally cannot change their sexual orientation at will" is vague and on the ground that the Request asks Defendant to admit or deny a sweeping generalization. Subject to and without waiving these objections or the General Objections, Defendant admits that some people who have attempted to change their sexual orientation have experienced difficulty in doing so.

20. Admit that sexual orientation is a defining characteristic of a person's identity.

Response: Defendant objects to this Request on the ground that the phrase "defining characteristic of a person's identity" is vague and on the ground that the Request asks Defendant to admit or deny a sweeping generalization.

21. Admit that sexual orientation is so fundamental to a person's identity that a person should not be required to try to change that orientation in order to avoid discrimination on the basis of that orientation.

Response: Defendant objects to this Request on the ground that it does not seek an admission as to the truth of any matters within the scope of Rule 26(b)(1) relating to facts, the application of law to fact, or opinions about either. *See* Fed. R. Civ. P. 36(a)(1)(A). Defendant further objects to the extent that the Request seeks admission as to a legal conclusion.

22. Admit that any governmental interest insuring that heterosexual couples procreate 'responsibly' is not rationally advanced by the government refusing to respect the existing marriages of same-sex couples.

Response: Defendant objects to this request as seeking an admission as to a legal conclusion. Defendant further objects to this Request on the ground that the phrase "refusing to respect" is vague.

23. Admit that any governmental interest in promoting the raising of children by their married biological parents is not rationally advanced by the government refusing to recognize the existing marriages of same-sex couples.

Response: Defendant objects to this Request as seeking an admission as to a legal conclusion.

24. Admit that prior to the passage of DOMA, the federal government did not impose its own requirements in determining marital status in jurisdictions such as the fifty states in which it did not exercise plenary authority.

Response: Defendant objects to the Request as seeking an admission as to a legal conclusion. To the extent the Request does not seek an admission as to a legal conclusion, Defendant denies the Request. For example, Congress required Utah to prohibit plural marriage as a condition of Utah's admission into statehood. As another example, Congress, in enacting the District of Columbia marriage statute of 1901, intended that marriage is limited to opposite-sex couples. *See Dean v. District of Columbia*, 653 A.2d 307, 314 (D.C. 1995).

25. Admit that section 3 of DOMA causes married same-sex couples and married opposite-sex couples to be treated differently in the distribution of federal benefits that are based on marital status.

Response: Defendant objects to this request as seeking an admission as to a legal conclusion. Defendant further objects to this Request on the ground that the word "causes" is vague in the context of the Request. Subject to and without waiving these objections and the General Objections, Defendant admits the Request to this extent only: For purposes of federal law, DOMA defines the word "marriage" to mean only a legal union between one man and one

woman as husband and wife. DOMA also defines the word "spouse" as a person of the opposite sex who is a husband or wife. These definitions govern the distribution of certain federal benefits based on marital status. Defendant denies that DOMA is always the cause or sole cause of any differential treatment of same-sex couples and opposite-sex couples.

26. Admit that the federal recognition of marriages between same-sex couples would result in a net increase in federal revenue. *See* Douglas Holtz-Eakin, Cong. Budget Office, The Potential Budgetary Impact of Recognizing Same-Sex Marriage (2004), http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf.

Response: Defendant objects to the Request because it does not specify a time period over which the effect on federal revenue is to be calculated. Defendant further states that the referenced document speaks for itself. To the extent that a further response is required, Defendant objects that after reasonable inquiry it lacks sufficient information to determine the nature of future events that will occur over an unknown period of time.

27. Admit that the ability to procreate is not a prerequisite for a marriage license in any of the fifty states, or for any federal benefit that is based on marital status.

Response: Defendant objects to the Request as calling for an admission as to a legal conclusion.

28. Admit that certain members of the House of Representatives or the Senate expressed anti-gay sentiments that were overtly hostile towards lesbians and gay men in their remarks during the Congressional debate over DOMA in 1996.

Response: Defendant objects to the Request on the ground that the term "overtly hostile" is vague. Subject to and without waiving this objection or the General Objections, Defendant admits that certain members expressed disapproval of homosexual conduct during the debate over DOMA in 1996.

/s/ H. Christopher Bartolomucci
Paul D. Clement
H. Christopher Bartolomucci
Conor B. Dugan
Nicholas J. Nelson
BANCROFT PLLC
1919 M Street, N.W., Suite 470
Washington, D.C. 20036
(202) 234-0090

Counsel for Defendant-Intervenor
The Bipartisan Legal Advisory Group of
the U.S. House of Representatives

Dated: July 8, 2011

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EDITH SCHLAIN WINDSOR, Plaintiff, v. UNITED STATES, *et al.*, Defendants.	No. 10 Civ. 8435 (BSJ) (JCF)

THE BIPARTISAN LEGAL ADVISORY GROUP OF THE U.S. HOUSE OF REPRESENTATIVES' OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 33.3 of the Local Civil Rules of the United States District Court for the Southern District of New York, Intervenor-Defendant the Bipartisan Legal Advisory Group of the U.S. House of Representatives ("Defendant") objects and responds to Plaintiff's First Set of Interrogatories as follows:

GENERAL OBJECTIONS AND RESPONSES

1. Defendant objects to the interrogatories to the extent that they purport to impose any requirement or discovery obligation on Defendant beyond those set forth in the Federal Rules of Civil Procedure.

2. Defendant objects to the Interrogatories to the extent they seek information or documents protected by the attorney-client privilege, the attorney work-product doctrine, the Speech or Debate Clause of the United States Constitution, Art. I § 6, cl. 1, or any other applicable protection or claim of privilege. The responses that follow encompass responsive, non-privileged, non-exempt information and documents. Any disclosure of privileged or

confidential information or documents is inadvertent and not intended to waive any applicable privileges or protections.

3. Defendant objects to the Interrogatories to the extent that they seek information or documents not relevant to the claims or defenses in this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendant objects to the Interrogatories to the extent they seek information or documents already known to Plaintiff, in the possession, custody or control of Plaintiff, previously filed with the Court in this litigation, or otherwise available through or from a more convenient, less burdensome, or less expensive source.

5. Defendant objects to the Interrogatories to the extent they are unreasonably cumulative or duplicative; cause annoyance, embarrassment, oppression, undue burden or expense; or are onerous, uncertain, or vague. Defendant further objects to these interrogatories to the extent they use terms that are not defined or understood, or are vaguely or ambiguously defined, and therefore fail to identify with reasonable particularity the information sought. Defendant will not speculate as to the meaning to ascribe to such terms.

6. Defendant has conducted a reasonable investigation concerning the information sought by the Requests and objects to the extent they seek to require Defendant to maintain or obtain information beyond that available through reasonable investigation and/or in the time permitted for these responses. In addition, Defendant continues to search for additional information. Defendant reserves the right to amend, supplement, or modify these responses, if necessary, to reflect additional responsive information or documents as they become known or available.

7. Each of Defendant's responses to the Interrogatories is subject to the General Objections set forth herein. The assertion of the same, similar, or additional objections in the specific responses set forth below, or the failure to assert any additional objections, does not waive any of Defendant's General Objections.

SPECIFIC OBJECTIONS AND RESPONSES

1. What, if anything, do you contend are the compelling justifications for section 3 of DOMA, 1 U.S.C. § 7?

Response: Defendant objects to the Interrogatory to the extent that it assumes the legal conclusion that Congress required a compelling justification to enact Section 3 of DOMA. Defendant objects to the Interrogatory to the as unduly vague and overly broad. Defendant further objects that the Interrogatory improperly calls for legal conclusions. To any extent that the Interrogatory might be construed as a contention interrogatory, Defendant further objects that a response is not required at this time, before the conclusion of discovery.

2. If you contend that there is a compelling justification for section 3 of DOMA under heightened scrutiny, *see, e.g., Gratz v. Bollinger*, 539 U.S. 244, 270 (2003), please identify the basis (including specific documents) for asserting that such justification is genuine, and not hypothesized or invented *post hoc* in response to litigation.

Response: Defendant objects to the Interrogatory to the extent it assumes the legal conclusions that Section 3 of DOMA is subject to heightened scrutiny or that Congress required a compelling justification to enact DOMA. Defendant objects to the Interrogatory to the as unduly vague and overly broad. Defendant further objects that the Interrogatory improperly calls for legal conclusions. To any extent that the Interrogatory might be construed as a contention interrogatory, Defendant further objects that a response is not required at this time, before the conclusion of discovery.

3. What, if anything, do you assert are the legitimate government interests rationally advanced by section 3 of DOMA, 1 U.S.C. § 7?

Response: Defendant objects to the Interrogatory to the as unduly vague and overly broad. Defendant objects that an Act of Congress can and must be upheld under rational-basis review under any conceivable rational basis, and that it would be unduly burdensome to identify every conceivable rational basis supporting Section 3 of DOMA, or to anticipate every rational basis that a court might conceive of, any and all of which Defendant contends support DOMA. On rational basis review, DOMA must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC. v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). Furthermore, "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Id.* at 315. Rather, "those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." *Vance v. Bradley*, 440 U.S. 93, 111 (1979). Defendant "has no obligation to produce evidence to sustain the rationality of a statutory classification." *Heller v. Doe*, 509 U.S. 312, 320 (1993). According to Supreme Court precedent, "a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Beach Communications*, 508 U.S. at 315. Defendant further objects that the Interrogatory improperly calls for legal conclusions. To any extent that the Interrogatory might be construed as a contention interrogatory, Defendant further objects that a response is not required at this time, before the conclusion of discovery.

4. If you deny Requests for Admission 3-23 or 27, in whole or in part, please identify any and all bases for doing so.

Response: Defendant objects to the Interrogatory to the as unduly vague and overly broad. Defendant objects that, although numbered as only one interrogatory, this Interrogatory has 21 different "discrete subparts," *see* Fed. R. Civ. P. 33(a)(1), and therefore is 21 separate interrogatories. Defendant incorporates by reference its General Objections to Plaintiff's Requests for Admission and its specific objections to each Request for Admission listed here. Subject to and without waiving these objections and the General Objections, Defendant states that the bases for any total or partial denials of Requests for Admission 3-23 or 27 are set forth in Defendant's Objections and Responses to the respective Requests.

/s/ H. Christopher Bartolomucci
Paul D. Clement
H. Christopher Bartolomucci
Conor B. Dugan
Nicholas J. Nelson
BANCROFT PLLC
1919 M Street, N.W., Suite 470
Washington, D.C. 20036
(202) 234-0090

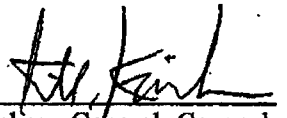
Counsel for Defendant-Intervenor
The Bipartisan Legal Advisory Group of
the U.S. House of Representatives

Dated: July 8, 2011

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing responses to interrogatories are true and correct to the best of my knowledge and belief.

Executed on July 8, 2011, in Washington, D.C.



Kerry Kircher, General Counsel, Bipartison Legal Advisory Group of the U.S. House of Representatives

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of July, 2011, the Bipartisan Legal Advisory Group of the U.S. House of Representatives' Objections and Responses to Plaintiffs' First Request for the Production of Documents, First Set of Requests for Admissions, and First Set of Interrogatories, were served by electronic mail upon the following counsel of record:

Roberta A. Kaplan, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
rkaplan@paulweiss.com

James D. Esseks, Esq.
American Civil Liberties Union Foundation
jesseks@aclu.org

Judson Littleton, Esq.
United States Department of Justice
Judson.O.Littleton@usdoj.gov

By: /s/Nicholas J. Nelson
Nicholas J. Nelson

EXHIBIT C

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064
TELEPHONE (212) 373-3000

LLOYD K GARRISON (1946-1991)
RANDOLPH E PAUL (1946-1956)
SIMON H RIFKIND (1950-1995)
LOUIS S WEISS (1927-1950)
JOHN F WHARTON (1927-1977)

WRITER'S DIRECT DIAL NUMBER

212-373-3086
WRITER'S DIRECT FACSIMILE

212-492-0086
WRITER'S DIRECT E-MAIL ADDRESS

rkaplan@paulweiss.com

UNIT 3601, FORTUNE PLAZA OFFICE TOWER A
NO 7 DONG SANHUAN ZHONGLU
CHAO YANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86 10) 5828 6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U K
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

MATTHEW W ABBOTT
ALLAN J ARFFA
ROBERT A ATKINS
DAVID J BALL
JOHN F BAUGHMAN
LYNN B BAYARD
DANIEL J BELLER
CRAIG A BENSON*
MITCHELL L BERG
MARK S BERGMAN
BRUCE BIRENBOIM
H CHRISTOPHER BOEHNING
ANGELO BONVINO
HENK BRANDS
JAMES L BROCHIN
RICHARD J BRONSTEIN
DAVID W BROWN
SUSANNA M BUERGEL
PATRICK S CAMPBELL*
JEANETTE K CHAN
YVONNE Y F CHAN
LEWIS R CLAYTON
JAY COHEN
KELLEY A CORNISH
CHRISTOPHER J CUMMINGS
CHARLES E DAVIDOW
DOUGLAS R DAVIS
THOMAS V DE LA BASTIDE III
ARIEL J DECKELBAUM
JAMES M DUBIN
ALICE BELISLE EATON
ANDREW J EHRLICH
GREGORY A EZRING
LESLIE GORDON FAGEN
MARC FALCONE
ANDREW C FINCH
BRAD J FINKELSTEIN
ROBERTO FINZI
PETER E FISCH
ROBERT C FLEDER
MARTIN FLUMENBAUM
ANDREW J FOLEY
HARRIS B FREIDUS
MANUEL S FREY
KENNETH A GALLO
MICHAEL E GERTZMAN
PAUL D GINSBERG
ADAM M GIVERTZ
ROBERT D GOLDBAUM
NEIL GOLDMAN
ERIC S GOLDSTEIN
ERIC GOODISON
CHARLES H GOOGE, JR
ANDREW G GORDON
NICHOLAS GROOMBRIDGE
BRUCE A GUTENPLAN
GAINES GWATHMEY, III
ALAN S HALPERIN
CLAUDIA HAMMERMAN
GERARD E HARPER
BRIAN S HERMANN
ROBERT M HIRSH
MICHELE HIRSHMAN
JOYCE S HUANG
DAVID S HUNTINGTON
MEREDITH J KANE
ROBERTA A KAPLAN
BRAD S KARP
JOHN C KENNEDY
ALAN W KORNBERG
DANIEL J KRAMER
DAVID K LAKHDHIR
STEPHEN P LAMB*
JOHN E LANGE
DANIEL J LEFFELL
XIAOYU GREG LIU
JEFFREY D MARELL
MARCO V MASOTTI
EDWIN S MAYNARD
DAVID W MAYO
ELIZABETH R MCCOLM
MARK F MENDELSOHN
TOBY S MYERSON
JOHN E NATHAN
CATHERINE NYARADY
JOHN J O'NEIL
ALEX YOUNG K OH
BRAD R OKUN
KELLEY D PARKER
ROBERT P PARKER*
MARC E PERLMUTTER
MARK F POMERANTZ
VALERIE E RADWANER
CARL L REISNER
WALTER G RICCIARDI
WALTER RIEMAN
RICHARD A ROSEN
ANDREW N ROSENBERG
PETER J ROTHENBERG
JACQUELINE P RUBIN
RAPHAEL M RUSSO
JEFFREY D SAFERSTEIN
JEFFREY B SAMUELS
DALE M SARRO
TERRY E SCHIMEK
KENNETH M SCHNEIDER
ROBERT B SCHUMER
JAMES H SCHWAB
JOHN M SCOTT
STEPHEN J SHIMSHAK
DAVID R SICULAR
MOSES SILVERMAN
STEVEN SIMKIN
JOSEPH J SIMONS
MARILYN SOBEL
AUDRA J SOLOWAY
TARUN M STEWART
ERIC ALAN STONE
AIDAN SYNNOTT
ROBYN F TARNOFSKY
MONICA K THURMOND
DANIEL J TOAL
MARK A UNDERBERG
LIZA M VELAZQUEZ
MARIA T VULLO
LAWRENCE G WEE
THEODORE V WELLS, JR
BETH A WILKINSON
STEVEN J WILLIAMS
LAWRENCE I WITDORCHIC
MARK B WLAZLO
JULIA T M WOOD
JORDAN E YARETT
KAYE N YOSHINO
TONG YU
TRACEY A ZACCONE
T ROBERT ZOCHOWSKI, JR

*NOT ADMITTED TO THE NEW YORK BAR

July 12, 2011

By E-Mail

H. Christopher Bartolomucci, Esq.
Bancroft PLLC
1919 M Street, NW
Suite 470
Washington, D.C. 20036

Windsor v. *United States*, 10 Civ. 8435 (BSJ) (JCF)

Dear Chris:

We write on behalf of Plaintiff Edith Schlain Windsor regarding the significant deficiencies in BLAG's written responses and objections to Plaintiff's discovery requests.

BLAG has improperly refused to provide any meaningful response to twenty-five of Plaintiff's twenty-eight requests for admission and has refused to provide a response to any of Plaintiff's interrogatories. As set forth in detail below, BLAG's abject failure to respond to Plaintiff's straightforward discovery requests are plainly improper and in violation of its obligations under the Federal Rules.

BLAG's refusal to respond to Plaintiff's discovery requests is particularly troubling in light of the fact that BLAG requested additional time to serve its responses and objections, and Plaintiff agreed to such an extension on the (apparently incorrect) assumption that BLAG would provide good faith responses to her discovery requests.

Given the short briefing schedule in this case, and that fact discovery closed on July 11, we cannot countenance any further delay in BLAG's responses. Accordingly, we expect that BLAG will be prepared to tell us at Wednesday's meet-and-confer whether it will withdraw its improper objections and in good faith respond to Plaintiff's discovery requests. We expect BLAG to provide any such responses by no later than July 14.

We note also that BLAG has not produced a single document in response to Plaintiff's First Request for the Production of Documents, dated June 3, 2011, notwithstanding that it specifically responded that it would do so. Fact discovery is now closed and, accordingly, BLAG's failure to produce responsive documents is in violation of the Court's Scheduling Order. We expect BLAG will produce all responsive documents by no later than July 14, or, if it cannot do so, explain the reason for the delay.

With respect to BLAG's specific responses and objections to Plaintiff's discovery requests, we note the following deficiencies:

BLAG's Responses to Plaintiff's Requests for Admission

BLAG's responses and objections to Plaintiff Edith Schlain Windsor's First Request for Admission to the Bipartisan Legal Advisory Group of the United States House of Representatives, dated June 3, 2011 (the "RFAs"), are deficient in a number of critical respects.

1. BLAG's "Legal Conclusion" Objection. BLAG has objected to RFA Nos. 4-5, 7-11, 21-25, and 27 on the purported grounds that they "seek admissions as to legal conclusions." These requests patently seek ***factual*** information concerning, among other things, the history of discrimination suffered by gay men and lesbians, the relevance of sexual orientation to the ability to contribute to society or raise a family, and whether the ability to procreate is a prerequisite for marriage in any of the fifty states or for any federal benefit that is based on marital status. The RFAs do not ask BLAG to admit its interpretation of the law. *See Miller* v. *Holzmann*, 240 F.R.D. 1 (D.D.C. 2006) ("A request may be said to call for a legal conclusion when it purports to require a party to admit, for example, that a statute or regulation imposes a particular obligation."). And the mere fact that an admission sought may bear on legal issues in this case does not render the RFAs objectionable. "A party may serve on any other party a written request to admit . . . the truth of any matters within the scope of Rule 26(b)(1) relating to . . . ***facts, the application of law or fact, or opinions about either***." Fed. R. Civ. P. 36(1) (emphasis added). *See also* Fed. R. Civ. P. 33 ("[a]n interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact . . ."). Plaintiff is fully entitled to discovery of the information she seeks.

2. BLAG's Response to RFA No. 1. BLAG has refused to provide a complete answer to RFA No. 1, which seeks information concerning whether Thea Spyer's estate would qualify for the estate tax marital deduction if she were married to a man rather than a woman. BLAG claims to "lack[] sufficient knowledge or information" to admit or deny the RFA. This response defies credulity. Plaintiff has produced

documents concerning the estate tax filing for Ms. Spyer, including the Claim for Refund and Request for Abatement (Form 843) filed with the IRS, dated April 7, 2010. Those filings contain sufficient information for BLAG easily to determine the value of Ms. Syper's estate and the applicability of the estate tax marital deduction. BLAG has not provided any reason, and we can think of none, why it cannot respond as to whether the estate tax marital deduction would apply if Ms. Spyer were married to a man instead of a woman.

3. BLAG's Refusal to Respond to RFA Nos. 3, 4 and 5. BLAG has improperly refused to respond to RFA Nos. 3, 4 and 5, which seek information concerning the unequal treatment of, and discrimination against, lesbians and gay men in the twentieth century. BLAG has objected that the phrases "history of unequal treatment," "subjected to discrimination," and "their perceived stereotyped characteristics associated with being lesbian or gay," are "undefined and vague." These objections are plainly without merit. There is nothing vague about the terms "discrimination" "unequal treatment" or "stereotypes." *See Roesberg* v. *Johns-Manville Corp.*, 85 F.R.D. 292, 298 (D. Pa. 1980) ("The requirement that interrogatories be defined is satisfied so long as it is clear what the interrogatory asks."). These concepts are central to the issues in this case and Plaintiff has produced several expert witnesses who have testified at length about these subjects. *See, e.g.*, Segura Dep. 125:6-12; 22-24 (providing examples of "stereotypes of gays and lesbians"). If BLAG was confused about the meaning of these phrases, it has had ample opportunity to clear up its confusion during these depositions. Indeed, BLAG itself has used many of the terms it now purports are "vague" in its briefings in *Golinski*, and in taking the depositions of Plaintiff's experts. *See, e.g.*, *Golinski* Mot. to Dismiss at 22 ("unequal treatment" (quoting *In re Kandu*, 315 B.R. 123, 143 (Bankr. W.D. Wash. 2004)); Segura Dep. 151:8-11 ("discrimination against gays and lesbians"). What is more, the United States House of Representatives surely understands what the term "discrimination" means, in light of the fact that there are numerous federal statutes directly addressed to prohibiting discrimination (albeit none that would protect gay men and lesbians). *See, e.g.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e. BLAG cannot reasonably be heard to say now that Plaintiff's RFAs are too vague or undefined to justify its refusal to respond to these requests.

BLAG further purports that RFA Nos. 3, 4 and 5 call on it to admit or deny a "sweeping generalization encompassing more than a century of American history." Setting aside that this is not a valid objection, and that BLAG has failed to state in detail why it cannot truthfully admit or deny the RFAs as required by Rule 36(a)(4), BLAG is simply wrong. These RFAs ask BLAG to admit or deny that lesbians and gay men have, in the twentieth century, faced discrimination. There is no reason that BLAG cannot provide a response to that straightforward question. Indeed, BLAG's refusal to admit or deny that gay men and lesbians have suffered discrimination is particularly specious in light of its admission that "some lesbians and gay men have been subjected to violence in the United States because of their sexual orientation."

4. BLAG's Refusal to Respond to RFA Nos. 7, 8 and 9. BLAG has improperly refused to respond to RFA Nos. 7, 8 and 9, which concern whether, in the twentieth century, gay men and lesbians have been harassed, denied jobs and other opportunities, and terminated from jobs and other opportunities based on their sexual orientation. Remarkably, BLAG claims that these RFAs are "undefined and vague." These RFAs are specific and clear—the phrases "denied jobs" and "terminated from jobs" mean precisely what their plain language indicates. Moreover, BLAG is not, as it contends, being called on to admit or deny "sweeping generalizations"—the RFAs seek information concerning actual events that occurred over the course of the twentieth century.

5. BLAG's Refusal to Respond to RFA Nos. 10, 11 and 12. BLAG also has improperly refused to answer RFA Nos. 10, 11 and 12, which seek information concerning whether sexual orientation is related to an individual's ability to perform in, or contribute to, society and whether, in the absence of unequal treatment, discrimination, harassment, and stereotyping, lesbians and gay men are generally no less able to achieve the same professional success as heterosexual women and men. BLAG purports that terms such as "ability to perform in society" and "ability to contribute to society" are so "vague and undefined" so as to render the questions unanswerable. Once again, however, BLAG's objection is wholly without merit. These phrases have clear, unmistakable meanings.

6. BLAG's Refusal to Respond to RFA Nos. 13, 14, 15, 16, 17 and 18. BLAG has improperly refused to answer RFA Nos. 13 through 18, which seek information concerning the ability of same-sex couples to form and maintain family relationships and the ability of lesbians and gay men to care for and rear psychologically well-adjusted children. BLAG has objected that the phrases "generally no less capable of forming and maintaining close family relationships," "generally no less capable of loving, nurturing, and supporting," "generally no less able to adequately care for," "generally no less capable of making good decisions," "psychologically well-adjusted," and "child outcomes" are all "vague and undefined." These phrases are clear, specific and have been defined and discussed extensively by Plaintiff's expert witnesses. And BLAG too has used this terminology in depositions. *See, e.g.*, Lamb Dep. 54:21-25 ("outcomes for children"). BLAG also purports that RFA Nos. 13 through 17 call on it to admit or deny a "sweeping generalization." This is an invalid and inadequate objection. Finally, BLAG objects that RFA No. 17 fails to indicate "the group(s) to which lesbians and gay men are to be compared." As BLAG can surely infer from all of the other, related questions which explicitly state it—and from the entire subject matter of the instant litigation—RFA No. 17 calls for a comparison of lesbian and gay men to heterosexual women and men.

7. BLAG's Refusal to Respond to RFAs Nos. 19 and 20. BLAG has refused to answer RFA Nos. 19 and 20, which seek information related to whether people can change their sexual orientation at will and whether sexual orientation is a defining characteristic of a person's identity. BLAG has objected that the phrases "generally

cannot change their sexual orientation at will" and "defining characteristic of a person's identity" are vague. These are clear phrases which are widely used and accepted, particularly within the context of this litigation. They were also discussed at, and defined during, BLAG's deposition of Plaintiff's expert witnesses. BLAG's contention that these RFAs require BLAG to make or deny a "sweeping generalization" also is incorrect, as discussed above.

8. BLAG's Response to RFAs Nos. 22 and 23. BLAG has refused to answer RFA Nos. 22 and 23, which seek information related to the government's interest (or lack thereof) in ensuring heterosexual couples procreate "responsibly" and in promoting the raising of children by their married biological parents. BLAG has objected that the phrase "refusing to respect [the existing marriages of same-sex couples]" is vague. This objection is nothing but semantic wordplay. The question of federal recognition of existing marriages of same-sex couples is at the heart of this case and as such has been discussed extensively and is firmly established. Certainly BLAG is aware that DOMA calls for the federal government to refuse to recognize, *i.e.* respect, marriage between individuals of the same sex.

9. BLAG's Refusal to Respond to RFA No. 25. BLAG also has improperly refused to answer RFA No. 25, which seeks information related to the effect of DOMA on the treatment of married same-sex and opposite-sex couples in the distribution of federal benefits based on marital status. BLAG has objected that the word "causes" in this context is vague. This objection is baseless; there are few clearer or more commonly used words or concepts.

10. BLAG's Refusal to Respond to RFA No. 27: BLAG has refused to answer RFA No. 27, which seeks information related to whether procreation is a perquisite for a marriage license or federal benefits. As set forth above, BLAG's refusal to respond to this RFA on the purported grounds that it seeks an admission as to a legal conclusion is without merit.

BLAG's Responses to Plaintiff's Interrogatories

BLAG's responses and objections to Plaintiff Edith Schlain Windsor's First Set of Interrogatories to the Bipartisan Legal Advisory Group of the United States House of Representatives, dated June 3, 2011 (the "Interrogatories"), also are deficient in several important respects.

As an initial matter, notwithstanding the fact that BLAG did not serve its responses and objections until July 8—only three days before the close of fact discovery in this case and with all but one expert deposition completed—BLAG has objected to Interrogatories 1, 2 and 3 on the purported grounds that a "response is not required at this time, before the conclusion of discovery." We simply fail to understand how BLAG can refuse to answer these highly relevant discovery requests on this basis, in light of the fact that fact discovery is completed, all but one expert deposition has been taken and Plaintiff has produced documents and responded to BLAG's written discovery requests. In any

event, all discovery in this case will be complete as of today, following the deposition of Professor Chauncey. Accordingly, we expect that BLAG will promptly, and by no later than July 14, supplement its response to these Interrogatories.

BLAG's other purported objections to responding to Plaintiff's Interrogatories are similarly without merit:

BLAG has refused to provide *any* response to Interrogatory No. 1, which seeks information concerning the compelling justifications for Section 3 of DOMA. BLAG's objection that the Interrogatory "assumes the legal conclusion that Congress required a compelling justification to enact Section 3" has no basis whatsoever. The Interrogatory contains no such assumption. BLAG's vagueness and overbreadth objections are similarly without merit. The justifications for DOMA lie at the heart of this case and are highly relevant to the factual issues in dispute. Finally, for the same reasons set forth above, BLAG's objection to responding to Interrogatory No. 1 on the purported grounds that it seeks a legal conclusion is without merit. "An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact." Fed. R. Civ. P. 33.

BLAG's refusal to respond to Interrogatory Nos. 2 and 3 is similarly improper for all the same reasons as discussed above. BLAG's refusal to respond to Interrogatory No. 3, which seeks information concerning the legitimate government interests rationally advanced by DOMA, on the additional grounds that "it would be unduly burdensome to identify every conceivable rational basis supporting Section 3 of DOMA" likewise is unavailing. We are hard pressed to think of any facts that are *more* relevant to the issues in this case that the information called for by this request. We likewise fail to see any burden to BLAG in detailing in an interrogatory response the justifications for DOMA. In any event, the fact that BLAG claims to be unable to identify every basis for DOMA certainly does not provide a basis for BLAG to refuse to provide ***any*** basis for DOMA.

BLAG also has failed to respond adequately to Interrogatory No. 4. As an initial matter, BLAG's claim that this request has "discrete subparts" is irrelevant, because, even if true, Plaintiff's Interrogatories were still within the limits allowed by the Local Rules. BLAG contends that it need not respond to this Interrogatory because "the bases for any total or partial denials of the RFAs are set forth in [BLAG's] Objections and Responses to the respective Requests." But that simply is untrue. BLAG failed to provide any basis for its partial denials of RFA Nos. 6 or 25. Indeed, BLAG's General Objection No. 8 to the RFAs explicitly objected to Plaintiff's instruction that BLAG identify the factual bases for its denials. Accordingly, BLAG has failed to comply with its obligation to respond to Interrogatory No. 4.

* * *

We look forward to discussing these issues with you on our meet-and-confer tomorrow. Due to a scheduling conflict, we would like to move the call to noon, if possible. Please let us know if you are available at that time and we will provide you with a dial-in number for the call.

Sincerely,

Roberta A. Kaplan

cc: Paul D. Clement, Esq.
Jean Lin, Esq.
James Esseks, Esq.

EXHIBIT D

From: "Christopher Bartolomucci" [cbartolomucci@bancroftpllc.com]
Sent: 07/12/2011 08:28 PM AST
To: Roberta Kaplan; Julie Fink
Cc: "Nicholas Nelson" <nnelson@bancroftpllc.com>; jean.lin@usdoj.gov; jesseks@aclu.org; Andrew Ehrlich
Subject: RE: Windsor v. United States, 10 Civ. 8435 (BSJ) (JCF)

Dear Robbie:

We have reviewed your letter regarding discovery in the Windsor case. As we anticipate your complaints will be the subject of the scheduled call tomorrow, I will not comment on them here, except to note that we are currently in the process of preparing for production the documents we stated we will produce, and we will produce them as soon as they are ready, likely in the next day or two. As he indicated in his email yesterday, Nicholas Nelson, a colleague of mine who I am copying on this email, is available for a call tomorrow, and he is happy to accommodate your request to move the call to noon. Please do reply to him with a dial-in number.

Contrary to your letter, we did not request an extension to respond to your discovery requests. We had calculated the response date for both of our discovery requests as July 8, which evidently you did not agree with. But in any event, as I stated in our email exchange on July 1 on this topic, we were merely trying to further the convenience of everyone involved by seeking a single response date for the substantially overlapping discovery in the Windsor and Pedersen cases, which otherwise would have been due mere days apart.

Chris Bartolomucci

From: Julie E Fink [mailto:JFink@paulweiss.com]
Sent: Tue 7/12/2011 2:37 PM
To: Christopher Bartolomucci
Cc: Paul Clement; Nicholas Nelson; jean.lin@usdoj.gov; jesseks@aclu.org; Roberta A Kaplan; Andrew J Ehrlich
Subject: Windsor v. United States, 10 Civ. 8435 (BSJ) (JCF)

Counsel,

Please see the attached.

Regards,
Julie

Julie E. Fink | Associate
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas | New York, NY 10019-6064
(212) 373-3721 (Direct Phone) | (212) 492-0721 (Direct Fax)
jfink@paulweiss.com | www.paulweiss.com

This message is intended only for the use of the Addressee and may
contain information that is privileged and confidential. If you are not the
intended recipient, you are hereby notified that any

dissemination of this
communication is strictly prohibited. If you have received
this communication
in error, please erase all copies of the message and its
attachments and
notify us immediately.