

Obama directs feds to extend veterans benefits to same-sex spouses

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USPA News - U.S. President Barack Obama has directed his administration to take steps to allow same-sex spouses of military veterans to collect federal benefits which were previously only available to heterosexual couples, the U.S. Justice Department said on Wednesday. In a letter to congressional leaders, U.S. Attorney General Eric Holder said the statutory language in question violates the equal protection component of the Fifth Amendment and added that Obama had directed the federal government to cease enforcement of Sections 101(3) and 101(31) within Title 38 of the U.S. Code.

"Decisions by the Executive not to enforce federal laws are appropriately rare. Nevertheless ... the unique circumstances presented here warrant non-enforcement," Holder wrote. "Although the Supreme Court did not directly address the constitutionality of the Title 38 provisions in *Windsor*, the reasoning of the opinion strongly supports the conclusion that those provisions are unconstitutional under the Fifth Amendment." The language in the provisions, which describe the term spouse as a person of the opposite sex, had until now prevented the federal government from providing spousal benefits to veterans - and in some instances active-duty service members and reservists - who are in same-sex marriages recognized under state law. Wednesday's announcement comes after the Obama administration directed the U.S. Justice Department last year to stop defending the Title 38 provisions, and the House Bipartisan Legal Advisory Group (BLAG) recently also decided to stop defending the provisions in pending cases. It also comes just days after a federal district court in California held the Title 38 provisions unconstitutional on equal protection grounds. "In light of these developments, continued enforcement of the Title 38 provisions pending further judicial review is unwarranted," Holder said. "Continued enforcement would likely have a tangible adverse effect on the families of veterans and, in some circumstances, active-duty service members and reservists, with respect to survival, health care, home loan, and other benefits," he explained. "In these unique circumstances, continued enforcement ... is no longer appropriate, and the Executive Branch will no longer enforce them." The reasoning behind Wednesday's decision stems from the landmark Supreme Court ruling on June 26 that struck down the Defense of Marriage Act (DOMA), which had denied more than 1,100 federal benefits to married individuals in same-sex relationships. It was signed into law by President Bill Clinton in September 1996, although he no longer supports the law. Last week, also in response to the ruling in June, the U.S. Treasury Department and the Internal Revenue Service (IRS) decided to recognize married same-sex couples living across the country, allowing them to receive federal tax benefits previously only given to heterosexual couples. Under the ruling, same-sex couples will be treated as married for all federal tax purposes, including income, gift and estate taxes. The ruling applies to all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA, and claiming the earned income tax credit or child tax credit. The ruling covers all same-sex marriages legally entered into in one of the 50 states, the District of Columbia, a U.S. territory, or a foreign country. It also applies to same-sex couples who were married in a jurisdiction that recognizes gay marriage but have since moved to a jurisdiction that does not recognize them. In early July, Homeland Security Secretary Janet Napolitano announced the federal government would no longer prevent foreigners who are married to an American citizen of the same sex from obtaining family-based immigrant visas such as a "green card," also complying with the Supreme Court's ruling. "Effective immediately, I have directed U.S. Citizenship and Immigration Services (USCIS) to review immigration visa petitions filed on behalf of a same-sex spouse in the same manner as those filed on behalf of an opposite-sex spouse," Napolitano said in a statement at the time. The Department of Homeland Security (DHS) said the changes would apply for all American citizens who are in a same-sex marriage, even if they now live in a state that does not recognize their same-sex marriage. "USCIS looks to the law of the place where the marriage took place when determining whether it is valid for immigration law purposes," it said. Support for same-sex marriage has increased across the United States in recent years, with now 13 states and the District of Columbia performing them. A Gallup poll in 1996 found that only 27 percent of Americans were in favor of same-sex marriage, but the latest survey conducted in July found that 54 percent of Americans are now in favor of allowing marriages between people of the same gender.

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