



February 28, 2011

James M. Kovakas
Freedom of Information/Privacy Act Officer
Civil Division
Department of Justice
Room 7304, 20 Massachusetts Avenue, N.W.
Washington, DC 20530-0001

Dear Mr. Kovakas:

This is a request under the Freedom of Information Act (FOIA) (5 U.S.C. § 552).

On Wednesday, February 23, 2011, Attorney General Holder announced that the Obama Administration would no longer defend the federal definition of marriage found in the Defense of Marriage Act (DoMA).¹ The Department of Justice sent a letter to members of the Congress announcing this decision.²

Less than three hours after Attorney General Holder's announcement, litigants seeking to strike down California's traditional marriage definition enacted by Proposition 8 filed a "Motion to Vacate Stay" in the U.S. Court of Appeals for the Ninth Circuit. On pages 7 of 23 and 10 of 23 the Motion cited to and quoted from the Attorney General Letter.

As the president of the Family Research Council (FRC), an organization that has filed amicus briefs defending both Proposition 8 and DoMA, I am troubled by the lightning-fast integration of concepts and actual language from the Attorney General Letter into the Motion to Vacate Stay. Let me repeat: the Motion was filed within two-and-one-half hours of Attorney General's press conference.³ Consequently, I am deeply concerned that officials at the Department of Justice were collaborating with the litigants in the Proposition 8 case. Even the appearance of collusion between the Department of Justice and litigants is highly damaging to the rule of law in America.

With that in mind, FRC seeks records of communications regarding any same-sex marriage litigation or policy discussion between the employees of the Department of Justice and employees of the following: the law firm Boies, Schiller & Flexner, LLP; the law firm Gibson, Dunn & Crutcher, LLP; and any public interest organization involved in political or legal

¹ Link: < <http://www.justice.gov/opa/pr/2011/February/11-ag-222.html> >.

² Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act (Feb. 23, 2011) (Attorney General Letter).

³ From our review of time stamps on e-mail notifications, Attorney General Holder's press release is time stamped at Feb. 23, 2011 at 11:10:04 AM EST; the Attorney General Letter is time stamped Feb. 23, 2011 at 11:13:37AM EST. An e-mail alert announcing the filing of the Motion to Vacate Stay was circulated by the Ninth Circuit and received by 1:40 PM EST on the same date. The Motion to Vacate Stay was probably filed around 1:30 PM.

opposition to either Proposition 8 or the Defense of Marriage Act that might include but not be limited to the American Civil Liberties Union, Lambda Legal Defense and Education Fund, Gay & Lesbian Alliance Against Defamation (GLAAD), and Gay & Lesbian Advocates and Defenders. We time-limit our request to communications made after February 1, 2011.

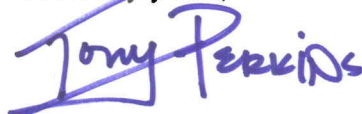
To flesh out the request made in the previous paragraph, FRC asks that the Department of Justice produce all responsive correspondence, memoranda, documents, statements, e-mails, text messages, letters, calendar or diary logs, facsimile logs, telephone records, call sheets, tape recordings, notes, and other documents and things that refer or relate to the foregoing matter in any way, within twenty (20) business days.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), *cert denied*, 415 U.S. 977 (1974). Additionally, any reasonably segregable portion of a responsive record must be provided after redaction of any allegedly exempt material, as the law requires. 5 U.S.C. § 552(b).

In order to help determine the status of FRC and me for purposes of determining the applicability of any fees, FRC, a 501(c)(3) tax-exempt organization, seeks to educate the public on matters related to the importance of traditional family and marriage in our society. As mentioned above, I am FRC's president. We are willing to pay fees up to the amount of \$100.00. If the fees will exceed this amount, please inform me before fees are incurred. I can be contacted at the address given in the letter, if necessary, to discuss any aspect of this request. You can also contact my assistant, Ms. Lindsay Hoefer, through our switchboard at 202-393-2100.

Thank you for your consideration and assistance.

Sincerely yours,



Tony Perkins
President
Family Research Council
801 G Street, N.W.
Washington, D.C. 20001