1		
2		
3		
4		
5		
6		
7		
8		
9 10	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA	
11 12 13 14 15 16 17 18 19 20 21 22 23 24	COOPER-HARRIS, ET AL. Plaintiffs, vs. UNITED STATES OF AMERICA, ET AL. Defendants. The matter before the Court is Plain ("Motion"). [Dockets No. 96, 97.] Plain Section 3 of the Defense of Marriage Act 101(31) of Title 38 ("Title 38") on the bat protection of the laws guaranteed by the	CASE NO. 2:12-00887-CBM (AJWx) ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT intiffs' Motion for Summary Judgment atiffs challenge the constitutionality of at ("DOMA") and Sections 101(3) and asis that these provisions violate the equal
25	I. PROCEDURAL HISTORY Plaintiffs and Intervenor-Defendant Bipartisan Legal Advisory Group of the United States House of Representatives ("BLAG") filed cross-motions for summary judgment. [Doc. No. 105.] The Federal Government filed a Response	
26		
27		
28		

1	in support of Plaintiffs' Motion. [Doc. No. 113.] Subsequent to the Supreme	
2	Court's decision in <i>United States v. Windsor</i> , 133 S. Ct. 2675, 186 L. Ed. 2d 808	
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
	2	

U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000). The evidence presented by the parties must be admissible. Fed. R. Civ. P. 56(c)(2). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *See Thornhill Pub. Co. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

"Summary judgment is especially appropriate where there is no genuine issue of material fact and the only dispute is as to pure legal questions." *Miller v. Cnty. of Santa Cruz*, 796 F. Supp. 1316, 1317-18 (N.D. Cal. 1992) *aff'd*, 39 F.3d 1030 (9th Cir. 1994).

III. DISCUSSION

Plaintiffs argue that (1) heightened scrutiny is the appropriate standard of review for sexual orientation discrimination, (2) heightened scrutiny also applies because DOMA and Title 38 discriminate on the basis of sex, (3) if the Court finds that heightened scrutiny is not the appropriate standard of review, DOMA and Title 38 do not survive rational basis scrutiny. (*See* Motion at 7.)

A. Title 38

Plaintiffs challenge Title 38. (Motion at 24-25.) BLAG's withdrawal states that "in light of the Supreme Court's opinion in *Windsor*, that it no longer will defend [Title 38]." [Doc. No. 136, at 2:7-10.] However, the Supreme Court does not address Title 38's constitutionality. *See, e.g., Windsor*, 133 S. Ct. at 2694.

Plaintiff argues that the appropriate standard of review is heightened scrutiny. The current standard of review for sexual orientation classifications in the Ninth Circuit remains unsettled. *See In re Levenson*, 587 F.3d 925, 931 (9th Cir. 2009). Like the *Diaz* Court, "[w]e do not need to decide whether heightened scrutiny might be required" because as discussed below Title 38 is unconstitutional under rational basis scrutiny. *See Diaz v. Brewer*, 656 F.3d 1008, 1012, 1015 (9th Cir. 2011).

1. Rational Basis

Under rational basis review, a statute will be upheld as constitutional "if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440, 105 S. Ct. 3249, 3254, 87 L. Ed. 2d 313 (1985).

Plaintiffs state that Congress enacted Title 38 to remove "unnecessary gender references," and promote gender equality and expand the availability of veterans' benefits. (Motion at 24:7-13.) The Court finds that the exclusion of spouses in same-sex marriages from veterans' benefits is not rationally related to the goal of gender equality.

Plaintiffs also argue that Title 38 is not rationally related to any military