



Congress of the United States
House of Representatives
April 18, 2011

The Honorable Nancy Pelosi
Democrat Leader
U.S. House of Representatives
H-204, the Capitol
Washington, DC 20515

Dear Leader Pelosi:

Thank you for your letter of March 11, 2011 regarding the Bipartisan Legal Advisory Group's (BLAG) decision to defend the constitutionality of the federal statute, Defense of Marriage Act (DOMA). This decision was necessitated by the extraordinary announcement by the current Attorney General, U.S. Department of Justice (DOJ) declining to defend the constitutionality of Section 3 of that Act.

Had the BLAG not taken this action, the constitutionality of the law would have been determined by a unilateral action of the President. By the House taking this action and the steps necessary to defend the law, the House is ensuring that the courts will decide DOMA's constitutionality.

The burden of defending DOMA, and the resulting costs associated with any litigation that would have otherwise been born by DOJ, has fallen to the House. Obviously, DOJ's decision results in DOJ no longer needing the funds it would have otherwise expended defending the constitutionality of DOMA. It is my intent that those funds be diverted to the House for reimbursement of any costs incurred by and associated with the House, and not DOJ, defending DOMA.

I appreciate that ordinarily DOJ should be in a better position to defend a federal statute in the Courts, both in terms of resource allocations and in expertise of personnel. However, by the President's action through the Attorney General we have no choice; the House now faces that additional burden and cost. I would also point out that the cost associated with DOJ's decision is exacerbated by the timing of this decision. Most of these cases are in the middle of lower court litigation and not ripe for Supreme Court review. Had the Attorney General waited until the cases were ripe for certiorari to the Supreme Court, the costs associated with the House defense would have been exponentially lower.

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I would welcome your joining me in support of redirecting those resources from the DOJ to the House that would otherwise have been necessary expenses on the Attorney General to defend this federal statute. In the interim, I have directed House Counsel and House Administration Committee to assure that sufficient resources and associated expertise, including outside counsel, are available for appropriately defending the federal statute that the Attorney General refuses to defend.

Thank you.

Sincerely,



JOHN A. BOEHNER
Speaker of the House