



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

February 17, 2012

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

Re: *McLaughlin v. Panetta*, No. 11-11905 (D. Mass.)

Dear Mr. Speaker:

On February 23, 2011, I notified Congress of the Executive Branch's determination that Section 3 of the Defense of Marriage Act ("DOMA"), 1 U.S.C. § 7, is unconstitutional as applied to same-sex couples who are legally married under state law, and to inform Congress that I would instruct Department attorneys to cease defense of Section 3 against a challenge under the equal protection component of the Fifth Amendment. Pursuant to 28 U.S.C. § 530D—and after consultation with the Department of Defense and the Department of Veterans Affairs—I write to inform you of steps the Department will take in *McLaughlin v. Panetta*, No. 11-11905 (D. Mass.), a case that presents constitutional challenges, including under the equal protection component of the Fifth Amendment, to Section 3 of DOMA and certain additional statutory provisions.

In *McLaughlin*, plaintiffs are current and former active duty members of the United States military seeking various federal benefits for their same-sex spouses. These benefits include medical and dental benefits, basic housing allowances, travel and transportation allowances, family separation benefits, military identification cards, visitation rights in military hospitals, survivor benefits, and the right to be buried together in military cemeteries. The plaintiffs claim that Section 3 of DOMA prevents their same-sex spouses from being eligible for these benefits. They also claim that certain additional statutory provisions, including two definitional provisions in Title 38, may affect the eligibility of same-sex couples for military and veterans' benefits, even independent of Section 3. The language of the Title 38 provisions is identical in material respects to the language of Section 3 of DOMA: Those provisions, like Section 3, define the term "spouse" (or "surviving spouse") as "a person of the opposite sex." 38 U.S.C. §§ 101(3), (31).

As I explained in my letter of February 23, 2011, the President and I have concluded that classifications based on sexual orientation should be subject to a heightened standard of constitutional scrutiny under equal protection principles, and that Section 3 of DOMA fails such scrutiny as applied to couples who are legally married under state law.

