

No. 12-307

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

EDITH SCHLAIN WINDSOR, in Her Capacity
as Executor of the Estate of THEA CLARA SPYER,
Respondent,

and

THE BIPARTISAN LEGAL ADVISORY GROUP OF THE
UNITED STATES HOUSE OF REPRESENTATIVES,
Respondent.

**On Writ of Certiorari to the United States Court
of Appeals for the Second Circuit**

**BRIEF OF HON. LAWRENCE J. KORB,
RADM THOMAS F. ATKIN, BG ROOSEVELT
BARFIELD, DR. COIT D. BLACKER, GEN WESLEY
K. CLARK, RICHARD CLARKE, HON. WILLIAM
COHEN, CDR BETH COYE, HON. RUSSELL D.
FEINGOLD, BG EVELYN FOOTE, LTG ROBERT G.
GARD, JR., ET AL. AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENT WINDSOR
ON THE MERITS QUESTION**

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INTEREST OF *AMICI CURIAE*¹

Amici are former high-ranking officers of the Army, Navy, Air Force, Marine Corps, and Coast Guard, former civilian leaders with responsibility for overseeing our nation's defense, and authorities on national security. They include former Secretaries of Defense, Department of Defense officials, United States Senators and Congressmen, Flag and General Officers, advisors for national security, and groups representing tens of thousands of veterans. They have led and overseen the military while the Defense of Marriage Act (DOMA) has been in effect, including after the repeal of the "Don't Ask, Don't Tell" (DADT) policy, and/or have experience with the military that provides unique insights into how DOMA currently harms the military and what its future untoward consequences will be to our national security. They have a significant interest in this case because they understand that, if the military is unable to give effect to marriages that are legal under state law, it will undermine the military's morale, readiness, cohesion, and effectiveness. It will also undermine the military's significant efforts, particularly since the repeal of DADT, to recruit and retain gay and lesbian individuals to ensure that servicemembers are drawn from the full pool of the best and brightest

¹ Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici curiae* and their counsel, made any monetary contribution towards the preparation and submission of this brief. The United States and the respondent Bipartisan Legal Advisory Group of the United States House of Representatives filed blanket consents to the filing of *amicus curiae* briefs, which were docketed on January 10, 2013 and January 2, 2013, respectively. Respondent Windsor consented to the filing of this brief.

candidates. Accordingly, *amici* urge this Court to affirm the judgment holding DOMA unconstitutional.

Amici's views are based on decades of experience and accomplishment at the highest positions in our country's military leadership and our civilian leadership charged with oversight of national security. Biographical sketches of each *amicus* are included in the appendix to this brief.

SUMMARY OF ARGUMENT

Charged with the paramount mission of protecting national security, the military's leadership long ago concluded that supporting servicemembers' families is central to tactical effectiveness and strategic victory. The strength of our servicemembers comes from the strength of their families. "Family readiness"—achieved by providing a strong, supportive environment where servicemembers and their families can thrive—is an essential element of military readiness. Indeed, "[t]he President has made the care and support of military families a top national security priority." President of the U.S., *Strengthening Our Military Families: Meeting America's Commitment* 1 (Jan. 2011) ("*Strengthening Our Military Families*"). Without the commitment of our nation to protect and support those left behind, all who are asked to serve either in preparation for deployment or actual deployment are necessarily distracted from their vital missions on behalf of our national security.

Today, after the repeal of "Don't Ask, Don't Tell," the reality is that military families include openly gay, legally married men and women. The compelling military need to protect these families is indistinguishable from that which leaders have

recognized about military families generally for decades.

The Defense of Marriage Act, however, prohibits the military from providing all servicemembers and their families with necessary care and support. DOMA discriminates against certain legally married servicemembers and their families by denying them numerous benefits, including healthcare, equal pay, educational assistance, and survivorship benefits.

The question then is whether the military should be permitted to provide equal treatment to all legally married servicemembers and their families, or if it must discriminate against certain servicemembers and their families in a manner that research, experience, and common sense show is harmful to individual servicemembers and to the military collectively. For those experienced in military leadership and familiar with military values, the answer is easy. As Secretary of Defense Leon Panetta recently stated, “[d]iscrimination based on sexual orientation no longer has a place in the military.” Memorandum from the Secretary of Defense, *Extending Benefits to Same-Sex Partners of Military Members* 1-2 (“*Extending Benefits Memo*”).

As detailed below, DOMA threatens the core of the military’s mission and culture. *First*, in light of military families’ well-established central role in mission readiness and military effectiveness, if DOMA is permitted to stand, it will harm morale and the performance of individual servicemembers and their units. The extensive support offered to military families exists precisely because military and civilian leaders consistently have recognized that the services’ readiness and effectiveness depend upon *all* servicemembers’ confidence that their families are

supported and cared for, particularly during inevitable periods of separation.

Second, DOMA's mandatory discrimination undermines efforts that the military has taken since the repeal of "Don't Ask, Don't Tell" to recruit and retain the most talented servicemembers, regardless of sexual orientation. Because research and experience have shown that the availability and quality of benefits, including family benefits, are central to recruitment and retention, DOMA is a formidable obstacle to fulfilling these goals. In the environment of voluntary armed service, any action that arbitrarily deters thousands of potential candidates from service presents serious obstacles to ensuring that the nation's fighting forces are unparalleled throughout the world.

Third, that every man and woman who serves in the United States military deserves to be treated equally and with honor, respect, and dignity is unassailable. DOMA, however, undercuts these principles at every turn. It mandates that the military leadership replace the ethos of equality that they aspire to instill in the service—and the equal treatment that servicemembers expect and deserve—with discrimination. Moreover, it requires that leaders breach the core military values of honesty and dignity. The highest ranking military leaders have sworn to each servicemember that our Nation will "provid[e] the best care and support to our wounded, ill, and injured Soldiers—along with their Families. And our commitment extends to the Families who have lost a Soldier in service to our nation. We will never forget our moral obligation to them." Hon. P. Geren & Gen. G.W. Casey, *A Statement on the Posture of the United States Army 2009*, at May 7, 2009 letter (May 2009). Yet, DOMA compels military

leaders to break those commitments and obligations to many military families.

To protect the extraordinarily vital interests of the Nation embodied in its need to recruit, retain, and ensure the dedication of commitment of all of its military personnel, the Second Circuit's judgment should be affirmed.

ARGUMENT

I. SUPPORT FOR ALL MILITARY FAMILIES IS INTEGRAL TO NATIONAL SECURITY

1. "It is 'obvious and unarguable' that no governmental interest is more compelling than the security of the Nation." *Haig v. Agee*, 453 U.S. 280, 307 (1981) (quoting *Aptheker v. Sec'y of State*, 378 U.S. 500, 509 (1964)). Since the founding of this country, there has been no doubt that "[s]ecurity against foreign danger is . . . an avowed and essential object of the American Union." *The Federalist No. 41* (J. Madison). Tasked with protecting this paramount governmental interest, the U.S. military solemnly embraces its essential role in national security matters.

Crucial to the military's success in protecting the nation are each servicemember's morale, readiness, and effectiveness. See, e.g., *Brown v. Glines*, 444 U.S. 348, 356 (1980) (describing "morale, discipline, and readiness" as "essential attributes of an effective military force"); *United States v. Voorhees*, 16 C.M.R. 83, 108 (C.M.A. 1954) ("the spirit and morale of others . . . are vital to military preparedness and success"). Morale and cohesion also play a critical role in retention. See generally, e.g., J. Shay, *Cohesion, Confidence, Command Climate: Keys to Preventing Psychological and Moral Injury in Military*

Service, in Leadership: Theory and Practice 408 (G.R. Andersen ed., 1999).

2. The military and civilian leadership long have recognized that the physical and emotional well-being of servicemembers' families is critical to the military's efforts to ensure and increase morale, readiness, cohesion, and ultimately the operational success of our armed forces. Research, experience, and common sense dictate that individuals who are preparing for deployment or have been deployed to areas of actual or potential fighting should have as few distractions as possible. Thus, making sure that loved ones are not suffering any more than humanly possible by the absence of someone stationed in the military is a mission critical objective.

After the military became an all-volunteer force, leadership (civilian and military alike) increasingly came to view military success as dependent upon the strength of military families. See generally, *e.g.*, S. Albano, *Military Recognition of Family Concerns: Revolutionary War to 1993*, 20 *Armed Forces & Soc'y* 283, 289-90 (1994) (explaining that the military recognized that "the needs of hundreds of thousands of military family members" were central to "the readiness equation"); L.W. Oliver, U.S. Army Research Inst. for the Behavioral & Soc. Scis., Research Report 1582, *Readiness and Family Factors: Findings and Implications from the Literature* 6 (1991) ("families contribute to readiness").

In 1983, for example, Army leaders launched an initiative—still thriving today—to study and strengthen family supports, repeatedly expressing that the military family is inseparable from military readiness. See Chief of Staff, U.S. Army, *White Paper 1983: The Army Family* (Aug. 1983) ("*The Army Family*"). In a letter to soldiers and their families

regarding this effort, the Chief of Staff explained that, in order “to execute the missions entrusted to it” for the national defense, “the Army can and must assure within available resources and commitments adequate care for families of its members.” *Id.* at introductory letter. He explained that “[s]ervicemembers and their families should be able to enjoy the benefits of the society they are pledged to defend,” and that the nature of the military’s commitment to its mission and its servicemembers “dictates . . . a moral obligation to support their families.” *Id.* at 1, 13. He further emphasized that the military’s strength “lies in its people,” that families directly affect the military’s “ability to accomplish its mission,” and that families are “an organizational concern.” *Id.* at introductory letter & 1; see *id.* at 14 (“[F]amily stability promotes greater individual effectiveness.”); see also, *e.g.*, Albano, *supra*, at 291 (in 1979, the Air Force “formally recognized the role of the family in mission readiness”).

Today, the highest levels of leadership recognize that these principles are incontrovertible:

“The President has made the care and support of military families a top national security priority,” recognizing that “[t]he well-being of military families is an important indicator of the well-being of the overall force.” *Strengthening Our Military Families* 1. The Chairman of the Joint Chiefs of Staff has stressed, “[t]he All-Volunteer Joint Force is our Nation’s decisive advantage, and its lifeline is our military family.” Office of the Chairman of the Joint Chiefs of Staff, *Keeping Faith with our Military Family* 1 (Nov. 2012). The Defense Department similarly “consider[s] ‘family readiness’ as an essential element of our Readiness strategy.” Dr. K. Guice, Principal Deputy Assistant Sec’y of Def.

(Health Affairs) & Dr. R. Posante, Deputy Dir., Office of Cmty. Support for Military Families with Special Needs, *Prepared Statement of Before the Senate Armed Services Committee Subcommittee on Military Personnel* 6 (June 20, 2012); see U.S. Dep't of Def., Instruction No. 1342.22, *Military Family Readiness* § 4.a (July 3, 2012) (incorporating family life into “recruitment, retention, morale, and operational readiness of the military force”).

The service branches' leadership agrees. For instance, the Air Force recognizes that “caring for families has a direct impact on mission readiness When families are taken care of, Airmen are free from distractions and are better able to focus on the mission at hand.” *Recruiting, Retention and End Strength Overview: Hearing Before the Military Personnel Subcomm. of the H. Comm. on Armed Services*, 111th Cong. 120–21 (2009) (statement of Lieutenant General Richard Y. Newton, III, Deputy Chief of Staff, Manpower, and Personnel, United States Air Force) (“*Testimony of Lieutenant General Newton*”). Likewise, the Army has recognized that “Soldiers and their families are the Army’s greatest asset,” U.S. Dep’t of Def., *Welcome to the Army Family: A First Guide for Military Spouses and Family Members* 2 (June 2005), so “[o]ur policies must recognize that soldiers cannot perform efficiently while distracted by overwhelming family concerns,” *The Army Family* 13-14 (“taking care of our families enhances both retention and readiness”). Given the extraordinarily complicated technology used by our nation’s military and the staggering consequences of mistakes, every needless distraction creates an unacceptable risk to our security and to the safety of our fighting forces.

3. Because of these universal recognitions that military families are inseparable from military readiness and effectiveness, military and civilian leaders have gone to great lengths to protect and support servicemembers and their families, particularly when military personnel are deployed. See, *e.g.*, S. Rep. No. 93-235 (1973), *reprinted in* 1973 U.S.C.C.A.N. 1579, 1585 (“Success in modern warfare demands the full utilization of every ounce of both the physical and mental strength and stamina of its participants. No soldier can be and remain at his best with the constant realization that his family and loved ones are in dire need of financial assistance.”); 127 Cong. Rec. 21,378 (1981) (Statement of Sen. Hatfield).

To that end, numerous government programs provide benefits to servicemembers to strengthen their families, see, *e.g.*, 10 U.S.C. §§ 1781-1790 (military family programs); *id.* §§ 2821-2838 (military family housing), and indeed servicemembers’ families receive many direct benefits, *e.g.*, *id.* §§ 1071-1110b (medical and dental care); 38 U.S.C. § 3319(c) (educational assistance benefits for a servicemember’s spouse or children); see also *infra* § II.A. Furthermore, the military leadership has prioritized initiatives to study and support (materially and emotionally) military families, advocating repeatedly for retaining and expanding benefits that strengthen servicemembers’ families and committing itself to providing whatever additional benefits it can. See, *e.g.*, *The Army Family* 13-14 (“[o]ur policies must recognize that soldiers cannot perform efficiently while distracted by overwhelming family concerns”); *id.* at 17-21 (advocating for, *inter alia*, “[i]mproved medical and dental care, more and better on- and off-post housing . . . financial assistance for higher education”); see also *Extending Benefits Memo* 1-2. For

instance, the Army Family Covenant commits to “[p]roviding our Families a strong, supportive environment where they can thrive,” including a commitment to “Improving Family Readiness” by “funding existing Family programs and services,” “[i]ncreasing accessibility and quality of health care,” “[i]mproving Soldier and Family housing,” “[e]nsuring excellence in schools, youth services and child care,” and “[e]xpanding education and employment opportunities for Family members.”² As detailed *infra* § II, DOMA directly contravenes these efforts by military leadership.

II. BY REQUIRING THE MILITARY TO DISCRIMINATE AGAINST CERTAIN SERVICE-MEMBERS, DOMA UNDERMINES NATIONAL SECURITY AND IS CONTRARY TO THE MILITARY’S CORE VALUES

DOMA violates the military’s above-discussed commitment to provide for all servicemembers and their families. There is no question that DOMA discriminates against certain legally married servicemembers and veterans and their families. *Accord* Br. for the United States on the Merits Question 17 (“Br. for U.S.”). The Secretary of Defense recently explained that vital military benefits “such as health care and housing allowances, are by statute [*i.e.*, DOMA] currently only available to spouses” as the term “spouse” is defined by federal law. *Extending Benefits Memo* 2; see 1 U.S.C. § 7 (“spouse’ refers only to a person of the opposite sex who is a husband

² At U.S. Army, *Soldier Life, Army Family Covenant*, http://www.goarmy.com/content/dam/goarmy/downloaded_assets/pdfs/Army%20Family%20Covenant.pdf; see also, *e.g.*, *Testimony of Lieutenant General Newton* 121 (stating that the Air Force is “committed to ensure our Airmen can rest easy, knowing the Air Force family is taking care of their family”).

or wife”). Therefore, such benefits “cannot be made available” to legally married gay and lesbian service-members and their families. *Extending Benefits Memo 2*.

This is simply untenable given the reality of today’s military, where following the repeal of “Don’t Ask, Don’t Tell” (DADT) gays and lesbians are permitted to serve openly in the military, and some of those individuals are legally married and have families. See *infra* § II.A. There is no military justification for this discrimination. See, *e.g.*, Br. for U.S. 28-29. On the contrary, DOMA harms the military by depriving a subset of legally married servicemembers and their families of the very benefits—including healthcare, housing, equal pay, and survivorship benefits—that common sense, military experience, and research have demonstrated to be essential to *all* military families and more fundamentally to military effectiveness. *Supra* § I; *infra* § II.A. DOMA also undermines the military’s post-DADT recruitment and retention initiatives. *Infra* § II.B. Finally, through such mandatory discrimination, DOMA infringes on the military’s core value of equality and requires that the military violate its most sacred promises to its servicemembers. *Infra* § II.C.

Based on their experience leading, overseeing, and analyzing the military, *amici* are confident that discriminating against certain servicemembers and their families in this manner is contrary to the military’s best interests and therefore undermines national security.

A. DOMA Harms The Post-DADT Military By Prohibiting Certain Servicemembers And Their Families From Securing Benefits That The Military Has Long Recognized Are Essential To Effective Service.

In 2011, the military implemented the repeal of the former DADT policy. Pub. L. No. 111-321, § 2(f)(1)(A), 124 Stat. 3515, 3516 (2011) (repealing 10 U.S.C. § 654); Br. for U.S. 24 n.5; see also *Extending Benefits Memo 1* (DADT's repeal "has been led effectively by leaders throughout the chain of command and is now essentially completed"). As a result, the estimated 65,000-plus gay and lesbian servicemembers already serving now can do so openly. See *The Report of the Department of Defense Working Group that Conducted A Comprehensive Review of the Issues Associated with a Repeal of Section 654 of Title 10, U.S.C., Policy Concerning Homosexuality in the Armed Forces: Hearing Before the S. Comm. on Armed Servs., 111th Cong. 899 (2010) ("S. Hearing 111-899")*.

Some of these gay and lesbian servicemembers are legally married. See, e.g., J. Gould, *Wife of 1st Openly Gay General to Attend State of the Union, Outside the Wire*, Army Times, Feb. 12, 2013, <http://militarytimes.com/blogs/outside-the-wire/2013/02/12/wife-of-1st-openly-gay-general-to-attend-state-of-the-union/> (discussing legally married Brigadier General). These legally married servicemembers, like all married servicemembers, need military benefits and protections to support their families while they serve and to maintain a decent quality of life. See *supra* § I. Obviously, sexual orientation does not affect the importance of loved ones to a servicemember deployed, nor does it change his or her worries and distract-

tions because those left behind to mind the home and children are facing deprivations that are no different for any member of a military family.

But, as the Secretary of Defense and the Solicitor General have recognized, DOMA prohibits the military from extending many important benefits to servicemembers and their families, *supra* at 10-11, and from “ensur[ing] that all Service members are treated equally regardless of sexual orientation.” *Extending Benefits Memo 2*; see Br. for U.S. 17, 28-29. Indeed, the Secretary of Defense has stated that but for DOMA, the Department of Defense would grant full military benefits to married couples and their dependents without regard to sexual orientation. *Extending Benefits Memo 2*. As detailed below, because the benefits that DOMA prohibits the military from providing these servicemembers and their families are among the most significant ones available to personnel, the Act impedes crucial military objectives.

Healthcare. In one of its most direct affronts to military strength and well-being, DOMA prevents the families of gay and lesbian servicemembers from receiving medical and dental care; “dependent” eligibility rests on the term “spouse” as defined by DOMA. See 10 U.S.C. §§ 1071 *et seq.*; *id.* § 1072; *Extending Benefits Memo 2*; Br. for U.S. 17. Moreover, if a married gay or lesbian servicemember is relying on his or her state-law marriage as the basis for parentage rights (as married parents typically do) or has not yet adopted his or her spouse’s child, then DOMA also denies the child access to medical or dental benefits. 10 U.S.C. § 1072(6) (defining “child” to mean an unmarried “legitimate” child, adopted child, stepchild, or a foster child); see also, *e.g.*, *In re Sebastian*, 25 Misc. 3d 567,

573, 584-86 (N.Y. Sur. Ct. 2009) (granting parent's petition to adopt her own child because, although New York would recognize parentage rights because child was born to legally married lesbian parents, an order of adoption was necessary to ensure that other jurisdictions would recognize legal parentage).

Denying health benefits plainly impedes morale, and therefore undermines the fundamental purposes of providing medical benefits to military members and families. See, e.g., *The Army Family* 1, 13-14. Indeed, the statute granting medical benefits expressly states that its "purpose . . . is to create and maintain high morale in the uniformed services by providing an improved and uniform program of medical and dental care for members . . . and for their dependents." 10 U.S.C. § 1071. Every branch of government has recognized the centrality of healthcare to military families. See e.g., *The Military Health System: Health Affairs/TRICARE Management Activity Organization: Hearing Before Military Personnel Subcomm. of the H. Comm. on Armed Services*, 111th Cong. 8 (2009) (statement of Lt. Gen. Schoomaker) ("[f]or an Army at war, care of our families is critical"). Servicemembers likewise have indicated that healthcare is a key indicator as to whether they and their spouses decide to remain in the military until retirement. U.S. Dep't of Def., *Support to the DoD Comprehensive Review Working Group Analyzing the Impact of Repealing "Don't Ask, Don't Tell," Volume I: DADT Report Findings From the Surveys* 58 tbl.4.25, 95, 99 (Nov. 2010). The courts and congressional studies have recognized the same. See, e.g., *Sierra Military Health Servs, Inc. v. United States*, 58 Fed. Cl. 573, 585 (2003) (noting the "public interest in maintaining the morale of our military personnel by providing improved health care

benefits to dependents”); D. Jansen, CRS Report, *Military Medical Care* 1-2 (May 14, 2009) (“[t]he military health system helps to maintain the health of military personnel so they can carry out their military missions” and supports “recruitment and retention”).

It is difficult to imagine anything more emotionally debilitating than knowing that a loved one is suffering from a treatable medical condition but lacks the access to medical care that every other dependent in a servicemember’s unit receives. The impact of the lost access is doubly discouraging because it is blatantly discriminatory.

Housing. Housing benefits are also critical in the military. Other than basic pay, housing allowances comprise the largest cash payment in a military member’s overall compensation. Office of the Under Sec’y of Def. for Personnel & Readiness, *Report of the Eleventh Quadrennial Review of Military Compensation* 17 fig.2-1 (2012). Moreover, the Army considers “improving [s]oldier and [f]amily housing” a core aspect of its “Covenant.” Geren & Casey, *supra*, at “Army Family Covenant.” Similarly, the Air Force recently emphasized that a lesbian servicemember should be able to “perform her mission and not have to worry about her partner and children living in shabby off-base housing because they were ineligible for on-base military housing.” U.S. Dep’t of Def., News Transcript, *Pentagon Lesbian, Gay, Bi-Sexual, and Transgender Pride Month Event* (June 26, 2012) (“*Pentagon Pride Month Event*”) (statement of Principal Deputy General Counsel Gordon Tanner).

DOMA, however, prevents legally married gay and lesbian couples from receiving equal housing benefits. See Br. for U.S. 17. For example, with respect to housing allowances, a Private assigned to the

1 Battalion 69th Infantry unit in New York City who was treated as “unmarried” under DOMA would receive \$9,216 less per year than a “married” counterpart—more than half of his or her base annual salary (\$18,194). See U.S. Dep’t of Def., *BAH Calculator*, <https://www.defensetravel.dod.mil/site/bahCalc.cfm> (last updated Jan. 22, 2013); U.S. Army, *Benefits, Basic Pay: Active Duty Soldiers*, <http://www.goarmy.com/benefits/money/basic-pay-active-duty-soldiers.html> (last visited Feb. 28, 2013); 37 U.S.C. § 403.³

Given the importance of housing, this is intolerable. In addition to its monetary value, housing is a vital military benefit because of its ability to foster military communities and support military families. Conversely, reducing housing options and allowances can mean that servicemembers have to live further away from their base, colleagues and spouses, and can put additional stresses on their professional and personal lives. B.R. Karney & J.S. Crown, *Families Under Stress: An Assessment of Data, Theory, and Research on Marriage and Divorce in the Military* 59 (2011). Common experience teaches that personal crises that can be resolved face-to-face often are all but impossible to sort out long distance.

Compensation. DOMA effectively lowers the salaries of legally married gay and lesbian servicemembers. For example, the same Private living in New York City who was treated as “unmarried”

³ Several branches of the military require unmarried, junior enlisted personnel to live in barracks on base. See, e.g., U.S. Marines Corps, MARADMIN 429/11, *Freeze on Further Approval of BAH* (Jul. 29, 2011). Because DOMA does not recognize gay and lesbian servicemembers’ legal marriages, these directives categorically prevent the servicemembers from living with their spouses.

under DOMA would receive \$864 less annually in cost of living adjustments (almost five percent of his annual base salary). See U.S. Dep't of Def., *CONUS COLA Calculator*, <https://www.defensetravel.dod.mil/site/conusCalc.cfm> (last updated Dec. 28, 2012); 37 U.S.C. § 403b (cost-of-living allowance in the continental United States). If the Private's spouse cannot live with him or near his permanent duty station, DOMA stops him from receiving up to \$250 per month in family separation allowance. 37 U.S.C. § 427. If the Private might otherwise qualify for assistance for low-income servicemembers with dependents (spouses), which can total up to \$1100 per month, DOMA prevents this. *Id.* § 402a.

If the Private suffers a service-connected disability, is 100% disabled, and is married with children, he would receive \$167 per month less because of DOMA. U.S. Dep't of Veterans Affairs, *Veterans Compensation Benefits Rate Tables*, http://www.benefits.va.gov/COMPENSATION/resources_comp01.asp (last updated Jan. 30, 2013); 38 U.S.C. § 1115 (wartime disability compensation for dependents); *id.* § 1135 (peacetime disability compensation for dependents); *id.* § 1114 (rates of maritime disability compensation). DOMA additionally bars myriad other monetary allowances, such as for travel and transportation. See 37 U.S.C. §§ 474-492.

Civil Protections. Further, DOMA limits the application of the Servicemembers Civil Relief Act (SCRA), which provides soldiers important financial protections as well as other procedural, tax and voting rights. See 50 U.S.C. app. §§ 501-596; *id.* app. § 511 (defining “dependent” to include “spouse”). Many of these protections apply jointly to servicemembers and spouses. See, e.g., *id.* app. § 527 (limiting interest rates for “the servicemember and

the servicemember's spouse jointly"). The explicit purpose of SCRA is "to provide for, strengthen, and expedite the national defense [by allowing servicemembers] to devote their entire energy to the defense needs of the Nation." *Id.* app. § 502. As this Court recognized about SCRA's predecessor, these benefits should be "read with an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948). Notwithstanding the SCRA's important aims, DOMA excludes gay and lesbian servicemembers and their spouses from these full protections.

Educational and Career Opportunities. DOMA prevents servicemembers from transferring to their spouse or children key educational benefits of the Post-9/11 Veterans Educational Assistance Act, which President George W. Bush signed into law in 2008. See 38 U.S.C. § 3319; see generally *supra* at 13-14 (noting potential parentage issues). This legal disability undermines what the Secretary of Veterans' Affairs hailed as "landmark legislation" and "an important part of fulfilling our promise to [those] who have served our country so honorably." *Strong Response to Yellow Ribbon Program, Vanguard* (U.S. Dep't of Veterans Affairs, Wash., D.C.), July/Aug. 2009, at 23. DOMA also forecloses eligibility for educational assistance to surviving spouses and their children through other provisions. 38 U.S.C. §§ 3500 *et seq.*; *id.* § 3501 (defining "eligible person" to include "surviving spouse"); *id.* § 101 (defining "child").

Additionally, DOMA limits career opportunities and job training for military spouses, which can otherwise be particularly difficult to secure given the rapid deployments and frequent moves associated with military life. See 10 U.S.C. §§ 1784 (employ-

ment opportunities for military spouses), 1784a (education and training opportunities for military spouses to expand employment and portable career opportunities).

Survivorship Benefits. When a servicemember loses his or her life in the line of duty, survivorship benefits often are a substantial source of income for a surviving spouse. Bureau of Naval Personnel, *Navy Pay and Benefits Guide* 11 (July 2010); 10 U.S.C. §§ 1447-1455; *id.* § 1447(9) (defining “surviving spouse”). DOMA also prevents surviving spouses from receiving many other forms of compensation and allowances related to a servicemember’s death. See, e.g., 37 U.S.C. § 481f (travel allowances to attend burial ceremony); 38 U.S.C. § 1121 (wartime death compensation); *id.* § 1141 (peacetime death compensation); *id.* § 1310 (dependency and indemnity compensation for service-connected deaths); *id.* § 101(3), (31) (defining “surviving spouse” and “spouse”); see also Br. for U.S. 17.

Burial Rights and Honors. DOMA denies typically applicable burial rights and honors to spouses of a gay and lesbian servicemembers. See 38 U.S.C. § 2402(a)(5) (spouses eligible for interment in national cemeteries); *id.* § 2402(a)(6) (only the Secretary of Veterans Affairs may designate other persons). Worse yet, if a servicemember is killed in action and posthumously receives the Purple Heart, DOMA prevents his or her spouse from receiving membership in the Military Order of the Purple Heart. 36 U.S.C. § 140503. Denial of these benefits is greatly disrespectful and deeply hurtful. See, e.g., T. Johnson, *War Widow Deemed Unequal by DOMA*, Stars & Stripes, Feb. 13, 2013 (although couple was legally married, spouse “was denied the ceremonies, rituals and spousal survivor’s benefits that usually go

to widows”) (“*War Widow Deemed Unequal*”). This also contravenes Department of Defense practice, which generally opposes legislation that could foster unequal treatment of service-members and their surviving loved ones. See, e.g., H.R. Rep. No. 106-270, at 7 (1999) (discussing the Department’s opposition to bill on grounds that it “would create inequities in the treatment of survivors of service members dying on active duty”).

Immigration and Naturalization. DOMA imposes severe immigration penalties on the legal spouses of gay and lesbian servicemembers. Immigration law provides a pathway to naturalization for the spouse of a servicemember who is a U.S. citizen and dies on active duty. 8 U.S.C. § 1430(d). This includes servicemembers who are awarded U.S. citizenship posthumously. But DOMA eliminates this pathway to naturalization for gay and lesbian spouses. This is particularly problematic since the military recently reinitiated a special program to “recruit legal immigrants with special language and medical skills.” J. Preston, *Pentagon Reopens Program Allowing Immigrants with Special Skills to Enlist*, N.Y. Times, Oct. 28, 2012, at A21. The program’s “powerful lure is that it allows [recruits] to naturalize as United States citizens quickly.” *Id.* But DOMA creates a directly contrary effect by *eliminating* opportunities for a subset of military spouses to naturalize, to the detriment of recruits’ peace of mind and the care of their families and children.

Veterans’ Benefits. DOMA prevents veterans from conferring benefits to their spouses, such as pensions and certain types of death and disability compensation. 38 U.S.C. §§ 1102, 1541; see also *id.* § 101 (defining “surviving spouse”). It creates bar-

riers to spousal notification when a servicemember is missing. See 10 U.S.C. § 655(a) (permitting servicemembers to “specify in writing the person or persons, if any, other than that person’s primary next of kin or immediate family” (such as a “spouse”) “to whom information on the whereabouts and status of the member shall be provided”—but distinguishing such designated persons from “primary next of kin or immediate family” members, thus creating a separate notification framework); see also, *e.g.*, *War Widow Deemed Unequal* (although couple was legally married, spouse was not personally informed by a casualty officer or provided with grief counseling when her wife was killed during deployment in October 2012). This weakens military families and undermines the Veterans Administration’s mission to “[t]o fulfill President Lincoln’s promise ‘[t]o care for him who shall have borne the battle, and for his widow, and his orphan.’” U.S. Dep’t of Veterans Affairs, *Mission, Vision, Core Values & Goals*, http://www.va.gov/about_va/mission.asp (last updated Oct. 3, 2011) (“*VA Mission Statement*”).

Again, each of these legal barriers imposes heightened anxiety for a gay servicemember with a legally joined spouse that Congress, by adopting the benefit, plainly recognized was crucial to ensuring that members of the military were spared as much as possible distractions caused by the plight of loved ones. The very fact that certain members of the military uniquely suffer these consequences, when otherwise identically situated fellow servicemembers do not, makes the situation intolerable in a way that can only threaten the military’s overall mission to protect our country.

B. DOMA Undermines The Military's Recruiting And Retention Initiatives.

In discriminating against gay and lesbian servicemembers and their families, DOMA hurts the military's ability to recruit and retain gay and lesbian servicemembers. DOMA does direct violence to many of the most important features of the military system that support recruitment and retention, and therefore will obstruct the leadership's ongoing work to improve the military, which plainly was intended by DADT's repeal.

1. The DADT policy ended for reasons that are humanitarian, economically rational and operationally beneficial. See, e.g., L.J. Korb et al., Ctr. for Am. Progress, *Ending "Don't Ask, Don't Tell": Practical Steps to Repeal the Ban on Openly Gay Men and Women in the U.S. Military* (June 2009) (describing how DADT undermined cohesion and effectiveness, harmed crucial recruitment and retention efforts, and exacted significant financial and other costs on the military). The recruitment and retention of gay and lesbian personnel implicates all of these aspects of DADT's repeal.

The military has a substantial interest in recruiting and retaining the best and brightest individuals for the service. See, e.g., S. Reitz, *Coast Guard Academy welcomes 'don't ask' repeal*, Associated Press, Sept. 20, 2011 (quoting Rear Admiral Sandra L. Stosz, Superintendent of the U.S. Coast Guard Academy, that "our focus on finding the best and the brightest from diverse parts of America and our inclusive policies is going to make this easy for us"); T. Shanker, *Warning Against Wars Like Iraq and Afghanistan*, N.Y. Times, Feb. 25, 2011, at A7 (quoting Defense Secretary Gates' remarks that the military must "retain, challenge, and inspire its best,

brightest, and most battle-tested young officers to lead the service in the future”). Such individuals improve the military’s operational performance. Moreover, failing to retain them imposes significant financial and operational costs.

Indeed, as a result of DADT, the military squandered hundreds of millions of dollars and lost thousands of capable servicemembers—many of whom were discharged under the policy during a time of war. The U.S. Government Accountability Office (GAO) concluded that “it cost DOD approximately \$193.3 million (\$52,800 per separation) . . . to separate and replace the 3,664 service members separated under [DADT] from fiscal years 2004 through 2009,” while acknowledging that it could not capture all of the financial effects of DADT. U.S. GAO, GAO-11-170, *Military Personnel: Personnel and Cost Data Associated with Implementing DOD’s Homosexual Conduct Policy* 18 (Jan. 2011) (“GAO 2011 Report”); see *id.* at “Highlights” (noting limitations).⁴ Indeed, 39 percent of the gay and lesbian servicemembers discharged as a result of DADT from 2004-2009 “held skills in critical occupations” placing them among the

⁴ A 2005 GAO report acknowledged that approximately 9,500 servicemembers were discharged due to DADT between 1994 and 2003, but expressed more uncertainty in calculating DADT’s cost to DOD. See U.S. GAO, GAO-05-299, *Military Personnel Financial Costs and Loss of Critical Skills Due to DOD’s Homosexual Conduct Policy Cannot Be Completely Estimated* 1-2, 13-15 (Feb. 2005) (stating that the discharges may have cost DOD \$191 million between 1994-2003) (“GAO 2005 Report”); but see Blue Ribbon Comm., Palm Ctr., *Financial Analysis of Don’t Ask, Don’t Tell* 2 (Feb. 2006) (concluding that DADT’s cost was at least \$363.8 million during the same period). Indeed, had GAO applied its methodology from the 2011 report (*i.e.*, \$52,800 per discharge) to the 9,000-plus discharges at issue in the 2005 report, the cost to DOD would have exceeded \$500 million.

military's most highly trained personnel (e.g., intelligence specialists, cryptologic technicians) and most valuable personnel (e.g., Arabic linguists), see *GAO 2011 Report* 10, 12-15; see also *GAO 2005 Report* 4-5 (eight percent of servicemembers discharged under DADT between 1994 and 2003 held "critical occupations").⁵

2. Accordingly, since DADT's repeal, military leadership—from the Pentagon down—has been committed to recruiting and retaining gay and lesbian servicemembers. For example, the military has launched gay- and lesbian-focused initiatives at the Pentagon and around the country. See, e.g., M. Groves, *Marine Recruiters Reach Out at Gay Pride Event in Pasadena*, L.A. Times, Oct. 9, 2011; E. Bumiller, *Marines Hit the Ground Running in Seeking Recruits at Gay Center*, N.Y. Times, Sept. 21, 2011, at A1; E. Flock, *Pentagon to Hold First-Ever Gay Pride Event Tuesday*, U.S. News, June 25, 2012. Air Force bases, for instance, instituted mandatory sensitivity training, which was credited with ensuring a smooth transition post-repeal. See M. McCarty, *Wright-Patterson Transition Smooth After Repeal of DADT*, Stars & Stripes, Sept. 22, 2012. At West Point, an officer oversees Spectrum—a support club for Lesbian, Gay, Bisexual, and Questioning cadets—and, in tandem with a lesbian, gay, bisexual

⁵ The military already faced significant obstacles in recruiting: (i) highly qualified gay and lesbian individuals in the first instance because the strictures of DADT made them unwilling to serve, and (ii) individuals regardless of sexual orientation due to DADT's negative impact on ROTC and other recruiting programs. See, e.g., *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 51-55 (2006) (discussing Congress' enactment of the Solomon Amendment in response to law schools' restriction of access to military recruiters due to DADT).

and transgender alumni group, has been involved with establishing a cadet mentoring program. See U.S. Military Acad., *Spectrum*, http://www.usma.edu/dca/sitepages/club_spec.aspx (last visited Feb. 27, 2013); Knights Out, *Knights Out and USMA Spectrum Launch Cadet Mentorship Program* (Feb. 8, 2013), http://www.knightsout.org/articles/knights_out_and_usma_spectrum_launch_cadet_mentorship_program; see also generally R.L. Swarns, *Out of the Closet and Into a Uniform*, N.Y. Times, Nov. 16, 2012 (discussing gay- and lesbian-focused clubs at the academies).

These measures reflect the military's recognition that disclosing one's sexual orientation is no barrier to effective service, see Br. for U.S. 28, and that there is "another qualified pool of applicants" who can and should strengthen the military. Groves, *supra* (citing marketing and public affairs representative for the Marine Corps' Recruiting Station Los Angeles). Indeed, the branches of the armed services recognize that they may achieve competitive advantages by successfully drawing from this "new" pool of talent: "With the law now changed, the Marines appear determined to prove that they will be better than the Army, Navy, Air Force and Coast Guard in recruiting gay, lesbian and bisexual service members." Marine Corps Connection, *Marines Hit the Ground Running in Seeking Recruits at Gay Center* (Sept. 20, 2011).⁶

⁶ Before repeal, approximately 69 percent of troops who were polled reported that they were already serving in a unit with someone they believed to be gay or lesbian, and 92 percent of those individuals said that their unit's "ability to work together" was either "very good," "good," or "neither good nor poor." U.S. Dep't of Def., *Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell"* 3-4 (Nov. 30, 2010) ("*DADT Report*"). Moreover, for decades, gay and lesbian

Additionally, with DADT's repeal, ROTC has returned to many elite campuses for the first time in decades. See L. Gordon, *Once a Campus Outcast, ROTC is Booming at Universities*, L.A. Times, June 1, 2011; *Colleges Reconsider ROTC After "Don't Ask" Repeal*, Associated Press, Dec. 23, 2010. Thus, the military's open access to these universities has been restored; those recruiting efforts will not be successful, however, if DOMA's arbitrary discrimination as applied to the military is permitted to continue.

3. DOMA unquestionably stands as a substantial impediment to the military's post-DADT recruiting and retention initiatives.

Since this country's infancy, military leaders have recognized that military benefits are central to recruitment and retention. For example, "George Washington intervened in [congressional] debates to argue that the provision of veterans' benefits was absolutely necessary to preserve the ability of the military to recruit and retain officers." J.D. Ridgway, *The Splendid Isolation Revisited: Lessons from the History of Veterans' Benefits Before Judicial Review*, 3 Veterans L. Rev. 135, 140 (2011). More recently, this Court has observed that the military's retirement benefits, for instance, are "designed to serve as an inducement for enlistment and re-enlistment." *McCarty v. McCarty*, 453 U.S. 210, 234 (1981), *superseded by statute*, 10 U.S.C. § 1408, *as recognized*

servicemembers had advanced within the military and won acclaim from high-ranking military officers and within their units for their dedication and leadership. See, e.g., *id.* at 4, 6; *S. Hearing 111-899* at 9 (Statement of Adm. Michael G. Mullen, Chairman, Joint Chiefs of Staff); *Lutz v. Sec'y of Air Force*, 944 F.2d 1477, 1479 (9th Cir. 1991); *McVeigh v. Cohen*, 983 F. Supp. 215, 220-21 (D.D.C. 1998).

in *Barker v. Kansas*, 503 U.S. 594 (1992). Indeed, it was “[p]roblems in retention” in the all-volunteer military that brought attention to the “family and quality of life issues” that are discussed *supra* § I.A, and which now are a central part of the military’s goals. Albano, *supra*, at 289-90.

By prohibiting the military from providing equal benefits to legally married gay and lesbian servicemembers, *supra* § II.A, DOMA makes service less attractive and makes it substantially more difficult for some servicemembers to remain in the military. This threatens the military’s post-DADT initiatives to recruit and retain the most talented personnel. In recruiting servicemembers, the military must compete with the private sector, which frequently offers significant benefits (*e.g.*, health insurance to spouses and children) without interference from DOMA. Particularly as today’s enlisted servicemembers marry, have children, and develop specialized skills and knowledge, the benefits foreclosed by DOMA will loom larger, and the private sector will become more attractive. See generally *The Army Family 7* (discussing the “Family Life Cycle” during which the needs of servicemembers and their families change over time).

“[O]ne of the most consistent findings in the retention literature is that spouse support is positively and significantly related to reenlistment intentions of military personnel.” Oliver, *supra*, at 6; see also, *e.g.*, *id.* at 5 (“There is considerable historical documentation that soldiers have deserted, been absent without leave (AWOL), or performed less effectively during wartime because of concerns about their families.”); D.K. Orthner & G.L. Bowen, U.S. Army Research Inst. for the Behavioral & Soc. Scis. Research Report 1559, *Family Adaptation in the*

Military 1 (1990) (“[i]f the family does not adapt” to the military, “then the service member . . . will probably separate from the service at the next opportunity”). Deficiencies in healthcare, housing, and educational assistance, for example, have been linked to “severe dissatisfaction with Army life” and inability to retain servicemembers. *E.g.*, *The Army Family* 20-21.

Thus, the military and the federal government have continued to improve services and benefits to families to attract and retain personnel, recognizing that adequate housing, healthcare, education, and community support are essential to keeping military families cared for and satisfied, and thereby promoting as much as possible the likelihood that the servicemember remains in the military. See, *e.g.*, *The Army Family* 11, 17-18; Orthner & Bowen, *supra*, at 6-7; Albano, *supra*, at 288-89, 292-93. For instance, the Post-9/11 Veterans Educational Assistance Act expressly states that the “purpose” of its provisions permitting a servicemember to transfer higher education benefits to his or her spouse or children “is to promote recruitment and retention in the uniformed services.” 38 U.S.C. § 3319(a)(2); see *id.* § 3319(b)(1) (conditioning the ability to transfer such benefits on six years of service and an agreement to serve at least four more years). Moreover, by strengthening families and ensuring retention, the military stands to benefit operationally: “[h]igher retention rates mean less turnover, resulting in more experienced unit members and greater cohesion.” Oliver, *supra*, at 6.

The military’s interests following the repeal of DADT are simply incompatible with DOMA.

C. DOMA Is An Affront To Core Military Values And Requires The Military To Break Promises To Its Personnel.

Not only does DOMA threaten the military's effectiveness by depriving certain servicemembers and their families of benefits that are vital to performance, as well as recruitment and retention, but also it requires the military to violate its core principles and forces the leadership to break its promises to its servicemembers.

1. The military prides itself on providing equal opportunities and benefits to servicemembers. Historically, disparities existed between enlisted personnel and officers in the types of benefits for which they and their families were eligible. See Albano, *supra*, at 290-91, 294-95; *The Army Family 2-4*. Over time, however, the military and civilian leadership ensured that the provision of benefits was expanded to include families of enlisted personnel, not just officers, and was consistent with gender parity. Albano, *supra*, at 290-91, 294-95; *The Army Family 2-4*. In the last half-century, the military has consistently recognized the importance of equality and inclusion, including in the context of its gay and lesbian personnel. See Press Release, Chief of Naval Personnel Pub. Affairs, "*Don't Ask, Don't Tell*" Repealed (Sept. 20, 2011) ("Success of the Navy is enabled by the diversity of our Sailors"); see also, *e.g.*, M.J. MacGregor, Jr., *Integration of the Armed Forces 1940-1965*, at 355 (1980) ("maximum military efficiency demand[s] that all servicemen be given an equal opportunity"); U.S. Dep't of Justice, *Affirmative Action Review, Report to the President* § 7.1 (1995) ("success with the challenges of diversity is critical to national security").

Today, the armed services and Departments of Defense and Veterans Affairs formally recognize equality and dignity as core values.⁷ Servicemembers have an “[e]xpectation of fair and equitable treatment.” *The Army Family* 13. This only makes sense. Every member of the military is exposed equally to harm and personal sacrifice and thus each should receive equal treatment. Any other course is morally intolerable and undermines the military’s ability to serve its mission effectively.

DOMA, by contrast, is manifestly unequal inasmuch as it reduces and eliminates benefits to certain soldiers and their families. Dividing servicemembers into two classes has no military justification. See, e.g., Br. for U.S. 28-29, 12; cf. Dep’t of the Navy, OPNAVINST 5354.1F, *Equal Opportunity Policy* § 4(a) (Jul. 25, 2007) (discrimination “adversely affect[s] good order and discipline, mission readiness, and prevent[s] our Navy from attaining the highest level of operational readiness”). Moreover, this divisiveness runs directly counter to commonality and fairness that is essential to cohesion. See, e.g., *Pentagon Pride Month Event* (statement of Gordon Tanner: in the post-DADT military, a servicemember must “not be treated as second class because he receives lesser benefits than his straight colleague”); *Marine*

⁷ See, e.g., U.S. Dep’t of Def., Administrative Instruction No. 31, *Equal Opportunity (EEO) and Diversity Programs* § 4.1 (July 13, 2007) (“[p]romote equal opportunity in every aspect of civilian employment policy and practice”); U.S. Dep’t of Def., Directive No. 1322.22, *Service Academies* § 4.5.4.1 (Aug. 24, 1994); *VA Mission Statement* (“foster a culture that values equal opportunity”); U.S. ROTC, *Army Values* 142 (“promot[e] dignity, fairness, and equal opportunity for others”); U.S. Marine Corps, MCRP 6-11B, W/CH 1, *Marine Corps Values: A User’s Guide for Discussion Leaders* 15-20 (Oct. 1998) (“*Marine Corps Values*”) (“displaying fairness and impartiality is critical”).

Corps Values 11-7 (“The negative effect on morale and unit cohesion [of favoritism] is obvious.”). Indeed, in the aftermath of DADT, the Defense Department explicitly concluded that a “new inequity” between heterosexual and gay or lesbian service-members “or the perception of it, runs counter to the military ethic of fair and equal treatment, and resentment at perceived inequities runs deep in military families.” *DADT Report* 15. Servicemembers who happen to be gay or lesbian acutely feel DOMA’s unequal treatment. See, e.g., K. McCormack, *Lesbian mom who sought military benefits dies*, *Army Times*, Feb. 12, 2013 (“She deserves the same benefits as any other spouse,” since “[s]he went through the same stress, fear and concern during my deployment as any other spouse.”); D. Brooks, *Same Sex Couples Struggle for Equal Treatment in Military*, *Fayetteville Observer*, Jan. 20, 2013 (“We sacrifice like every military family, and a part of me resents it.”).

Thus, the Secretary of Defense has emphasized that the military must “ensure that all Service members are treated equally regardless of sexual orientation.” *Extending Benefits Memo 2*; see, e.g., T. Vanden Brook, *Interview: Panetta Recounts Tenure as Defense Secretary*, *USA Today*, Feb. 2, 2013 (“People who are serving in the military and putting their lives on the line deserve some of the benefits that go with that.”); Sgt. 1st Class T.C. Marshall Jr., *Defense Leaders Laud DADT Repeal, Return of “Equality”*, *Am. Armed Forces Press Serv.*, Sept. 20, 2011 (quoting Defense Secretary Panetta: repealing DADT helps us “move closer to achieving the goal at the foundation of the values that America’s all about—equality, equal opportunity and dignity for all Americans”), <http://www.defense.gov/news/news>

article.aspx?id=65390; see also *id.* (quoting Admiral Mullen: DADT “was fundamentally against everything we stand for as an institution”). DOMA, however, prevents the military from fulfilling this central aspect of its mission.

2. DOMA also requires that military leaders violate their commitments to servicemembers as well as the principles of honesty and dignity that are essential to military service. See, *e.g.*, Dep’t of Def., *The Armed Forces Officer* 42, 44-45 (Jan. 2006), <http://www.dtic.mil/doctrine/education/armedforcesofficer.pdf> (discussing an officer’s duties of honesty and integrity to his or her subordinates); *S. Hearing 111-899*, at 10 (Adm. Mullen: discussing the importance of dignity). The civilian and military leadership repeatedly have told servicemembers that they will protect their best interests and those of their families. For instance, the Army leadership recently stressed that it is “committed to providing the best care and support to our wounded, ill, and injured Soldiers—along with their Families. And our commitment extends to the Families who have lost a Soldier in service to our nation. *We will never forget our moral obligation to them.*” Geren & Casey, *supra*, at May 7, 2009 letter (emphasis added).

Sadly, and beyond acceptability, DOMA requires that the military violate these solemn pledges. As detailed *supra* § II.A, DOMA ensures that some married servicemembers’ deaths will pass without the military or civilian leaders being able to fulfill the financial and moral obligations to those families for which the servicemember paid his or her life. This is contrary to everything for which the military stands.

* * *

DOMA divides legally married servicemembers into unequal classes for reasons wholly unrelated to military experience, prowess, or objectives. After DADT's repeal, the reality is that legally married gay and lesbian servicemembers serve openly and admirably. Their commanding officers depend on them as integral parts of units that are facing extraordinary challenges defending this country. A further reality is that some gay and lesbian servicemembers have legal spouses, as well as children for whom they share custody and are obligated to support. In sum, legally married gay and lesbian servicemembers have the same needs and obligations as their heterosexual peers.

From a wealth of experience and study, reinforced by common sense, *amici* know that servicemembers and their families face unique challenges when a servicemember is deployed and when he or she is stationed at home. Over time, the military and civilian leadership have developed a comprehensive set of benefits for servicemembers and their families—all designed to strengthen the armed forces' ability to effectively protect this Nation's safety. In doing so, the leadership has spent considerable time and energy ensuring that the stresses of service—while inherently significant—are sufficiently manageable to allow (i) the servicemember and the military to perform at the highest level possible, and (ii) the servicemember to make a career of defending this great nation.

As set forth above, however, DOMA strips away the very tools that experience has demonstrated are necessary to legally married servicemembers and their families if the military is to be as productive as it can be. DOMA's sanction of inequality has arbitrarily imposed deeply hurtful effects on today's

military. Because DOMA injures morale, readiness, cohesion and performance, there is no constitutional justification, let alone military rationale, that weighs in favor of permitting these threats to today's military and our national security to continue. Accordingly, the Court should recognize that DOMA cannot survive constitutional scrutiny when applied in the military of the 21st Century.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment.

Respectfully submitted,

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March 1, 2013

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APPENDIX

Biographies of *amici curiae*

Rear Admiral Thomas F. Atkin (U.S. Coast Guard, Ret.) retired in 2012 after 34 years of service, including as Assistant Commandant for Intelligence and Criminal Operations at Coast Guard Headquarters.

Brigadier General Roosevelt Barfield (U.S. Army, Ret.) served for 32 years, including as Deputy Director, Operations, Operations & Logistics Directorate, U.S. Africa Command and Commander, Standing Joint Force Headquarters Command Element.

Dr. Coit D. Blacker, served as Special Assistant to the President for National Security Affairs as well as a Senior Director at the National Security Council. He is a senior fellow and professor in international studies at Stanford University.

General Wesley K. Clark (U.S. Army, Ret.) served for 38 years, including as Supreme Allied Commander, Europe (1997–2000), and Commander in Chief, U.S. Southern Command (1996–97).

Richard Clarke had a 19-year career in the Pentagon, the Intelligence Community, and State Department, and served the last three Presidents, including as National Coordinator for Security and Counterterrorism.

Honorable William Cohen, served as the 20th Secretary of Defense (1997–2001). As U.S. Senator from Maine (1979–1997), he chaired the Armed Services Committee's Seapower and Force Projection Subcommittee.

Commander Beth Coye (U.S. Navy, Ret.), served 21 years and has taught at the Naval War College.

Honorable Russell D. Feingold represented Wisconsin in the U.S. Senate (1993–2011), and served on the Senate’s Foreign Relations Committee, Select Committee on Intelligence, and Judiciary Committee.

Brigadier General Evelyn (“Pat”) Foote (U.S. Army, Ret.) served on active duty for more than 30 years, including as Vice Chair of the Secretary of the Army’s Senior Review Panel on Sexual Harassment.

Lieutenant General Robert G. Gard, Jr., Ph.D (U.S. Army Ret.) served for 31 years, had combat service in Korea and Vietnam, and was Commanding General of the Army Military Personnel Center and executive assistant to two secretaries of defense.

Rear Admiral John Hutson (U.S. Navy, Ret.) served for 27 years, including as Judge Advocate General of the Navy (1997–2000). He is Dean Emeritus of the University of New Hampshire School of Law.

Brigadier General David R. Irvine (U.S. Army, Ret.) served for 40 years, including as Deputy Commander for the 96th Regional Readiness Command.

Lieutenant General Arlen D. Jameson (U.S. Air Force, Ret.) served for 34 years, including as Deputy Commander-in-Chief, U.S. Strategic Command and Commander of the 20th Air Force.

Brigadier General John H. Johns, Ph.D (U.S. Army, Ret.) served for over 26 years, including as Assistant Division Commander of the 1st Infantry Division and Director of Human Resources Develop-

ment for the Army General Staff. He also was Deputy Assistant Secretary of Defense.

Lieutenant General Claudia Kennedy (U.S. Army, Ret.) served for 31 years, including as Deputy Chief of Staff for Army Intelligence (1997–2000). In 2010, the Secretary of Defense appointed her to chair the Defense Advisory Committee on Women in the Services.

Brigadier General Keith H. Kerr (California State Military Reserve, Ret., U.S. Army, Ret.) served for 43 years, including in the 228th Military Intelligence Detachment (Division) and Company B, 12th Special Forces.

Honorable Lawrence J. Korb, Ph.D, served as Assistant Secretary of Defense for Manpower, Reserve Affairs, Installations and Logistics (1981–1985). Dr. Korb served on active duty as a Naval Flight Officer and retired from the Naval Reserve with the rank of Captain.

Major General Dennis Laich (U.S. Army, Ret.) served in the U.S. Army Reserve for 35 years, including as Commander of the 94th Regional Readiness Command.

Honorable Patrick J. Murphy was a captain in the U.S. Army before serving as U.S. Representative for Pennsylvania’s 8th congressional district (2007–2011), becoming the only Iraq War veteran in the 110th Congress. In Congress, he authored the bill repealing “Don’t Ask, Don’t Tell.”

Lieutenant General Charles Otstott (U.S. Army, Ret.) served for 32 years, including on two combat tours in Vietnam, as Division Commander of the 25th Infantry Division (Light), and as Deputy

Chairman of the North Atlantic Treaty Organization Military Committee.

Honorable William J. Perry, Ph.D., was the 19th Secretary of Defense (1994–1997). He also served as Deputy Secretary of Defense (1993–1994) and as Under Secretary of Defense for Research and Engineering (1977–1981).

Honorable Joe R. Reeder was the 14th Under Secretary of the Army (1993–1997), where he was responsible for long range planning, readiness, and financial management.

Honorable Charles S. Robb, a retired Marine officer who served in combat, was Governor of Virginia (1982–1986) and a U.S. Senator (1989–2001). He has been co-chair of the Commission on Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, and a member of both the President’s Foreign Intelligence Advisory Board and the Iraq Study Group.

Vice Admiral Joseph Sestak (U.S. Navy, Ret.) served for 35 years including as Deputy Chief of Naval Operations and Director for Defense Policy on the National Security Council. He also represented Pennsylvania’s 7th congressional district in Congress (2007–2011).

Vice Admiral John J. (“Jack”) Shanahan, Jr. (U.S. Navy, Ret.) served for 35 years, including in combat in World War II, Korea and Vietnam, and as Commander of the U.S. Second Fleet.

Dr. Anne-Marie Slaughter, served as Director of Policy Planning for the U.S. Department of State (2009–2011), was the Dean of Princeton’s Woodrow Wilson School of Public and International Affairs

(2002–2009), and was the co-chair of the Princeton Project on National Security.

Rear Admiral Alan M. Steinman, MD (U.S. Coast Guard, Ret., U.S. Public Health Service, Ret.) served for 25 years. He was appointed to the Presidential Special Oversight Board for Department of Defense Investigations of Gulf-War Chemical and Biological Incidents.

Lieutenant General James M. Thompson (U.S. Army, Ret.) served for 33 years including as Chief of Staff for the Allied Forces Southern Europe. He also has served in the Pentagon.

Colonel Lawrence Wilkerson (U.S. Army, Ret.) served for 31 years, including as Special Assistant to General Colin Powell, Chairman of the Joint Chiefs of Staff (1989–1993). He also served as Chief of Staff to Secretary of State Powell (2002–2005).

Honorable Douglas B. Wilson served as the Assistant Secretary of Defense for Public Affairs (2010–2012), and is a Distinguished Fellow of Media and Public Affairs at George Washington University.

Iraq and Afghanistan Veterans of America is the first and largest nonprofit, nonpartisan organization for Iraq and Afghanistan veterans. It has over 200,000 member veterans and supporters nationwide.

Service Women’s Action Network is a nonprofit, nonpartisan organization providing national policy advocacy and direct services to servicewomen, female veterans, and their families.