

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.

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

**BRIEF OF LOS ANGELES COUNTY BAR
ASSOCIATION AND ARMED FORCES
COMMITTEE OF THE LOS ANGELES COUNTY
BAR ASSOCIATION AS *AMICI CURIAE* IN
SUPPORT OF RESPONDENT**

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QUESTION PRESENTED

Whether Section 3 of the Defense of Marriage Act (DOMA) 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.

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IDENTITY AND INTEREST OF THE AMICI¹

With more than 21,000 members, the Los Angeles County Bar Association (“LACBA”) is the largest voluntary local bar association in the United States. For more than 130 years, LACBA has represented the interests of its members, encouraged legal reform, promoted the administration of justice and supported the independence of the judiciary in California. LACBA opposes discrimination and supports the protection of fundamental rights. It previously joined in *amicus curiae* briefs filed with the California Supreme Court in *In re Marriage Cases* (Case No. S147999) and *Strauss v. Horton* (Case No. S168047) supporting marriage equality for same-sex couples, and opposed the passage of California’s Proposition 8, the constitutionality of which is presently before this Court in *Hollingsworth v. Perry* (Case No. 12-144).

The Armed Forces Committee of the Los Angeles County Bar Association (“AFC”) was created in 2012 as a means to provide pro bono legal assistance to veterans, to create a network for lawyers with military experience, and to coordinate

¹Pursuant to Supreme Court Rule 37.6, counsel for *amicus* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amicus*, made a monetary contribution intended to fund the preparation of submission of this brief. Both petitioner and respondent have consented to the filing of this brief. Counsel for the petitioner has filed a letter with the Clerk granting blanket consent to the filing of *amicus* briefs; counsel for respondent has consented to the filing of this brief, as reflected in a letter filed contemporaneously with this brief.

with existing legal service and nonprofit organizations that address the needs of veterans and active-duty service members.

Fulfilling these promises and purposes, LACBA and AFC present this *amicus curiae* brief to protect Constitutional principles of equal protection and inalienable rights and to protect the interests of our veterans and service members.

SUMMARY OF ARGUMENT

The inconsistent application of the Defense of Marriage Act (“DOMA”) to active-duty service members and veterans favors clear resolution by this Court. Empirical evidence supports equal inclusion and benefits for military dependents in order to achieve family adaptation and mission effectiveness. Unequal treatment is also contrary to the U.S. Military’s core values, which support marriage and family units.

Mission effectiveness depends on equal treatment of all dependents, including same-sex spouses. The application of DOMA is inconsistent with the repeal of “Don’t ask, don’t tell.” Young gay and lesbian veterans of the long wars in Iraq and Afghanistan have readily sacrificed for our nation, but their dependents are denied the normal access to a military base, as well as normal spousal benefits.

ARGUMENT

I. MISSION EFFECTIVENESS DEPENDS ON EQUAL BENEFITS FOR MILITARY DEPENDENTS

When “Don’t ask, don’t tell” was repealed in 2011, military recruiters began to accept applications from openly gay and lesbian applicants who sought to enlist in the military and active-duty gay and lesbian service members began to open up about their orientation, partners and families.

Same-sex couples, even those legally married, cannot obtain dependent identification cards for their spouses. Without the identification card, the spouse cannot obtain spousal benefits, nor purchase items at the base exchange, and cannot even enter the base alone. In some cases, the spouse cannot join support groups on the base and is deprived of equal resources. Such disparate treatment impacts all service members, including heterosexuals, because an active family support system is essential to effective deployment of active-duty service members in this time of war.

Participation in informal networks allows families to adapt more readily to the demands of deployment. The efficacy of benefits for dependents of military personnel is supported by empirical evidence. Pasek, Daniel J., *Love and War: An Argument for Extending Dependent Benefits to Same-Sex Partners of Military Service Members*, 6 Harvard Law & Policy Rev. 460 (2012); citing Orthner, Dennis K. & Bowen, Gary L., U.S. Army Research Inst. for the Behavioral & Soc. Scis., Research Report 1559:

Family Adaptation in the Military 6-7 (2006). Social isolation is “one of the most relevant factors that predicted poor family adaptation.” Pasek, *supra* 3, at 467.

Currently, families of veterans returning from deployment in Iraq or Afghanistan need resources to address post-traumatic stress, traumatic brain injury and other emotional and behavioral problems. The Department of Defense collaborates with non-medical support systems, including family support centers. See Adamson, David M., et al., *Invisible Wounds of War: Psychological and Cognitive Injuries, Their Consequences, and Services to Assist Recovery*, RAND Corporation 8 (2008), <http://www.rand.org/pubs/monographs/MG720>; Armstrong, Keith, et al., *Courage After Fire: Coping Strategies for Troops Returning From Iraq and Afghanistan and Their Families* 31-33 (Ulysses Press 2005); Galovski, T. et al., *Psychological sequelae of combat violence: A review of the impact of PTSD on the veteran’s family and possible interventions*, 9 Aggression and Violent Behavior 477-501 (2004); Batten, Sonja V., et al., *Veteran interest in family involvement in PTSD treatment*, 6 Psychological Services 184-89 (2009). Such collaboration is impossible where the dependent spouse is not recognized as such.

II. SAME-SEX SPOUSES DO NOT RECEIVE EQUAL BENEFITS

On September 20, 2011, after the repeal of “Don’t ask, don’t tell,” Navy Lieutenant Gary Ross, a graduate of the U.S. Naval Academy Class of 2002,

married his partner, Dan. The marriage was a valid marriage under the laws of the state of Vermont. His shipmates and their spouses “welcomed” the couple.

“From the moment we [Gary and Dan] arrived, we felt accepted like everyone else at the command. From the commander to my coworkers, everyone seemed genuinely happy to meet my husband and exchange pleasantries.” Welle, Joshua, et al., *In the Shadow of Greatness*, U.S. Naval Inst. Press 221 (2012).

Not long after we were married, Dan and I went to the ID office to report our marriage and get a dependent’s card, just like other newly married military couples. We were treated like all other applicants; for a moment, we thought that we finally really would be equal. Once we were called to the desk, however, the representative informed us that Dan could not be issued a dependent’s ID card, since he is the same gender...Without the ID card, Dan was unable to receive equal spousal benefits...each time we went to the base, the government ran a background check on Dan. It was humiliating for him and frustrating for me to be told that my husband could not accompany me onto the base unless we submitted to another lengthy background check.

Id. at 221.

Army Lt. Col. Heather Mack encountered similar problems. Her spouse, Ashley Broadway, volunteers and works with military families. The couple has been together for 15 years. They married, legally, after the repeal of “Don’t ask, don’t tell.” Despite the marriage, Broadway was not allowed to join the base spouses club “because she does not have a military dependent ID card.” Hlad, J., *Same-sex spouse not allowed to join group at Fort Bragg*, Stars & Stripes, Dec. 12, 2012, <http://www.stripes.com/news/same-sex-spouse-not-allowed-to-join-group-at-fort-bragg-1.200491>. After considerable press coverage, Broadway was offered a guest membership.

Chief Warrant Officer Charlie Morgan returned from a yearlong deployment to Kuwait with the New Hampshire National Guard in 2010. She then learned that she had terminal cancer. “That’s when Morgan began a new battle: to make sure her wife and their daughter receive the same survivor benefits that would go to any other married couple with children.” Murine, A., *Gay marriage at Supreme Court: Will military couples get more benefits?*, Christian Science Monitor, Dec. 28, 2012, available at <http://www.csmonitor.com/USA/Military/2012/1228/Gay-marriage-at-Supreme-Court-Will-military-couples-get-more-benefits>.

The pattern is identical. A gay or lesbian service member serves honorably, often in multiple deployments. Each hides his or her orientation.

Their long-term committed relationships are also hidden. Suddenly, “Don’t ask, don’t tell” is repealed. The couples open up about their families. The couples get legally married. DOMA, however, prevents the issuance of dependent identification to the dependent spouse. There are no spousal benefits. No health care. No support. No insurance.

CONCLUSION

For these reasons, LACBA and the LACBA Armed Forces Committee request that, as the Second Circuit ruled, DOMA be declared unconstitutional.

Respectfully submitted,

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