

IN THE SUPREME COURT OF THE UNITED STATES

No. 12-307

UNITED STATES OF AMERICA, PETITIONER

v.

EDITH SCHLAIN WINDSOR, IN HER CAPACITY AS EXECUTOR OF THE ESTATE
OF THEA CLARA SPYER, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT MOTION FOR ADDITIONAL TIME FOR ORAL ARGUMENT
AND FOR ALLOCATION OF ARGUMENT TIME

Pursuant to Rules 21 and 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that total time allotted for oral argument in this case be expanded from 60 minutes to 125 minutes and that the total oral argument time be allocated among the parties and the Court-appointed amica curiae as set forth below. All parties and the amica join in this motion.

1. On December 7, 2012, this Court granted the United States' petition for a writ of certiorari to address whether

Section 3 of the Defense of Marriage Act (DOMA), 1 U.S.C. 7, violates the Fifth Amendment's guarantee of equal protection of the laws as applied to persons of the same sex who are legally married under the laws of their State. The Court directed the parties also to brief and argue two threshold jurisdictional questions: (1) whether the Executive Branch's agreement with the court below that DOMA is unconstitutional deprives this Court of jurisdiction to decide this case; and (2) whether the Bipartisan Legal Advisory Group of the United States House of Representatives has Article III standing in this case. On December 11, 2012, the Court appointed an amica curiae to brief and argue the jurisdictional questions in this case (but not the merits question) in support of the positions that the Executive Branch's agreement with the court below that DOMA is unconstitutional deprives this Court of jurisdiction to decide this case, and that the Bipartisan Legal Advisory Group of the United States House of Representatives lacks Article III standing in this case. On December 14, 2012, the Court adopted a briefing schedule that calls for the parties to submit separate briefs on the jurisdictional questions and the merits.

2. In light of the Court's addition of the two threshold jurisdictional questions to the question presented in the petition and the Court's appointment of an amica curiae to brief and argue those questions, and in light of the parties' submission of separate briefs on the jurisdictional questions and the merits, the

parties and the amica request that the Court allow for separate oral arguments on the jurisdictional questions and the merits, and that the Court grant an additional 65 minutes of argument time to allow the parties to address the jurisdictional questions.

The parties and the amica propose to divide 65 minutes of argument time on the jurisdictional questions as follows, with argument to be presented in the following order:

| | |
|---------------------------------------|----------------------------|
| Court-appointed amica: | 25 minutes |
| | (to include rebuttal time) |
| United States: | 15 minutes |
| Bipartisan Legal Advisory Group | |
| of the U.S. House of Representatives: | 15 minutes |
| Edith Schlain Windsor: | 10 minutes |

The parties additionally propose to divide 60 minutes of oral argument time on the merits, to follow the oral argument on jurisdiction, as follows, with the argument to be presented in the following order:

| | |
|---------------------------------------|----------------------------|
| Bipartisan Legal Advisory Group | |
| of the U.S. House of Representatives: | 30 minutes |
| | (to include rebuttal time) |
| United States: | 15 minutes |
| Edith Schlain Windsor: | 15 minutes |

The amica takes no position on the allocation of time for the merits argument.

The parties and the amica believe that granting additional oral argument time, allowing for separate oral argument on the jurisdictional questions and merits, and dividing the oral argument time as set forth above, will facilitate an adequate and orderly presentation on the questions presented by this case.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record

FEBRUARY 2013