

Congress of the United States
Washington, DC 20515

September 26, 2011

The Honorable John A. Boehner
Speaker of the House
H-232, The Capitol
Washington, D.C. 20515

Dear Mr. Speaker,

On April 4, 2011, several of us asked for a briefing regarding your planned defense of the “Defense of Marriage Act” (DOMA) in court proceedings challenging the constitutionality of Section 3, which defines marriage for purposes of federal law. As Members who believe that DOMA is unconstitutional and support the President’s decision to stop defending it, we believe that the law is not factually or legally justifiable and were interested in hearing what arguments might possibly be made in its defense.

Regrettably, we did not receive the requested briefing. Outside counsel retained at your direction and at great taxpayer expense has since intervened in several cases on behalf of the Bipartisan Legal Advisory Group. BLAG’s involvement in the defense of DOMA was undertaken pursuant to a divided 3 to 2 vote, over the strong opposition of Leader Pelosi and Whip Hoyer. By virtue of the BLAG vote, however, outside counsel now purports to represent the interests of the entire House.

It is incumbent upon all lawyers – especially those paid for by taxpayers and responsible for representing a branch of our government – to undertake representation in an objective manner that is factually and legally supportable. Unfortunately, the outside counsel that you have retained have filed pleadings containing arguments and assertions that are troubling and appear to fall short of this standard.

In one case, for example, a professor has accused BLAG of distorting her research findings to suit its arguments: “BLAG misconstrues and distorts my research findings, which do not support the propositions for which BLAG cites them. . . .BLAG has completely misrepresented my research.” Declaration of Lisa M. Diamond at ¶¶ 5,6, *Windsor v. United States*, No. 10 Civ. 8435 (S.D.N.Y. Sept. 15, 2011). Another expert in that case stated that the author of an article relied upon by BLAG cited “individuals who have been discredited as biased with respect to the research on homosexuality.” Supplemental Expert Affidavit of Michael Lamb at n.2.

The Washington Post’s editorial board recently questioned a number of arguments that BLAG has made in court, noting that one claim – namely that DOMA is not discriminatory – simply “doesn’t hold water.” Editorial, *The House defends discrimination*, Wash. Post, Aug. 28,

2011, at A14. As the Post appropriately recognized, “[i]f defending DOMA requires making assertions that are clearly false, the law is not defensible.”

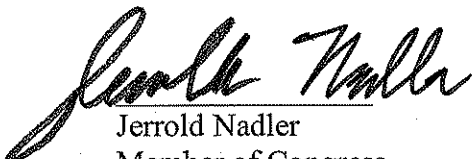
We agree. The United States House of Representatives should not be making harmful and unreasonable arguments that demean its credibility, and that of the American people. It has been fifteen years since the Congress enacted DOMA, and the materials and arguments that BLAG is making on behalf of the House do not withstand the test of time or scrutiny.


Members, and the American people, should be given the opportunity to understand why House Republican Leadership continues to advance arguments that have no valid basis and are demeaning to many of our fellow Americans. Insofar as BLAG purports to speak for the entire institution, all Members are clients and are entitled to such a briefing. We therefore reiterate our request for a briefing for interested Members, which could be conducted by outside counsel, regarding the continued defense of DOMA in the courts.

This is particularly important in light of the harm that DOMA imposes on married same-sex couples and their families, and the fact that this time-consuming and costly litigation is being paid for by the American people. At a time when families are struggling to make ends meet and asking Congress to focus on jobs, the economy, and federal spending, all Members should be concerned that taxpayers dollars are being used to pay costly legal fees to make arguments that lack adequate factual or legal support.


Thank you for your assistance with this matter, and we look forward to your prompt reply.

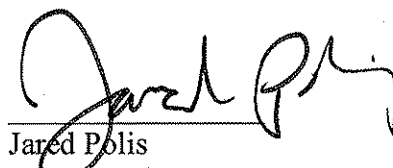
Best regards,

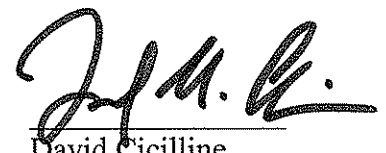

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Member of Congress


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