

United States Senate

WASHINGTON, DC 20510

January 16, 2014

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder,

We write today about the role of the Department of Justice (DOJ) to work with all Executive Branch agencies to guarantee the execution of federal laws in a manner consistent with the Supreme Court's findings in *United States v. Windsor*, No. 12-307, 133 S. Ct. 2675 (June 26, 2013). To be sure, there has been progress within several departments and agencies that have issued guidance formally recognizing same-sex married couples and providing equal access to federal benefits. While those changes represent a positive shift, we are concerned that a specific provision within Title 38 of the United States Code – section 103(c) – continues to be enforced in a way that discriminates against veterans and their spouses.

As you know, literally dozens of our colleagues weighed in to advocate for comprehensive application of the law since the Supreme Court handed down the *Windsor* decision this summer. Unfortunately, nearly six months after that decision we continue to see specific cases where the federal government is withholding federal benefits to legally married same-sex couples. This appears to be in conflict with the central principle of the *Windsor* decision, that the federal government should respect the lawful marriages of same-sex couples.

Of particular concern is the way section 103(c) of Title 38 is being interpreted and enforced across the country. As you know, section 103(c) is described as a so-called “place of residence” rule, which the Department of Veterans Affairs (VA) uses to determine who is a legal spouse for purposes of administering VA benefits. The current application of that law means any same-sex couple who did not reside in a state that recognizes their marriage at the time of the ceremony or who does not reside in a state that recognizes their marriage at the time the right to benefits accrued will not be recognized by the VA as legally married. Therefore they are denied federal spousal benefits. The discriminatory effect of this application has been denial of federal benefits to legally married same-sex couples.

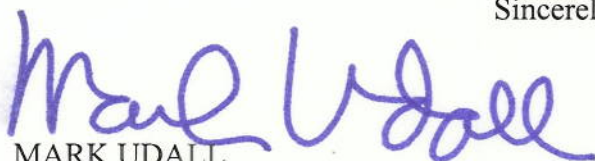
This fall, in response to *Windsor*, the Department of Justice directed the VA to cease enforcement of two other sections within Title 38 – section 101(3) and 101(31). While the *Windsor* decision did not specifically address provisions, like Section 103(c), that direct a federal agency to look to a particular state's laws to determine the validity of a marriage, the impact of applying such a law with regard to legally married same-sex couples has an equally discriminatory result. While many have suggested this section of law would prove problematic it is no longer hypothetical. Over the last few months there have been specific instances of legally married couples who were denied VA spousal benefits solely because of their gender and place of residence.

Over time there will be more examples of veterans and their spouses being denied all manner of benefits such as loan guarantees to purchase a home, survivor's pensions and G.I. bill transfers. No veteran should face this type of discrimination. With that background we respectfully ask the DOJ to direct the VA to apply section 103(c) in a manner consistent with the *Windsor* decision's mandate to respect the lawful marriages of the same-sex couples.

We believe taking this action is an important part of DOJ's responsibility to implement and enforce the legal doctrine created in *Windsor*. Further, if the VA is able to apply 103(c) so that all marriages legally entered into will be recognized, it will provide continuity with the Department of Defense policy that applies to active duty service members and avoid a situation where the federal government is recognizing a person's marriage one day and ignoring it the next.

We appreciate your consideration of our request and look forward to working with you in the weeks ahead to ensure our veterans and their families receive federal recognition and full access to the benefits they have earned.

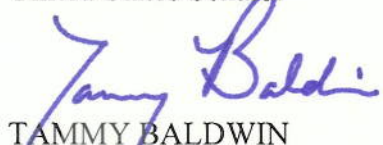
Sincerely,



MARK UDALL
United States Senator



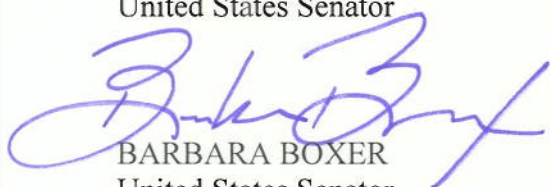
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