Vet. App. No. 11-3083

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

CARMEN J. CARDONA,

Appellant,

v.

ERIC K. SHINSEKI,

Secretary of Veterans Affairs,

Appellee.

BRIEF OF NATIONAL VETERANS' SERVICE ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF APPELLANT CARMEN J. CARDONA

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INTEREST OF *AMICI CURIAE*

Amicus Curiae Vietnam Veterans of America ("VVA") is a Congressionally-chartered organization dedicated to ensuring the rights of Vietnam-era veterans. VVA provides veterans *pro bono* legal representation during benefits proceedings, and also safeguards veterans' rights through impact litigation and legislative advocacy.

Amicus Curiae Servicemembers Legal Defense Network ("SLDN") is a non-partisan, non-profit organization dedicated to lesbian, gay, bisexual, and transgender equality in the military. SLDN provides free legal assistance to servicemembers who experience issues related to their service and their sexual orientation or gender identity.

Amicus Curiae Service Women's Action Network ("SWAN") is a non-partisan, non-profit civil rights organization that supports current service women and women veterans. SWAN seeks to secure equal opportunity and the freedom to serve without the threat of harassment, discrimination, intimidation, and assault.

Amicus Curiae Vets4Vets is a non-partisan, non-profit peer support organization dedicated to helping Iraq and Afghanistan-era veterans heal from war and service.

Amicus Curiae Iraq and Afghanistan Veterans of America ("IAVA") is a non-partisan, non-profit organization focused on supporting Iraq and Afghanistan veterans through health, education, employment and community programs that are achieved through advocacy, awareness and assistance.

Amicus Curiae Connecticut Veterans Legal Center ("CVLC") is a non-partisan, non-profit organization dedicated to helping veterans recovering from homelessness and mental illness overcome legal barriers to housing, healthcare and income.

Each organization supporting this *amicus curiae* brief is dedicated to ensuring that our nation's veterans, including gay men and lesbians, receive equal treatment under the law. *Amici* submit this brief pursuant to Rule 29 of the Rules of Practice and Procedure for the United States Court of Appeals for Veterans Claims.

SUMMARY OF ARGUMENT

In *Romer v. Evans*, the Supreme Court struck down a state constitutional amendment that targeted gay men and lesbians for unequal treatment. 517 U.S. 620 (1996). In so doing, the Court embraced Justice Harlan's dissent in *Plessy v. Ferguson*, observing that "Our Constitution . . . neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law." 163 U.S. 537, 559 (1896) (Harlan, J., dissenting). Yet today, 38 U.S.C. § 101(31) and 38 C.F.R. § 3.50 (hereinafter, the "Spouse Definition")[1] treat gay and lesbian veterans differently than their heterosexual peers by denying them, and them alone, their earned right to receive spousal benefits. The Spouse Definition is not only constitutionally infirm under the most deferential review because it fails to "bear a rational relationship to an independent

[1] This brief does not address the Defense of Marriage Act, 1 U.S.C. § 7, but there is ample authority to find DOMA unconstitutional. *See Golinski v. U.S. Office of Pers. Mgmt.*, No. 10-00257, 2012 WL 569685 (N.D. Cal. Feb. 22, 2012); *Gill v. Office of Pers. Mgmt.*, 699 F. Supp. 2d 374 (D. Mass. 2010); *see also* Letter from Eric Holder, Attorney Gen., to John A. Boehner, Speaker of the House of Representatives (Feb. 23, 2011) (advising Congress of the President's determination that Section 3 of DOMA is unconstitutional as applied to same-sex couples who are legally married under state law).

and legitimate legislative end," *Romer*, 517 U.S. at 633, but it is also in direct conflict with the governmental purposes underpinning the enactment of veterans' benefit laws.

Although *amici* agree that Title 38 is subject to heightened scrutiny for the reasons articulated in Ms. Cardona's principal brief, the Spouse Definition fails even under rational basis review and would therefore also fail heightened scrutiny if applied. When a law's application targets a politically unpopular group, it is subject to a "searching" form of rational basis review. Under this standard, the actual purposes for enacting the law are accorded significant weight and *post-hoc* justifications are closely scrutinized. Here, because the ban on spousal benefits is inconsistent with the statutory purpose of veterans' benefits laws, and serves only to discriminate against gay and lesbian veterans, the Spouse Definition must be struck down as unconstitutional.

FACTUAL BACKGROUND

Our nation's unwavering commitment to honor the service and sacrifices of veterans who have been disabled in defense of our nation dates back to 1636, when the Colony of Plymouth enacted a law ensuring that soldiers injured while defending the Colony would be supported for life.[2] Since then, our nation has steadfastly recognized the importance of providing for disabled veterans and their families by enacting more than eighty laws intended to improve the quality of life for all veterans injured in the line of duty, as well as for their dependents.[3] Indeed, "[c]ompensation to service-connected disabled veterans . . . represents an obligation of the highest character in our veterans'

[2] *See* VA Office of Policy, Planning, and Preparedness, *VA Disability Compensation Program: Legislative History* 11 (2004) ("*Legislative History*").

[3] *See generally Legislative History* at 27-102.

program." 104 Cong. Rec. A8011 (daily ed. Sept. 4, 1958) (statement of Rep. Sisk).

In 1958, Congress enacted a comprehensive program to compensate service-disabled veterans and their families for the impact of their disability on their earning capacity and quality of life. Veterans' Benefits, Pub. L. No. 85-857, 72 Stat. 1105 (1958). Veterans' disability benefits not only help service-disabled veterans successfully reintegrate into civilian life, but also create incentives for recruitment and retention of armed forces personnel by reassuring that those who serve, as well as their families, will be properly cared for and fairly compensated for their service.

I. CONGRESS ENACTED 38 U.S.C. §§ 1110 AND 1115 TO AID SERVICE-DISABLED VETERANS AND TO CREATE INCENTIVES FOR SERVICE.

The dominant theme animating the enactment of veterans' benefits legislation, dating back to 1917, has been to wholly compensate veterans for the impact on their earning capacity caused by a service-connected disability. War Risk Insurance Act Amendments, Pub. L. No. 65-90, 40 Stat. 398 (1917). Consistent with this purpose, the 1958 Veterans' Benefits act set forth at 38 U.S.C. § 1110 the basic entitlement to disability compensation in the form of a monthly cash benefit, the amount of which is "based, as far as practicable, upon the average impairments of earning capacity resulting from [service-connected disabilities] in civil occupations." 38 U.S.C. § 1155 (2006).[4]

Recognizing that an impairment of earning capacity impacts not only disabled veterans, but also their spouses and other dependents, Congress enacted § 1115 to

[4] This Court has likewise held that the purpose of the veterans' disability compensation program is "to compensate veterans based upon degree of impairment of earning capacity." *Allen v. Brown*, 7 Vet. App. 439, 447 (1995) (en banc).

provide that veterans who are entitled to compensation under § 1110 are also "entitled to additional compensation for dependents," including spouses. 38 U.S.C. § 1115 (2006). This additional compensation "is intended to defray the costs of supporting the veteran's . . . dependents" when a service-connected disability is hindering the veteran's employment abilities.[5] S. Rep. No. 95-1054, at 19 (1978), *reprinted in* 1978 U.S.C.C.A.N. 3465, 3477; *see also Sharp v. Shinseki*, 23 Vet. App. 267, 272 (2009). Section 1115 was by no means an afterthought. In fact, Congress has frequently amended Title 38 to increase the additional compensation payable to disabled veterans with dependents in order to account for inflation and increases in the cost of living. *See, e.g.*, S. Rep. No. 95-1054, at 19, 1978 U.S.C.C.A.N. at 3477.

In addition to compensating service-disabled veterans and their families for the impact on their earning capacity, the veterans' disability compensation program is also "intended to create incentives for service" and "to try to provide reassurance that those who serve[,] as well as their dependents, will be cared for, rewarded, and compensated for their service." *Legislative History* at 15. Congress has made clear that "[l]ong-range benefits which insure the future financial security of both partners in a military marriage will improve morale and increase reenlistment." *Uniformed Services Former Spouses Protection Act: Hearing Before the Manpower & Pers. Subcomm. of the S. Comm. on Armed Servs.*, 97th Cong. 12 (1982) (statement of Sen. Hatfield). In order to recruit and

[5] As this Court has recognized, "[t]he United States pays compensation to veterans when they have, in honorable service to their nation, suffered a loss that is reflected in the decreased ability to earn a living for themselves and their families." *Hunt v. Derwinski*, 1 Vet. App. 292, 296 (1991).

retain armed forces personnel, the government must preserve the dignity and integrity of military service by ensuring that those who have been disabled in defense of our nation can re-establish themselves in civilian society and provide for their families:

> [T]he warrior and their families must be confident that if that warrior is injured or ill in the course of their duties that they are going to survive, they are going to return home, and they will have the best chance at full recovery and an active or productive life, either in uniform or out.

The Military Health System: Hearing Before the Military Pers. Subcomm. of the H. Comm. on Armed Servs., 111th Cong. 8 (2009) (statement of Lt. Gen. Eric Schoomaker).

Congress's commitment to ensuring the welfare of disabled veterans' spouses and other dependents is consistent with the United States military's own commitment to caring for the families of armed forces personnel. The military often emphasizes that it "recruit[s] soldiers, but retain[s] families." *See, e.g.*, Operation Ready, *The Army Leaders' Desk Reference for Soldier/Family Readiness* 1 (2002). Congress has likewise noted that "[t]he theme of the 'military family' and its importance to military life is widespread and well publicized." S. Rep. No. 97-502, at 6 (1982), *reprinted in* 1982 U.S.C.C.A.N. 1596, 1601. To that end, the military has pledged: "We will not walk away from our commitment to our Families . . . . We must fulfill our moral obligation to the health, welfare and care of our Soldiers, Civilians and Families." John M. McHugh & Raymond T. Odierno, *A Statement on the Posture of the United States Army 2012*, at 12.

In honor of this commitment to caring for veterans and their families, Congress enacted a comprehensive disability compensation program that is "suffuse[d]" with a "generous spirit." *See Boyer v. West*, 210 F.3d 1351, 1355 (Fed. Cir. 2000) (internal

quotation marks omitted).[6] Consistent with this generous spirit, "veteran benefit statutes are construed liberally in favor of the veteran." *Hix v. Gober*, 225 F.3d 1377, 1380 (Fed. Cir. 2000) (citing *Brown v. Gardner*, 513 U.S. 115, 118 (1994)). Moreover, "[the Federal Circuit] and the Supreme Court both have long recognized that the character of the veterans' benefits statutes is strongly and uniquely pro-claimant." *Hodge v. West*, 155 F.3d 1356, 1362 (Fed. Cir. 1998).

Thus, in order to compensate disabled veterans and their families for impairment in earning capacity and impact on quality of life, and in order to create incentives for service, Congress enacted a comprehensive statutory scheme that is uniquely pro-claimant and generously compensatory.

II. CONGRESS ENACTED 38 U.S.C. § 101(31) TO FURTHER OUR NATION'S COMMITMENT TO EQUALITY.

Congress enacted the Spouse Definition to make the distribution of veterans' benefits gender neutral. In response to the Supreme Court's ruling in *Frontiero v. Richardson*, 411 U.S. 677 (1973) (plurality opinion), that military benefits could not be distributed differently based on gender, Congress amended Title 38 to "eliminate unnecessary gender references." S. Rep. No. 94-568, at 20 (1975). As understood by the Veterans Administration itself,[7] the legislation was intended to "remove implications"

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[6] For example, some disabled veterans receive a "special monthly compensation," which compensates veterans at a rate higher than the 100% rate, because they have lost limbs or the use of limbs. 38 U.S.C. § 1114(k) (2006); 38 C.F.R. § 3.350 (2011).

[7] At the time, the Veterans Administration was the agency responsible for veterans' benefits. It proposed changes to the Code of Federal Regulations, in this case 38 C.F.R. § 3.50, in response to changes in the United States Code. In 1989, the Veterans Administration was replaced with the Department of Veterans Affairs.

that benefits "may not be available equally to male and female veterans." Pension, Compensation, and Dependency and Indemnity Compensation, 41 Fed. Reg. 18,299 (May 3, 1976). A review of the history of the amending legislation shows that the change was intended primarily to increase veterans' benefits to meet rising inflation, secondarily to make the distribution of benefits gender neutral, and was in no way designed to deny benefits to gay and lesbian veterans. *See* Veterans and Survivors Pension Interim Adjustment Act of 1975, Pub L. No. 94-169, 89 Stat. 1013.

First introduced in the House as H.R. 10355, the bill proposed increasing veterans' benefits rates to meet rising inflation and eliminating some references to gender. H.R. Rep. No. 94-601, at 2, 29 (1975). Changes to gendered terms were not proposed uniformly throughout the bill, however. In fact, such changes were not even discussed in the House report, and throughout the report, there were numerous references to veterans as "him" and to their spouses as "she." *See id.* at 29, 31.

While H.R. 10355 was working its way through the House, a similar bill was moving through the Senate: S. 2635. Like the House bill, S. 2635 proposed increasing veterans' benefits to keep up with inflation, but it also recommended wholesale language changes to reflect gender equality. It proposed replacing the term "wife" with "spouse" throughout Title 38 and adding § 101(31) to define the term "spouse" as a "wife or husband." 121 Cong. Rec. 35,647, 35,658 (1975); S. 2635, 94th Cong., 121 Cong. Rec. 35,662 (1975). The proposed definition of spouse made no mention of the language "person of the opposite sex" as exists in § 101(31) today and the record reveals no discussion of gay and lesbian veterans. S. Rep. No. 94-532, at 40 (1975) (outlining

proposed subsection 31 as amended, on Dec. 10, 1975); *see* 121 Cong. Rec. 40,573-603 (1975).

Once these similar bills had passed their respective houses, it became clear that the House Committee on Veterans Affairs would not be able to review and pass the Senate's bill before Congress's December recess. S. Rep. No. 94-568, at 8-9. The Senate Committee was concerned about leaving veterans' benefits rates unchanged because Congressional testimony had revealed an urgent need for an increase as some veterans would feel an effective reduction in their benefits come January 1, 1976. *Id.* In an effort to effect some improvement before January 1, the Senate Committee proposed that the Senate instead adopt H.R. 10355 with some amendments. *Id.* at 9.

With no evident purpose or reason, it was at this stage that the language "person of the opposite sex" first entered the Spouse Definition. In a hurried attempt to make H.R. 10355 more like S. 2365, the Senate Committee proposed amending H.R. 10355 to strike Title 38 of all needless gender references. S. Rep. No. 94-568, at 1, 28. The Senate Committee also proposed the addition of § 101(31), which would define the term "spouse." This time, however, the Committee inexplicably defined a spouse as a "person of the opposite sex who is a wife or husband." *Id.* at 2. Thus with no discussion, recorded debate, or testimony, the phrase "person of the opposite sex" was inserted into § 101(31).[8]

[8] In fact, the Senate Committee, in its report on H.R. 10355, as amended, described the changes to § 101 as including "adding the term 'spouse' to mean wife or husband," suggesting that the "person of the opposite sex" language may have gone unnoticed by many Committee members themselves. S. Rep. No. 94-568, at 19.

Once the amended H.R. 10355 passed the full Senate, the bill returned to the House to be passed in its amended form. Tellingly, the House debate on the Senate-passed version made no mention of the new "person of the opposite sex" language. 121 Cong. Rec. 41,756-58 (1975). Rather, the Chair of the House Committee on Veterans' Affairs advised that the Senate had made "no substantive changes" to the House bill and that the effect of the Senate's amendments, among others, was "to eliminate all reference to gender with respect to veterans, spouses, and survivors." *Id.* at 41,758. The House approved the Senate amendments to H.R. 10355 on December 18, 1975. *Id.* Thus, the legislative history of the Spouse Definition reflects Congress's commitment to furthering equality and expanding the number of veterans receiving benefits; it plainly does not reflect a desire to exclude, and thereby uniquely harm, gay and lesbian veterans.[9]

III. CONGRESS ENACTED TITLE 38 WITH THE CLEAR PURPOSE AND INTENTION OF DEFERRING TO STATE MARRIAGE LAWS.

Notwithstanding the Spouse Definition, the Secretary of Veterans Affairs must defer to the "law of the place where the parties resided" when determining "whether or not a person is or was the spouse of a veteran." 38 U.S.C. § 103(c) (2006). Indeed, § 103(c) commands that "their marriage shall be proven as valid for the purposes of *all laws* administered by the Secretary." *Id.* (emphasis added). Accordingly, Congress plainly intended to defer to a state's definition of marriage when determining whether someone is or was a "spouse" within the meaning of Title 38.

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[9] *See also* Letter from Eric Holder, Attorney Gen., to John A. Boehner, Speaker of the House of Representatives (Feb. 17, 2012) (noting that "[t]he legislative record of [the Spouse Definition] contains no rationale for providing veterans' benefits to opposite-sex spouses of veterans but not to legally married same-sex spouses of veterans").

ARGUMENT

I. THE ACTUAL PURPOSES ARTICULATED BY CONGRESS ARE GIVEN WEIGHT WHEN THE LAW AT ISSUE TARGETS A POLITICALLY UNPOPULAR GROUP.

The guarantee of equal protection of the law "directs that 'all persons similarly circumstanced shall be treated alike.'" *Plyler v. Doe*, 457 U.S. 202, 216 (1982).[10] "From its founding the Nation's basic commitment has been to foster the dignity and well-being of *all* persons within its borders." *Goldberg v. Kelly*, 397 U.S. 254, 264-65 (1970) (emphasis added). Denying spousal benefits to gay and lesbian veterans, and them alone, is antithetical to the "principles of equality" on which this "Nation . . . prides itself." *Plyler*, 457 U.S. at 219. Indeed, it is in direct conflict with the expressed governmental purposes underlying veterans' benefits laws.

To prevail in this case, the Government must establish that there is a constitutionally sufficient interest underpinning the Spouse Definition's discriminatory treatment of gay and lesbian veterans. *Romer*, 517 U.S. at 633. At a minimum, it must demonstrate "that the classification bear[s] a rational relationship to an independent and legitimate legislative end." *Id.*[11] Ordinarily, *post-hoc* justifications for the challenged

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[10] Although the Fifth Amendment to the United States Constitution does not contain an Equal Protection Clause, a similar constraint, governing federal action, is implicit in its Due Process Clause. *See Briggs v. Merit Sys. Prot. Bd.*, 331 F.3d 1307, 1317 (Fed. Cir. 2003) (citing *Bolling v. Sharpe*, 347 U.S. 497, 498-99 (1954)).

[11] In *Woodward v. United States*, 871 F.2d 1068, 1076 (Fed. Cir. 1989), the Federal Circuit determined that classifications based on sexual orientation should be scrutinized under the rational basis test. Because the court's holding was explicitly premised on the since-overruled decision in *Bowers v. Hardwick*, 478 U.S. 186 (1986), *Woodward*'s continued validity is suspect. Further, *Woodward*—which held that sexual orientation is "behavioral," not immutable, 871 F.2d at 1076—cannot be reconciled with the Supreme

law are considered and may suffice. But when that law targets and inflicts harm onto a "politically unpopular group," such as gay and lesbian individuals, a court must "appl[y] a more searching form of rational basis review to strike down such laws." *Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (O'Connor, J., concurring). This "searching" review gives weight to the actual purposes for enacting the law and closely scrutinizes *post-hoc* justifications, thereby "ensur[ing] that classifications are not drawn for the purpose of disadvantaging the group burdened by the law." *Romer*, 517 U.S. at 633.

Department of Agriculture v. Moreno, 413 U.S. 528 (1973), is illustrative. There the Supreme Court struck down a provision of the Food Stamp Act targeting and penalizing so-called "hippies." *Id*. at 534. Because Congress enacted the Food Stamp Act "to safeguard the health and well-being of the Nation's population," the Court found that the challenged classification was "clearly irrelevant to the stated purposes." *Id*. at 533-34 (internal quotation marks omitted). The Court considered and rejected the government's *post-hoc* justifications because the classification was in conflict with the actual purposes articulated by Congress and harmed the very people the Act was enacted to protect. *Id*. at 538. In the absence of any legitimate justification for the classification, and with the legislative history indicating an intent to discriminate against "hippies," the Court cautioned "that a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest." *Id*. at 534.

Court's holding in *Christian Legal Society v. Martinez*, 130 S. Ct. 2971, 2990 (2010), that there is no such cognizable distinction between gay identity and conduct. In all events, the Spouse Definition is unconstitutional under any standard of equal protection scrutiny because it does not further a legitimate—much less, an important or compelling—governmental interest.

The Spouse Definition is the same type of irrational and discriminatory classification targeting a politically unpopular group that the Supreme Court rejected in *Moreno*. As such, this Court should apply the required "searching form of rational basis review to strike down [this] law[]." *Lawrence*, 539 U.S. at 580. There is no doubt that the purpose of spousal benefits is to recruit and retain armed forces personnel and to preserve the dignity and integrity of military service by helping those who have been disabled in defense of our nation re-establish themselves in civilian society. It is plain that excluding gay and lesbian veterans conflicts with and frustrates this purpose. *See infra* Part II. No *post-hoc* justification can change this fact. *See infra* Part III. Rather, to the extent the Government enforces the Spouse Definition to ban gay and lesbian veterans from receiving spousal benefits, it is done with the sole purpose and "desire to harm a politically unpopular group." This it cannot do.

II. THE BAN ON SPOUSAL BENEFITS CONFLICTS WITH THE EXPRESSED GOVERNMENTAL PURPOSES ANIMATING VETERANS BENEFITS LAWS.

Denying benefits to gay and lesbian veterans, and them alone, frustrates the clear congressional purpose of §§ 1110 and 1115: to fairly compensate disabled veterans for their decreased ability to earn a living and support their families. The legislative history of these provisions evinces no intent to prevent gay and lesbian veterans from receiving spousal benefits, and any *post-hoc* argument that Congress intended to deprive them of these benefits is inconsistent with Congress's clear intent to support service-disabled veterans' spouses and other dependents. Such an argument is also inconsistent with the military's own commitment to caring for the families of armed forces personnel.

Moreover, denying spousal benefits to gay and lesbian veterans is inconsistent with the congressional purpose of creating incentives for the recruitment and retention of armed forces personnel. Denying spousal disability benefits to gay and lesbian veterans "sends the wrong signal to the young people—straight or gay—that the military is trying to recruit. It tells them that the military is an intolerant place that does not value what they value, namely, diversity, fairness, and equality." *See* Lawrence J. Korb et al., *Ending "Don't Ask, Don't Tell"* 2 (2009). Equality is critically important in the military; "to accomplish its mission the military must foster instinctive obedience, unity, commitment, and esprit de corps." *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986).

The legislative history of § 101(31) likewise evinces no intent to curtail veterans' benefits. Rather, it reflects a broad commitment to *equality* and the provision of benefits to improve the lives of *all* veterans. Plainly, Congress could not have intended to exclude gay and lesbian veterans, as there is no evidence that Congress anticipated same-sex marriages at the time. Thus, the "person of the opposite sex" language can only be explained as a haphazard, last-minute addition. Nothing suggests it should now be given the perverse effect of advancing *inequality* by excluding veterans and their spouses from benefits based solely on their sexual orientation. *See, e.g.*, *Watt v. Alaska*, 451 U.S. 259, 266 (1981) (Recognizing that legislative history can "persuade a court that Congress did not intend words of common meaning to have their literal effect.").

In addition to the absence of legislative history demonstrating any intention to exclude gay and lesbian veterans from benefits, when viewed as a whole within Title 38, it is clearer still that § 101(31) does not speak to same-sex marriages. Rather, the subject

of marriages and the validity of marriages is taken up elsewhere—specifically, in § 103(c), which states that to determine if a marriage is valid, one must defer to the "law of the place where the parties resided at the time of the marriage." 38 U.S.C. § 103(c). The statute's definition of "marriage" is a clear statement that Congress intended to defer to the states when defining "spouse." Therefore, a same-sex marriage, if valid in Connecticut, should be "valid for the purposes of all" veterans' benefits laws. *Id*.

III. EVEN IF THIS COURT WERE TO ENTERTAIN *POST-HOC* JUSTIFICATIONS, THE SPOUSE DEFINITION IS NOT RATIONALLY RELATED TO ANY INTEREST PROFFERED.

The various interests proffered—including responsible procreation and child-rearing, caution in defining a legislative term and maintaining the status quo, and caution in area of social divisiveness—have been rejected by other federal courts as bearing no rational relationship to a classification burdening gay men and lesbians alone. *See, e.g*., *Golinski*, 2012 WL 569685, at *24-26; *Gill*, 699 F. Supp. 2d at 388-97; *see also Perry v. Brown*, No. 10-16696, 2012 WL 372713 (9th Cir. Feb. 7, 2012). The same holds true here. As the legislative history clearly demonstrates, any *post-hoc* justification for denying gay and lesbian veterans spousal benefits cannot be squared with the actual, legitimate legislative purposes animating the enactment of veterans' benefits laws. Rather, it is clear that the ban "serves no purpose, and has no effect, other than to lessen the status and human dignity of gays and lesbians." *Perry*, 2012 WL 372713, at *1.

CONCLUSION

For the foregoing reasons, and for those stated by the Appellant, this Court should strike down as unconstitutional 38 U.S.C. § 101(31) and 38 C.F.R. § 3.50.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2012, a copy of the foregoing Brief of National Veterans' Service Organizations as *Amici Curiae* was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF system.

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