



Collateral Damage

How the Defense of Marriage Act Harms the Troops and Undermines the U.S. Military

Katie Miller and David McKean February 2013



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Foreword

On September 20, 2011, tens of thousands of gay and lesbian service members awoke to a new reality: Their continued service in defense of this country would no longer be contingent on a willingness to compromise their integrity and lie about who they were. It was an enormous accomplishment, one that was decades in the making. But the gains of the repeal of Don't Ask, Don't Tell were, unfortunately, limited. Today it is legal for gay and lesbian service members to serve openly. They can be "out"—but they are anything but equal. It has been more than two years since President Barack Obama signed the Don't Ask, Don't Tell Repeal Act of 2010, and yet gay and lesbian service members still do not receive equal treatment, equal protection or equal support for their equal service.

Much of this is the fault of the so-called Defense of Marriage Act, which defines marriage for federal purposes as the "union between one man and one woman."¹ As much as military leaders at all levels may wish to treat the troops under their command with equity, they are forced by federal law to discriminate. As a result, gay and lesbian service members are denied access to critical benefits and meaningful support programs the services provide to help families face the unique challenges of military life. This denial weakens the force itself. Our soldiers, sailors, airmen, marines, and coast guardsmen perform best when they know that their loved ones are well cared for and will continue to be well cared for even if they are asked to make the ultimate sacrifice. Today gay and lesbian service members can take no such comfort. The Defense of Marriage Act categorically denies it to them.

But while we've known these inequities exist, little has been done until now to quantify the toll that this disparity takes on gay and lesbian service members and their families, and how that discrimination undermines the military mission writ large. This report, a joint effort of the Center for American Progress and OutServe-SLDN, explores exactly how the Defense of Marriage Act wreaks havoc on the lives of gay and lesbian service members and their families. The report places in stark relief the daily struggles and near-constant indignities that result when a

federal law insists on creating two classes of service members. It demonstrates precisely how gay and lesbian service members and their families—and the military as a whole—are weakened by the law.

Service members and commanders in the field have been telling this story in bits and pieces since the Don't Ask, Don't Tell repeal took effect more than a year ago. They know how the Defense of Marriage Act hurts them and their families, and they can see how the law harms their units and their commands. We've seen how this is playing out on the ground. With this report, we have the bigger picture, and the story it tells is just as indicting. The Defense of Marriage Act is not just unfair, nor is it merely demeaning—though it is certainly both. It is an issue of national security, and it must be repealed.

Allyson Robinson

Executive Director, OutServe-SLDN

Introduction and summary

In 2010 President Barack Obama signed the Don't Ask, Don't Tell Repeal Act, creating a path to allowing gay and lesbian service members to serve openly for the first time. Although this was a monumental achievement for our troops and for our country, gay and lesbian service members continue to face discrimination within the U.S. armed services. The Defense of Marriage Act, or DOMA, is a law that, for the purposes of the federal government, defines marriage as the union between one man and one woman.³ Despite same-sex marriage now being legal in nine states and the District of Columbia, the law prevents the federal government—and the military as a part of the federal government—from recognizing same-sex marriages. The Defense of Marriage Act governs who can be counted as a spouse in all aspects of federal policy, including enrollment in important military-benefits programs.

The United States has a moral obligation to care for its military members and their families. Congress has passed hundreds of laws intended to improve the quality of life of service members, veterans, and their families, which not only compensates military members for their sacrifices but also enables the armed forces to achieve high levels of mission readiness and effectiveness. Adequate compensation for military members and their families is necessary to the well-being of the entire force and is a critical component of our national security.

The Defense of Marriage Act was enacted before gays and lesbians were permitted to serve openly in the military and before same-sex marriages were legal in the United States. When Congress passed the Defense of Marriage Act, it was not confronted with the fact that the law would force the military to deny support and benefits to legally wedded same-sex spouses. But that is the current reality. On average, 70 percent of an active-duty service member's compensation comes in the form of benefits and allowances.⁴ Withholding the portion of these benefits that are intended to care for the spouse of a military member inflicts significant financial burdens on military families headed by same-sex spouses. Denying gay and lesbian service members and their families the benefits that years of experience have shown are essential to the

Without adequate compensation, the nation would be unable to sustain the all-volunteer force, in the size and with the skill sets needed to support the missions called for in the national security strategy. — U.S. Department of Defense, 2012²

proper functioning of our armed forces is counterproductive to the effort to recruit and retain these service members.

The Defense of Marriage Act neither defends marriage nor contributes to the actual defense of our country. Service members should never be forced to choose between continuing their service to our country and ensuring the financial stability and well-being of their families. In fact, it is our responsibility as Americans to ensure that our military families are rewarded for their many sacrifices—not burdened by additional sacrifices when they return from duty. Unfortunately, the Defense of Marriage Act forces the military to subject a subset of personnel to heavy financial burdens by withholding benefits even as their service remains paramount to the freedom, security, and prosperity of our country. Moreover, the Defense of Marriage Act compromises the efforts of Congress and military leaders to recruit, retain, develop, and honor our men and women in uniform. By preventing the military from recognizing the legal marriages of same-sex military couples, the Defense of Marriage Act contradicts numerous military initiatives and represents an injustice against the brave Americans responsible for defending us all.

Impact of the Defense of Marriage Act on gay and lesbian service members by the numbers

Nearly 100 laws provide a military spouse with support or benefit of some kind.⁵

70 percent of an active-duty service member's compensation comes in the form of allowances and benefits—separate from base pay, which provides the other 30 percent of compensation.⁶

Housing

18 percent to 23 percent: the average increase in Basic Allowance for Housing at the “with dependent” rate.⁷

\$417,000: the maximum home loan amount from the U.S. Department of Veterans Affairs for a legally recognized surviving spouse.⁸

Health care

\$0: the cost of out-of-pocket expenses for a service member with an opposite-sex partner to extend military health insurance and health care to eligible dependents.⁹

\$5,615: the average cost a military family headed by a same-sex couple will pay out of pocket to obtain health insurance—because same-sex spouses are not eligible for military health insurance.¹⁰

Employment and education

27,000: the number of military spouses hired by 129 businesses through the Military Spouse Employment Partnership, a program unavailable to same-sex military spouses.¹¹

\$18,077: amount of tuition coverage per year that a service member may transfer to a legally recognized spouse under the G.I. Bill.¹²

\$987: the monthly allowance for education and job training for legally recognized spouses of deceased service members.¹³

Honoring families of the fallen

\$564 to \$1,884: amount of additional disability compensation awarded annually if a wounded warrior is supporting a legally recognized spouse.¹⁴

\$1,215: monthly allowance for Dependency and Indemnity Compensation, which goes to the surviving opposite-sex spouse of a service member who died while on active duty.¹⁵

\$8,219: annual income limit that the federal government ensures no surviving military spouse will fall below—if their marriage is legally recognized by the federal government.¹⁶

The Defense of Marriage Act harms the troops

There are two categories of benefits same-sex military spouses still cannot access, even after the repeal of Don't Ask, Don't Tell. The first category is benefits granted by the Department of Defense; the second is benefits granted by an act of Congress.

The spousal benefits provided at the Pentagon's discretion do not require the repeal of the Defense of Marriage Act in order to be extended to same-sex military spouses. These benefit programs allow the Department of Defense to determine who counts as an eligible beneficiary, and just days ago the Pentagon announced its intent to extend most of these programs to include same-sex military spouses.¹⁷ The Department of Defense must work to expeditiously implement the extension of these benefits and continue working to extend those benefits that will remain unavailable to same-sex military spouses independent of the Defense of Marriage Act, such as on-base housing policy and certain overseas assignment privileges for military family members.

The Pentagon-regulated benefits, unfortunately, are not the majority of benefits—or the most significant benefits—withheld from military families headed by same-sex couples, which are the primary focus of this report. Congress grants the most important and financially robust benefits available to service members, veterans, and their families. Close to 100 of these statutory benefits depend on marital status, and as a consequence same-sex military spouses cannot be included as long as the Defense of Marriage Act remains law.¹⁸ The military has no choice but to comply with the eligibility qualifications set forth by Congress to obtain these benefits. Compounding the unfairness is the fact that the same benefits denied to the spouse of a gay or lesbian service member are also denied to his or her children and parents acquired through marriage, whereas the military would normally recognize these family members as dependents if they were acquired through a heterosexual marriage.

This report focuses strictly on the benefits withheld from military families headed by same-sex couples as a result of federal statute, unless otherwise noted. The Defense of Marriage Act undermines some of the military's most important efforts to alleviate the sacrifices of military families, including housing security, health insurance and health care services, spousal employment, and honoring the families of the fallen. Each area is explored in greater detail below.

Housing and moving benefits

Active-duty service members can be required to relocate—known as Permanent Change of Station, or PCS—as often as once every two years. Congress and the armed services make every effort to ease this financial burden and minimize the risk of separating military families. Most Permanent Change of Station allowances and relocation policies are granted by federal statute, which means that same-sex spouses of service members cannot be considered for the same travel-assistance benefits offered to opposite-sex military spouses. This poses significant financial and logistical challenges to families headed by same-sex couples, and it increases the risk of families being separated, especially when a service member receives an overseas assignment.

Basic Allowance for Housing, or BAH, and Overseas Housing Allowance, or OHA

Aside from basic pay, the Basic Allowance for Housing and the Overseas Housing Allowance make up the largest cash payment in a military member's overall compensation.¹⁹ These allowances are monthly, tax-exempt payments intended to offset housing expenses for the majority of military personnel who do not reside in on-base housing or in the barracks. Basic Allowance for Housing is for service members who reside within the continental United States, and Overseas Housing Allowance is awarded to service members assigned to overseas bases, where the cost of living is more expensive.²⁰

Payments under both programs vary by pay grade, geographical location, and whether or not a service member has dependents. The military will significantly increase these allowances if the service member has dependents: a 23 percent increase to the Basic Allowance for Housing for junior enlisted personnel, for senior enlisted personnel a 21 percent increase, and an 18 percent increase to officers if they have dependents.²¹ This computes to an allowance increase of between \$24 and \$1,041 per month in housing allowance for military families assigned within the continental United States.

Because same-sex spouses cannot be recognized as dependents, a gay or lesbian service member will not receive either housing allowance at the “with dependent” rate by virtue of being married.

Permanent Change of Station, or PCS, benefits

When a service member is assigned to a new duty station, he or she is eligible for allowances designed to offset the costs associated with the move. If the service member has dependents, several of these allowances are increased so that the family can afford to accompany the member to the new permanent duty station.²² Same-sex spouses, of course, are not dependents in the eyes of the armed services. Some of these allowances include:

- **Per Diem.** This allowance covers the cost of lodging and subsistence expenses incurred while traveling to a new duty station. The military will provide a service member with a 75 percent increase in per diem in order for a spouse or child to accompany him or her to a new duty station.²³
- **Transportation expenses.** Service members are completely reimbursed for up to the cost of a commercial airline ticket.
- **Temporary lodging expense, or TLE.** This expense is given to a relocating military family that requires time to look for a house or that otherwise cannot immediately move into their residence when they arrive at an assignment within the continental United States. Service members receive a 54 percent increase in temporary lodging expense if they are accompanied by spouses or children.²⁴
- **Temporary lodging allowance, or TLA.** This allowance is given to a military family that requires time to look for a house or that otherwise cannot immediately move into their residence at a new overseas assignment. Temporary lodging allowance rates are generally higher than temporary lodging expense rates due to a higher cost of living at military installations in foreign countries. Service members also receive a 54 percent increase in temporary lodging allowance when accompanied by a dependent.²⁵
- **Dislocation allowance, or DLA.** This allowance is provided to partially reimburse costs not otherwise reimbursable by a specific allowance. Military personnel servicewide are entitled to an average of an additional \$658—or a 36

percent increase—in dislocation allowance when they have dependents. Junior enlisted service members, who are the most financially vulnerable due to age and rank, are entitled to an additional \$961—a 92 percent increase—in dislocation allowance if they have dependents.²⁶

Overseas cost-of-living allowance, or COLA

Within the continental United States, service members receive a tax-exempt basic allowance for subsistence, or BAS, in order to defray the costs of meals. But if a service member receives orders for an overseas assignment, the military will offer a cost-of-living allowance so that the purchasing power of the family will remain the same despite the higher cost goods at the overseas post. The cost-of-living allowance, in contrast to the basic allowance for subsistence, takes into account the number of dependents, which means a larger family will receive a higher allowance. Due to the Defense of Marriage Act, the same-sex spouse of a service member cannot be considered a dependent, so a gay or lesbian service member will not receive the increase in his or her cost-of-living allowance to which a service member in a heterosexual marriage is entitled.

Family separation allowance, or FSA

When service members are assigned to select duty stations overseas and the military will not allow their families to accompany them, the service member will receive a monthly allowance of \$250 to cover expenses resulting from his or her separation from family. The allowance can be used to help cover the expense—rent or mortgage—of maintaining two separate residences.²⁷ Service members are also entitled to the allowance if their families are unable to accompany them due to medical reasons.

The payment is contingent upon dependent status. Therefore, a service member can be separated from a same-sex spouse for years, and the military will have no way to compensate the couple for the financial impacts associated with dividing the family.

Servicemembers Civil Relief Act, or SCRA

Frequent relocations, activations, and deployments can make it difficult for military families to meet their financial obligations. Congress passed the

Servicemembers Civil Relief Act in order to prevent service members from becoming financially unstable and legally vulnerable as a result of serving in the military.²⁸ The act allows active-duty military personnel, active reservists, and their families to suspend or postpone certain civil obligations so that a service member can perform without the stress of financial collapse at home.

One such benefit is protection from eviction. A landlord may not evict an active-duty military member or his or her dependents without first obtaining a court order. If the court determines that the military member or his or her dependents are unable to pay their rent on time as a direct result of the member's military duties, eviction can be postponed for up to three months.²⁹

A service member also has the right to terminate a housing lease when he or she activated or required to relocate to a new permanent duty station. To qualify, the member or a dependent must occupy the house.³⁰

Under Pentagon regulations, only service members and dependents of service members are authorized to live in military housing, so same-sex spouses can be forced to live in separate, off-base housing.³¹ As a result, military families headed by same-sex couples are even more vulnerable to being caught in housing leases when military members receive orders for a new assignment.

Military Lending Act, or MLA

The Military Lending Act protects active-duty service members and their families from unscrupulous credit practices and high-cost loans. The act caps consumer credit interest rates for military borrowers at 36 percent and declares violations as misdemeanors.³² According to the Department of Defense, "Predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all-volunteer fighting force."³³

Undue financial burdens on troops or their family members are matters of national security. The Military Lending Act protects service members and their spouses from being victimized by unfair financial practices. Unfortunately, same sex-sex spouses are not protected from predatory lenders under the Defense of Marriage Act.

Veteran Affairs home loans

Veterans, as well as un-remarried surviving spouses of service members killed on active duty or of veterans who died as a result of military service, are eligible for a Department of Veterans Affairs guaranteed home loan.³⁴ The benefit allows qualified military couples to borrow up to \$417,000 to purchase or build a house with no down payment and without having to purchase private mortgage insurance. Though the loan is actually granted by a private lending institution, the Department of Veterans Affairs first certifies that the lending agreement is neither unfair nor predatory. The benefit is marketed as having been “designed specifically for the unique challenges facing service members and their families.”³⁵ In other words, it is one of the most competitive loans that military families can obtain.

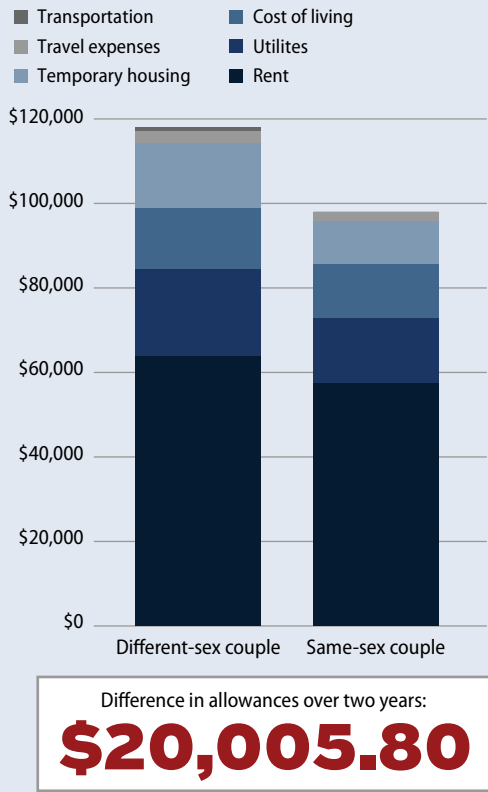
When a military couple applies for a Veterans Affairs home loan, the credit histories and incomes of both spouses are taken into account when determining if the couple qualifies and, if they do, the maximum amount of money that they are eligible to borrow. Since a same-sex spouse is not recognized under the Defense of Marriage Act, only the service member’s credentials will be accessed, which often means the couple is eligible for a smaller loan at a worse rate. Furthermore, the same-sex spouse must be left off the mortgage and title of the home.

For surviving spouses of deceased service members and veterans, a Certificate of Eligibility, or COE, is necessary to qualify for the loan. Under the Defense of Marriage Act, same-sex spouses cannot obtain a certificate of eligibility—and same-sex couples, therefore, may not receive a Veterans Affairs home loan.

Capt. Mathew Phelps is an officer in the U.S. Marine Corps who deployed in support of Operation Iraqi Freedom in 2007. He currently studies at the Expeditionary Warfare School at the Marine Corps University, and he anticipates receiving orders for Okinawa, Japan, at the end of this summer.

Last year Capt. Phelps proposed to his partner, Ben, and the two expect to be wedded before Matthew leaves for Okinawa. The Pentagon is currently working to offer same-sex military spouses “command-sponsored” status, which would allow Ben to travel to Okinawa with Capt. Phelps, obtain a visa more quickly, live on base, and receive host-nation legal protections. This benefit, however, has not yet been extended to same-sex military spouses.

Receiving orders overseas is often costly, and as long as the Defense of Marriage Act remains law, Capt. Phelps and his soon-to-be husband cannot take advantage of the military benefits intended to offset the financial burden imposed on military families relocating to a post on foreign soil. If Ben is able to travel to be with Matthew despite Ben not being able to receive “command-sponsored” status, the two will receive at least \$13,000 less in cost-of-living allowances than a heterosexual military couple over the course of Capt. Phelps’s tour. When the cost of moving is considered, the difference in benefits and allowances may reach more than \$20,000. The breakdown of this disparity is detailed below.



Health insurance and services, or TRICARE

Federal statute governs access to medical treatment facilities under TRICARE, the health and dental insurance program of the U.S. Department of Defense.³⁶ As a result, the same-sex spouse of a service member is denied the military health insurance and health services that are provided to opposite-sex spouses of service members.

General health services

Military members are enrolled in health insurance at no cost. Depending on the specific plan, service members may also sign up dependents for health insurance at a modest out-of-pocket cost—if it costs them anything at all.³⁷ But because of the Defense of Marriage Act, a same-sex spouse cannot receive military health insurance or care at a military medical facility. This lack of access to care presents a challenge to military families headed by same-sex couples, as they must either purchase separate health insurance plans or forgo health insurance coverage for their spouses altogether. In 2012 the average cost for an individual to enroll in an employer-sponsored health insurance plan in the United States was \$5,615 per year, or \$468 per month.³⁸ Additionally, any family members gained through a same-sex marriage—such as step-children or parents-in-law—are not eligible for enrollment in TRICARE.

Mental health services

Since 2010 suicide has been the second leading cause of death among U.S. service members, exceeded only by injuries incurred in war.³⁹ In 2012 there were more soldiers in the Army who committed suicide than were killed in combat. This phenomenon has led military leaders and the federal government to the capacity of—and access to—military mental health services.

One of the ways in which the Obama administration and the Department of Defense have acted to reduce suicide rates is by increasing the number of mental health care professionals available to military members and their families.⁴⁰ Family therapy and telemental health services—which use telecommunications technology to provide mental health services—are two such programs equipped to combat military suicide. Unfortunately, health care provided by the military is subject to federal statute, and the Defense of Marriage Act prevents same-sex spouses from accessing services from military health facilities, including mental health services and some programs that address suicide.

Spouse abuse programs

The rate of domestic violence in same-sex couples is comparable to that of heterosexual couples.⁴¹ Services provided by the military’s Family Advocacy Program, including support for new parents and assistance for abused spouses, are only available to those eligible for treatment in military medical facilities—same-sex spouses, therefore, are not eligible. A legally married same-sex spouse of a service member can receive a basic assessment and safety plan from providers in the military facilities—since providers won’t turn away battered spouses—but same-sex spouses will have to receive subsequent care “outside the gate,” or off base. An abused same-sex spouse will not be able to receive military-sponsored protection or emergency shelter, and he or she is not afforded the ongoing financial support and benefits provided to opposite-sex spouses of service members discharged from the military for dependent abuse.⁴²

Chief Warrant Officer Charlie Morgan was a full-time member of the New Hampshire Army National Guard. She began her military career in 1982 and served in Kuwait, Qatar, and Iraq. In 2011 Chief Warrant Officer Morgan was diagnosed with a recurrence of stage IV breast cancer. She passed away earlier this month.

Morgan leaves behind a widow, Karen, and their 5-year-old daughter, Casey Elena. While she was still alive, Chief Warrant Officer Morgan feared for the well-being of her family after her death. Morgan was the sole breadwinner in the family, and Karen will not receive survivor's benefits or military health care coverage designed to offset the financial burden on families when a military member dies during service.

Morgan wrote the following in a letter to Congress: "My wife and daughter face an uncertain future, unable to receive the same family support services as our counterparts who render the same service, take the same risks, and make the same sacrifices."⁴³



Chief Warrant Officer Charlie Morgan and her daughter Casey.
OUTSERVE-SLDN

Spouse employment

Keeping military families strong means securing employment for spouses and stabilizing household finances. In 2010 President Obama directed military officials to develop a government-wide approach to supporting the families of service members. One of the major initiatives was expanding career and educational opportunities for military spouses.⁴⁴ Studies have shown that 77 percent of military spouses report needing or wanting work to supplement the household. Unfortunately, however, military spouses are more likely to be unemployed than their civilian counterparts.⁴⁵

Same-sex spouses are excluded from military programs and state initiatives designed to minimize their time out of the workforce and help them avoid financial consequences as a result of the military's need to routinely relocate personnel.

Employment assistance programs

The government and the military know that the loss of a spouse's income can be devastating to the entire family unit. For that reason, the president is authorized to grant special employment privileges to military spouses.

Specifically, military spouses are given noncompetitive appointment authority, which means they will receive hiring preference when applying for jobs on post at the military member's new permanent duty station.⁴⁶ The same statute authorizes the White House to team up with the private sector to make it easier for spouses of service members to secure employment. One example of this is the Military Spouse Employment Partnership, a "targeted recruitment and employment solution" that matches military spouses with more than 129 businesses seeking to hire them.⁴⁷ Arguably the greatest asset of the program is its online jobs database. Unfortunately, because spousal-employment opportunities are granted by statute, the Defense of Marriage Act prevents the same-sex spouse of a service member from registering and gaining access to the portal or

receiving noncompetitive appointment authority.⁴⁸ Even if the duty station and potential place of employment is in a state that legally recognizes same-sex marriages, gay and lesbian spouses cannot access the services of the Military Spouse Employment Partnership or receive the same employment assistance offered to heterosexual military couples.

Post-9/11 G.I. Bill

The G.I. Bill, a cornerstone benefit in the U.S. military, has encouraged young people to enlist and aided veterans in their transition to the civilian workforce following their service. The Post-9/11 G.I. Bill provides assistance for graduate and undergraduate degrees, vocational and technical training, flight training, correspondence training, and licensing programs. A service member eligible to redeem the entire benefit can receive up to \$18,077 for tuition, \$1,000 per year to cover the cost of books and supplies, and an average housing allowance of \$1,200 per month.⁴⁹

Since 2009 military members have been able to transfer their G.I. Bill benefits to a spouse or child. Service members, however, do not have the authority to direct their G.I. Bill benefits to a same-sex spouse under the Defense of Marriage Act.⁵⁰ So even though a service member may have no plans to utilize the G.I. Bill, a same-sex spouse will still not be offered the same opportunity to gain higher education and increase household income as an opposite-sex spouse.

Temporary professional licenses

Military service members with civilian spouses in professions requiring state-specific licensing face the problem of those licenses not always transferring across state lines. There are approximately 100,000 military spouses in the United States working in professions that require state licenses.⁵¹ Nurses, educators, counselors, and even dental hygienists who have spent years earning their degrees and gaining certification to practice in a state can suddenly find themselves uncertified to practice when they accompany their service-member spouse to his or her new duty station.

Nearly half of all U.S. states—with encouragement from the White House and the Department of Defense—have passed laws that ease the burden of transferring professional and education licenses across state lines.⁵² Most recently, the state of Illinois passed the Military Family Licensing Act, which allows military spouses

to obtain a temporary professional license allowing them to continue practicing while they work toward meeting the requirements for Illinois-specific licenses.⁵³ States that do not recognize marriage between same-sex couples, however, have the right to deny recognition of same-sex couples married in other states. The distribution of temporary professional licenses concerns a portion of the law separate from the section under review in *Windsor v. United States*, the case that will be heard in the Supreme Court later this year concerning the constitutionality of the Defense of Marriage Act. The law, however, nevertheless means that states can deny recognition of same-sex couples legally married in another state, making it perfectly legal to deny these licenses to gay and lesbian military couples.

Honoring the families of the wounded and the fallen

The military is committed to providing compensation to families of wounded warriors and deceased service members and veterans. As one might anticipate, the most significant financial challenge is the loss of the service member's income as a result of disability or death. According to the Department of Defense, the military is able to fully offset the household income loss of the most severely injured personnel and to replace from 57 percent to 78 percent of a deceased service member's earnings.⁵⁴ Unfortunately, the Defense of Marriage Act means that the military must leave the same-sex spouse of a deceased or disabled service member to fare on his or her own.

Disability compensation

Lawmakers and military leaders have recognized that wounded warriors—military members who have sustained injuries related to their service—need compensation for the financial harm that comes to their family as a result of losing a once able-bodied wage earner in the household. The most seriously injured active-duty personnel experience an average income loss of nearly \$22,000 annually; those in the reserve component lose an average of \$25,000.⁵⁵ Spouse earnings are also negatively impacted. Disability compensation is distributed monthly to a veteran who falls victim to injury, illness, or another condition related to service that impairs his or her ability to work and provide financially for the family.

The benefit amount is graduated according to the degree of the veteran's disability and ranges from 10 percent disabled to 100 percent disabled. If the veteran is 30 percent or more disabled, an additional allowance is allotted for that veteran's dependents. In 2012 a veteran received from \$564 up to \$1,884 in additional disability compensation annually if the veteran was married.⁵⁶ The Defense of Marriage Act precludes military families headed by same-sex spouses from receiving this additional compensation.

Dependents' Educational Assistance program, or DEA

The Dependents' Educational Assistance program provides financial assistance for education or employment training to a dependent of a deceased service member.⁵⁷ The program offers up to 45 months of education or training at a rate of \$987 per month if the dependent is attending school or a training program full-time.⁵⁸ If the deceased service member was the primary breadwinner in the household, it is important for the federal government to provide an opportunity for the surviving spouse to increase her or his income to compensate for the loss. Unfortunately, under the Defense of Marriage Act the military must deny a same-sex spouse of a deceased service member this opportunity because they cannot be considered dependents.

Emergency notification

All service members are required to complete Department of Defense Form 93—Record of Emergency Data—so that family members can be notified if the service member is killed in action, wounded in action, missing in action, or taken as a prisoner of war. The Defense of Marriage Act prevents a same-sex spouse from being recognized as the primary next of kin, or PNOK—the person first notified in the event of emergency. This status is limited to family members listed on Form 93, and while a service member may list a same-sex spouse under the “designated persons” category, which ensures the spouse would be notified eventually, they would not be notified as quickly as the primary next of kin in the event of emergency.

Funeral ceremonies

Most service members and veterans are eligible for burial in a Veterans Affairs national cemetery next to his or her spouse, as defined by the Defense of Marriage Act.⁵⁹ As a result, the same-sex spouse of a fallen service member or veteran cannot be laid to rest at the side of his or her spouse in a military cemetery.⁶⁰ Similarly, a same-sex spouse is deprived the option of burial at sea that is otherwise afforded to military spouses recognized under federal law. The Defense of Marriage Act means that families of fallen service members must choose between honoring their service or recognizing their spouses—even in death.

Death gratuity⁶¹

A nontaxable cash payment of \$100,000 is given to military families in the event that a service member dies while on active duty or while serving in a variety of other capacities. The purpose of the death gratuity is to provide immediate assistance—before survivor benefits become available—to the survivors of the service member to meet their financial needs.⁶² Prior to 2007 the gratuity was distributed according to a prescribed order, which started with the spouse of the deceased service member. Same-sex spouses were obviously precluded as beneficiaries due to the collective impact of the Defense of Marriage Act and the military’s Don’t Ask, Don’t Tell policy. Since 2008, however, members of the armed forces have been able to designate a beneficiary of the gratuity regardless of relationship status, which has allowed gay service members to designate their partners as the primary recipients of the payment following the repeal of Don’t Ask, Don’t Tell.

The appointment of a beneficiary is an unequivocal improvement from the prescribed distribution order, which automatically excluded spouses of gay service members, but the Defense of Marriage Act still poses a risk to the spouses of gay service members. Should a deceased member of the armed services fail to designate a primary beneficiary for any reason, the payment will be distributed according to the prescribed order set forth prior to 2007.⁶³ Though the spouse of the deceased service member is the primary beneficiary by default, the Defense of Marriage Act prevents a same-sex spouse from being listed as an official spouse, so the gratuity will be issued to a family member later in the prescribed order. The Defense of Marriage Act leaves same-sex military spouses financially vulnerable when they are most in need of relief. The spouse may not receive a penny of the death gratuity, even if the deceased service member was the sole breadwinner in the family.

Dependency and indemnity compensation, or DIC

Dependency and Indemnity Compensation is a tax-free monetary benefit paid to eligible survivor dependents of service members who die in the line of duty or to eligible survivors of a veteran whose death resulted from a service-related injury or disease. In 2012 that benefit rate was \$1,215 per month.⁶⁴ Because of the Defense of Marriage Act, a same-sex spouse is not eligible for the compensation an opposite-sex spouse would receive when his or her spouse dies as a result of a service-related sacrifice.

Survivors pension

Survivors pension is a monthly payment made to low-income, un-remarried surviving spouses and/or the children of deceased wartime veterans. In 2011, if a spouse's yearly income was below \$8,219, the government would provide financial assistance to raise his or her income above that amount.⁶⁵ The military's minimum commitment—ensuring that the family of a fallen service member does not fall below the poverty line—cannot be fully honored as long as the Defense of Marriage Act remains law.

The Defense of Marriage Act undermines the military

The military—and therefore our entire country—has a legitimate interest in ensuring that our military families are not plagued by financial hardship. Not only is financial stability the least our government can provide to honor the sacrifices of those who serve, but those very same benefits are also intended to further the military’s efforts to recruit and retain talented personnel and ensure that service members can focus on the mission at hand—not on the challenges at home.

Recruitment and retention

Competing against the private sector

The former chairman of the Joint Chiefs of Staff, Adm. Mike Mullen, described Don’t Ask, Don’t Tell and other discriminatory personnel policies as “corrosive over time.”⁶⁶ In other words, the military may have the capacity to meet its recruitment and retention goals in the near term, but persistent discrimination against some service members, their spouses, and their families will nonetheless have an adverse impact on military efforts going forward, especially as time passes and the country’s attitude toward same-sex marriage continues to evolve. The Defense of Marriage Act undermines the military’s reputation and hinders its ability to recruit and retain the most talented personnel.

Since the advent of the all-volunteer force the military has emphasized repeatedly that providing benefits is necessary to compete with the private sector and recruit and maintain individuals. A 2012 Department of Defense report explained, “Without adequate compensation, the nation would be unable to sustain the all-volunteer force, in the size and with the skill sets needed to support the missions called for in the national security strategy.”⁶⁷ Military base pay alone—which comprises less than one-third of a service member’s total compensation—is not what makes the armed services a competitive career option.

The military cannot expect to compete against a private-sector employer who offers greater cash compensation and a benefits package the military cannot.

Benefits such as housing allowances and health services offset the disparity between private-sector and military earnings.

Indeed, workplaces across the country have begun to realize the competitive advantage of extending benefits to same-sex partners and spouses.⁶⁸ As of January 2013 more than half of Fortune 500 companies—and eight of the top 10—provide domestic-partner health insurance benefits to their employees.⁶⁹ When taking into account the fact that benefits comprise a significantly larger portion of military compensation than they do of the average civilian compensation, the disparity between civilian and military compensation grows even starker. The military cannot expect to compete against a private-sector employer who offers greater cash compensation *and* a benefits package the military cannot.

Veterans' benefits preserve the dignity of military service

The recruitment and retention of service members relies on the government's ability to preserve the dignity and integrity of military service by ensuring that those who have been disabled in the defense of our nation can successfully re-establish themselves in civilian society and continue providing for their families. Wounded warriors have an obvious need for compensation when their injuries incurred during service render them less capable of providing for their families. Moreover, the spouses of the most seriously injured personnel also experience a loss of income when a service member is injured in the line of duty. The Defense of Marriage Act prevents a service member from receiving increased veterans benefits to compensate for the loss to his or her entire family unit. When American communities witness the family of a wounded warrior struggling financially, it sends an upsettingly clear message that our country cannot care for the families of men and women who have sacrificed on our behalf.

Retaining families

A popular saying in the military is that, "Although the military recruits individuals, it retains families."⁷⁰ Benefits are an important factor when potential recruits decide whether to join the military. Benefits loom even larger in the minds of service members as they age and begin to form their families. Numerous studies have shown that when service members are faced with the decision to re-enlist, they give considerable weight to the fact that their families will have to make sig-

When American communities witness the family of a wounded warrior struggling financially, it sends an upsettingly clear message that our country cannot care for the families of men and women who have sacrificed on our behalf.

nificant sacrifices. The assurance that service members' families will be well cared for is fundamental to their decision to enlist or re-enlist.⁷¹ This principle rings even truer among gays and lesbians: 43 percent of gay and lesbian civilian workers say they would have stayed with their former employer had they been offered benefits, compared to just 19 percent of heterosexual employees.⁷² If a lack of benefits—which make up a much smaller portion of a civilian worker's overall compensation—deters civilian employees from continuing at their current workplace, it's reasonable to assume that lack of military benefits—which make up a higher percentage of a military member's overall compensation—would have an equally or more devastating impact on the military's ability to retain personnel.

Keeping up with public support for same-sex marriage

Although the military is obligated to enforce the Defense of Marriage Act, the practice is nonetheless at odds with public opinion. Poll after poll has recently shown that a majority of Americans now favor marriage between same-sex couples and that support for it continues to grow among nearly every single demographic group, including men, African Americans, Latinos, political independents, and generations both young and old.⁷³ Among people ages 18 to 34—a range that includes those of prime recruitment age—support for same-sex marriage is more than 70 percent.⁷⁴ As the consensus grows, the military will increasingly stand out as an institution that does not reflect the values of American society. The practice of discrimination against same-sex couples in the armed services can signal to young potential recruits that the military is an archaic institution that is out of touch with an increasingly accepting America, and an entire generation of people that overwhelmingly support marriage equality—whether they themselves are gay or lesbian or not—will be deterred.

Performance and readiness

Performance

Service members who know that their families are being cared for while they are deployed—and that their families will be cared for in the event that they are killed—are not only more likely to stay in the military, but they are also more likely to perform their military duties well. The military recognizes the link

between the provision of support and benefits and national security, explaining that service members who are distracted by thoughts that their loved ones are not being cared for may be less effective combatants. The Armed Services Committee of the Senate found, “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.”⁷⁵

Because the military believes that these benefits serve the interest of national security, the provisions of the Defense of Marriage Act directly contradict the efforts of Congress and the Department of Defense to provide them to all military families.

Unit cohesion

Creating two classes of service members threatens unit cohesion—the bonds that cement service members’ commitments to one another as well as to the mission. The military has echoed this concern repeatedly since the repeal of Don’t Ask, Don’t Tell. The Army stated, “Leaders are expected to dispassionately enforce standards and correct behaviors that undermine unit cohesion” once gays and lesbians were permitted to serve openly in the military.⁷⁶ The military appreciates the fact that fair treatment of all service members is necessary for fostering the cooperation needed to maximize a unit’s operational effectiveness.

Unfortunately, unit cohesion is compromised when commanders are forced to treat service members differently from one another because of the Defense of Marriage Act. Military commanders cannot credibly communicate a message of fairness and nondiscrimination when doing so is hindered by policies that undermine those principles. The military has previously made it clear that it will not build separate living or bathroom facilities for gay and straight service members; separate facilities would create divisions within units and both physically and emotionally isolate service members from one another.⁷⁷ The military has also emphasized that even joking publicly about the issue of sexual orientation is inappropriate—and that harassment or abuse based on sexual orientation is unacceptable. These stances are consistent with Department of Defense policy requiring all service members to be treated “with dignity and respect.”⁷⁸ If joking about sexual orientation is unacceptable and separate bathroom facilities are seen as a threat to unit cohesion, then certainly telling gay and lesbian service members that their

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families will not be supported to the same extent as those of their heterosexual counterparts has to pose an even greater threat to unit cohesion.

Psychological health

The first initiative listed in the 2011 White House report, “Strengthening Our Military Families,” is to enhance the psychological health of the military family unit.⁷⁹ Mental health is a top priority of the federal government, largely due to the fact that suicide has been the second leading killer among U.S. service members since 2010, exceeded only by injuries incurred in war.⁸⁰ Unfortunately, the Defense of Marriage Act undermines the federal government’s efforts to curtail suicide in two major ways: by restricting mental health services offered to military families headed by same-sex spouses and by exacerbating financial instability among these same households.

During a press conference addressing suicide in 2012 Secretary of Defense Leon Panetta said, “I want to make sure that all service members and their family members have the quality mental and behavioral health care that they need, the kind of care that must be delivered by the best health care professionals in the world.”⁸¹ But the Defense of Marriage Act requires that these health services and facilities deny access to military families headed by same-sex spouses.

What’s more, the threat of suicide is not an issue that will subside with the withdrawal of troops from Afghanistan. During that same press conference, Secretary Panetta noted that most service members who committed suicide had never even been deployed, let alone seen combat. He explained, “We’re dealing with broader societal issues. Substance abuse, financial distress, and relationship problems—the risk factors for suicide—also reflect problems ... that will endure beyond war.”⁸²

The military has identified suicide as more than just a byproduct of prolonged military campaigns and multiple tours in Iraq and Afghanistan. A Department of Defense study found that in 2011, for example, job loss and instability were present in nearly one in every three military suicides, and excessive debt and bankruptcy contributed to 13 percent of confirmed suicides of service members.⁸³ Moreover, the Department of Defense has identified financial instability as the second greatest source of stress among military families, especially in regards to housing and home ownership.⁸⁴

As explained in detail earlier in this report, gay and lesbian service members are made more financially vulnerable by, in large measure, the Defense of Marriage Act, especially when it comes to housing and relocation. Because the military does not collect data on the sexual orientation of its service members, the number of gay and lesbian suicides in the military is unknown. What we do know is that efforts by the federal government and the military to combat suicide will often exclude the same-sex spouses of service members. And of course, the financial consequences and associated stress placed on these families as a result of the Defense of Marriage Act is counterproductive to suicide-prevention initiatives.

Conclusion and recommendations

The Defense of Marriage Act undermines our military by mandating that discrimination be written into programs of the Department of Veterans Affairs and the Department of Defense. Not only does the law serve no compelling government interest, but it also undermines some of our most important national interests, our security, and our military readiness. The armed services have asked for—and Congress has granted—support and benefit programs to service members because these programs are vital to maintaining the world’s most powerful military.

Furthermore, the Defense of Marriage Act compromises the military’s ability to recruit and retain America’s best and brightest service members, and it prevents service members from focusing on their missions and performing at their maximum potential. Moreover, when American communities witness military families struggling financially, it sends an upsettingly clear message that our country cannot care for the families of men and women who have sacrificed on our behalf.

Pentagon leadership should expeditiously implement the extension of benefits and support services it has promised to offer to same-sex military spouses and continue to work to extend the remaining benefits to the fullest extent possible under the law. Unfortunately, full equality for our men and women in uniform cannot be implemented as long as the Defense of Marriage Act remains law.

Congress has introduced two bills in the past two years that would allow service members in same-sex marriages to access benefits denied to them because of the Defense of Marriage Act, without success. The first is the Respect for Marriage Act, a bill introduced in the 112th Congress by Rep. Jerrold Nadler (D-NY) and Sen. Dianne Feinstein (D-CA), which would repeal the Defense of Marriage Act and require the federal government to recognize same-sex marriages as legally valid.⁸⁵ The second is the Military Spouses Equal Treatment Act, which would amend the definition of “spouse” to include state definitions of spouse in federal statutes that specifically grant military and veteran spousal benefits.⁸⁶ Rep. Adam Smith (D-WA) reintroduced the Military Spouse Equal Treatment Act in the

House and Sen. Jeanne Shaheen (D-NH) and Sen. Kirsten Gillibrand (D-NY) introduced the bill in the Senate last week.

It is encouraging to see fair-minded policymakers working to put an end to the Defense of Marriage Act and to remove the undue burdens the law places on the backs of our military families, but the prospect of repeal under the 113th Congress appears bleak, given the conservative and antigay makeup of the House of Representatives. In the near term, the best prospects for repeal now lie with the Supreme Court, which will hear oral arguments challenging the law in March and rule on the constitutionality of the law sometime this summer. When the Supreme Court considers overturning this discriminatory law, the justices must take into account not only the rights of gay Americans, but also their untold sacrifices for this country and our patriotic duty to honor their contributions in service to the United States.

The Defense of Marriage Act is patently unfair but, just as importantly, it also imposes an unjustifiable mandate on our armed services, which have consistently rejected and acted to ameliorate the damage it causes to our troops and military readiness. The Defense of Marriage Act was passed before gays could serve openly in the military, so Congress was never confronted with the fact that the law forced the military to treat some service members and their families unequally. The collateral damage of this decision, however, is now clear. If we are to honor the service of all our military families and maintain the finest fighting force this world has ever known, the Defense of Marriage Act must be repealed.

About the author

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About OutServe-SLDN

OutServe-SLDN is the association of actively serving gay, lesbian, bisexual, and transgender military personnel with more than 50 chapters and 6,000 members around the world. The organization works to support a professional network of gay, lesbian, bisexual, and transgender military personnel and to create an environment of respect in the military with regard to sexual orientation and gender identity. It is a nonpartisan, nonprofit, legal services and policy organization dedicated to bringing about full equality to America's military and ending all forms of discrimination and harassment of military personnel on the basis of sexual orientation and gender identity. OutServe-SLDN provides free and direct legal assistance to service members and veterans affected by the repealed Don't Ask, Don't Tell law and the prior regulatory ban on open service, as well as those currently serving who may experience harassment or discrimination. For more information, visit www.outserve-sldn.org.

