

THE MILITARY MUST LEAD IN ADVOCATING FOR MARRIAGE EQUALITY

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I. INTRODUCTION

In 2012, the White House invited an openly gay servicemember, Colonel Ginger Wallace, to attend the State of the Union Address.¹ The White House biography for Colonel Wallace acknowledged her civilian partner of over a decade, Kathy Knopf.²

As a military family, Colonel Wallace and Ms. Knopf likely face many of the same challenges as other military families across the United States. Yet because Colonel Wallace and Ms. Knopf are of the same sex, the federal government and many states do not recognize them as married.³ They are, therefore, denied access to the many supports available to other military families.⁴

The experience of Colonel Wallace and Ms. Knopf illustrates a contradiction. While the White House applauds LGB military families⁵ for their contributions to the United States, LGB military families are not afforded the basic dignity of equal treatment alongside other military families. This disturbing reality is caused by the federal Defense of Marriage Act⁶ (DOMA) and its inconsistency with both the military's commitment to families and the passage of the Don't Ask, Don't Tell Repeal Act of 2010⁷ (DADT Repeal Act).

Through explicit statements and an array of support programs, the military has demonstrated its deep commitment to military families.⁸ In addition, since the passage of the DADT Repeal Act in 2010, which permitted LGB servicemembers to serve openly,⁹ the military has clearly expressed its belief that sexual orientation is a 'nonissue' in the military.¹⁰ Given these facts, it would

1. Press Release, The White House, Guest List for the First Lady's Box at the State of the Union Address (Jan. 24, 2012), <http://www.whitehouse.gov/the-press-office/2012/01/24/guest-list-first-ladys-box-state-union-address>. Other guests included the civilian wife of a navy commander and an army sergeant married to another army sergeant. *Id.*

2. *Id.* At the 2013 State of the Union, the White House again recognized a same-sex military couple by inviting Tracey Hepner and her wife, Army Brigadier General Tammy Smith (the first openly gay general). *The First Lady's Box at the 2013 State of the Union*, THE WHITE HOUSE BLOG (Feb. 12, 2013, 2:28 PM), <http://www.whitehouse.gov/blog/2013/02/12/first-ladys-box-2013-state-union>.

3. *See infra* Part II.

4. *See infra* Part V.B–C.

5. I use the term "LGB military families" to refer to families of servicemembers in which the spouses or partners are lesbian, gay, or bisexual. I use "LGB" rather than "LGBT" because military medical regulations bar transgendered individuals from serving. U.S. Dep't of Army, Reg. 40-501, Standards of Medical Fitness ¶ 2-27(n) (2011).

6. Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996).

7. Don't Ask, Don't Tell Repeal Act of 2010, Pub. L. No. 111-321, 124 Stat. 3515 (2010).

8. *See infra* Part IV.

9. *See* Don't Ask, Don't Tell Repeal Act of 2010, Pub. L. No. 111-321, 124 Stat. 3515 (2010).

10. Throughout this article, I use the term "nonissue" as shorthand to refer to the concept, repeatedly stated by the military after the DADT repeal, that sexual orientation is a "personal and private matter" and thus irrelevant to military service. *See* Raymond F. Chandler III, Raymond T.

seem that the military would not seek to discriminate between military families based on sexual orientation.

Yet DOMA frustrates this logical outcome. DOMA prevents the federal government from recognizing same-sex marriages and permits states to refuse to acknowledge same-sex marriages from other states.¹¹ As a result, DOMA prevents the military from supporting all its military families,¹² even as the military recognizes that family readiness improves military readiness¹³ and the efforts of military spouses benefit the military.¹⁴ In addition, inconsistent state laws on same-sex marriage create obstacles for LGB military families.¹⁵ Only once same-sex marriage is recognized nationwide will the military be able to make sexual orientation a true nonissue and realize its promise to support the families of *all* servicemembers. The military must, therefore, lead in the fight for marriage equality.

In Part II of this article, I provide some legal background on same-sex marriage, including the status of same-sex marriage at the federal¹⁶ and state levels.¹⁷ Then, in Part III, I review the history of Don't Ask, Don't Tell¹⁸ and describe the DADT repeal process,¹⁹ focusing on the findings of the military's DADT working group and its determination that sexual orientation should be a nonissue.²⁰ In Part IV, I discuss the military's commitment to military families; I start with a history of the military family²¹ and describe both the modern military community²² and the career impact of the military spouse.²³ I also detail the variety of support services and financial benefits that the military provides to qualifying military families.²⁴ Next, in Part V, I explain why the military's dual promises to view sexual orientation as a nonissue and to support military families cannot be reconciled without marriage equality.²⁵ Specifically, I discuss

Ordierno & John M. McHugh, *Don't Ask Don't Tell Repeal* WASH. POST (Sept. 20, 2011), www.washingtonpost.com/r/2010-2019/WashingtonPost/2011/09/19/National-Politics/Graphics/DA-Tri-signed-dadt-repeal-cert.pdf (statement by the Army); Don't Ask, Don't Tell, U.S. AIR FORCE, <http://www.af.mil/dontask%2Cdonttell/> (last visited Sep. 22, 2012) (statement by the Air Force).

11. Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996).

12. *See infra* Part V.B.

13. *See infra* Part IV.B.

14. *See infra* Part IV.B.2.

15. *See infra* Part V.C.

16. *See infra* Part II.A.

17. *See infra* Part II.B.

18. *See infra* Part III.A.

19. *See infra* Part III.C.

20. *See infra* Part III.B.

21. *See infra* Part IV.A.

22. *See infra* Part IV.B.1.

23. *See infra* Part IV.B.2.

24. *See infra* Part IV.C.

25. *See infra* Part V.

the tension following the DADT repeal,²⁶ explain how DOMA prevents the military from supporting LGB military families,²⁷ and how inconsistent state same-sex marriage laws harm LGB military families.²⁸ I then acknowledge and rebut potential criticisms of my argument that the military should advocate for same-sex marriage.²⁹ Finally, in Part VI, I demonstrate how the military can advocate for marriage equality,³⁰ suggesting testimony before Congress as one possibility.³¹

A note on structure: this article is best understood as a collection of building blocks, each one as important as the next to an understanding of the whole. My argument reflects historical developments that have overlapped and interacted in complex ways. As I delve into the diverse topics described above—everything from the history of Don't Ask Don't Tell to the structure of military benefits to the social events from which LGB families are excluded—it is important to focus on the big picture. The military has come a long way in supporting families and viewing sexual orientation as a nonissue; now, it must lead in recognizing marriage equality.

I want to acknowledge before proceeding that military support for families is not unlimited, and that the military does not provide all military families with the full range of support services they need.³² Yet LGB military families require at least the baseline of equal treatment, even if that baseline should rise for everyone.

26. See *infra* Part V.A.

27. See *infra* Part V.B.

28. See *infra* Part V.C.

29. See *infra* Part V.D.

30. See *infra* Part VI.

31. See *infra* Part VI.A–B.

32. The military has reduced some benefits to families due to budget cuts. See *MyCAA Revises Their Military Spouse Tuition Benefits*, VETERANS ADVISOR (Sept. 12, 2012), <http://www.veteransadvisor.com/2010/07/22/mycaa-revises-their-military-spouse-tuition-benefits/>. In addition, the military's Family Panel has yet to meet. See Karen Jowers, *DoD Family Panel Has Little Traction, Impact*, ARMY TIMES (Nov. 7, 2011), <http://www.armytimes.com/news/2011/11/military-family-council-quorum-defense-department-110711w/>. Meanwhile, military spouses report emotional problems, see KAREN PAVLICIN, SURVIVING DEPLOYMENT: A GUIDE FOR MILITARY FAMILIES 125 (2003), and high divorce rates. Andrew Tilghman, *Military Divorce Rate Rises Slightly in 2011*, ARMY TIMES (Dec. 14, 2011), <http://www.armytimes.com/news/2011/12/military-divorce-rate-rises-slightly-2011-121411w/>; *Divorces Rising in Military*, N.Y. TIMES (Nov. 27, 2009), http://www.nytimes.com/2009/11/28/us/28brfs-DIVORCESRISI_BRF.html. Military families also experience particularly high rates of domestic violence. Simeon Stamm, *Intimate Partner Violence in the Military: Securing Our Country, Starting with the Home*, 47 FAM. CT. REV. 321, 322–24 (2009). See also U.S. ARMY, ARMY HEALTH PROMOTION RISK REDUCTION SUICIDE PREVENTION REPORT 80 (2010) [hereinafter HEALTH PROMOTION].

II.

LEGAL BACKGROUND ON MARRIAGE EQUALITY

In order to understand my argument that the military must advocate to change the law on same-sex marriage, I first examine the current state of same-sex marriage law. In this Part, I provide a brief overview of same-sex marriage law at the federal and state levels. A more complete description of the same-sex marriage movement is beyond the scope of this article. This Part is the first building block toward my larger argument: that despite the military's dual commitments to families and to making sexual orientation as a nonissue, current law unacceptably hinders equal treatment for LGB families.

A. Federal Law on Same-Sex Marriage

The Defense of Marriage Act (DOMA) prohibits the federal government from recognizing same-sex marriages.³³ DOMA defines the word "marriage" as "only a legal union between one man and one woman as husband and wife," and the word "spouse" as "a person of the opposite sex who is a husband or a wife."³⁴ Additionally, DOMA provides that there is no legal requirement for a state to recognize a same-sex marriage performed in another state.³⁵ By 2004, just eight years after its passage, DOMA had denied same-sex spouses from receiving 1,138 types of federal benefits contingent on marital status.³⁶

1. Judicial Challenges to DOMA

Several lawsuits have challenged the constitutionality of DOMA. Initially, two lawsuits challenging DOMA's constitutionality were unsuccessful. Specifically, in 2004 and 2005, the bankruptcy court for the Western District of Washington and the United States District Court for the Middle District of Florida held that DOMA was constitutional.³⁷

Subsequently, three circuit courts found DOMA unconstitutional. In 2009, the Ninth Circuit ruled that DOMA was unconstitutional under the Due Process

33. 28 U.S.C. § 1738C (2006) ("No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding . . . respecting a relationship between persons of the same sex that is treated as a marriage . . . or a right or claim arising from such relationship.").

34. 1 U.S.C. § 7 (2006). Other federal statutory definitions relevant to the military also define marriage as only between opposite sex spouses. *See, e.g.*, 38 U.S.C. § 101(3) (2006) (defining a surviving spouse as a "person of the opposite sex who was the spouse of a veteran at the time of the veteran's death."); 38 C.F.R. § 3.50(a) (2011) ("Spouse" means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j).").

35. 28 U.S.C. § 1738C (2006).

36. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-04-353R DEFENSE OF MARRIAGE ACT: UPDATE TO PRIOR REPORT (2004), available at <http://www.gao.gov/new.items/d04353r.pdf>.

37. *Wilson v. Ake*, 354 F. Supp. 2d 1298, 1309 (Fla. M.D. 2005); *In re Kandu*, 315 B.R. 123, 148 (Wash. Bankr. W. D. 2004).

Clause.³⁸ In 2012, the First Circuit held that DOMA was unconstitutional under the Fifth Amendment Equal Protection Clause.³⁹ Most recently, in 2012, the Second Circuit similarly held that DOMA was unconstitutional on Equal Protection grounds.⁴⁰ In October 2012, the Supreme Court granted certiorari to review the decision of the Second Circuit.⁴¹ The Supreme Court's decision has the potential to greatly impact same-sex marriage law.

2. Non-Judicial Challenges to DOMA

There have also been non-judicial challenges to DOMA at the federal level. In February 2011, President Obama decided to cease defending DOMA in court.⁴² Congress has proposed legislation to overturn DOMA through the Respect for Marriage Act in the House,⁴³ and the Senate Judiciary Committee voted to repeal DOMA in November 2011.⁴⁴ Moreover, the federal government has taken steps to support same-sex families by expanding hospital visitation

38. *In re Levenson*, 560 F.3d 1145, 1149 (9th Cir. 2009). The Ninth Circuit initially heard two challenges to DOMA, both about fringe benefits for the same-sex spouses of federal employees who had been legally married in California. *In re Golinski*, 587 F.3d 901 (9th Cir. 2009); *Levenson*, 560 F.3d at 1145. While the Court ruled against DOMA in the second case, in the first case, Chief Circuit Judge Alex Kozinski avoided ruling on DOMA's constitutionality by relying on an anti-discrimination provision of the Ninth Circuit's employment dispute resolution plan. *In re Golinski*, 587 F.3d at 902–04. The plaintiffs in *Golinski* had been lawfully married before California amended its constitution to outlaw same-sex marriage in 2008.

39. *Massachusetts v. U.S. Dep't of Health & Human Servs.*, 682 F.3d 1 (1st Cir. 2012). The First Circuit's decision stemmed from two cases filed by the Commonwealth of Massachusetts in the Massachusetts District Court. In the first case, Massachusetts sued the federal government alleging that DOMA "forc[ed] the Commonwealth to engage in invidious discrimination against its own citizens in order to receive and retain federal funds." *Massachusetts v. U.S. Dep't of Health & Human Servs.*, 698 F. Supp. 2d 234, 236 (D. Mass. 2010). Specifically, Massachusetts had been forced to deny the request of a gay veteran for burial plots for himself and his husband in a Massachusetts veterans' cemetery funded by the Department of Veterans Affairs. *Id.* at 239–41. The District Court ruled for Massachusetts, holding that DOMA violated the spending clause and the Tenth Amendment. *Id.* at 248–49, 253. In the second case, the Massachusetts District Court held that DOMA violated the Fifth Amendment Equal Protection Clause. *Gill v. Office of Pers. Mgmt.*, 699 F. Supp. 2d 374, 396 (D. Mass. 2010). In that case, same-sex couples and survivors of same-sex spouses, all married in Massachusetts, were denied various federal benefits because of DOMA. *Id.* at 376–77.

40. *Windsor v. United States*, 699 F.3d 169 (2d Cir. 2012), *cert. granted*, 81 U.S.L.W. 3116 (U.S. Dec. 7, 2012) (No. 12-307).

41. *Windsor v. United States*, 81 U.S.L.W. 3116 (U.S. Dec. 7, 2012) (No. 12-307).

42. Jerry Markon & Sandhya Somashekhar, *In Gay Rights Victory, Obama Administration Won't Defend Defense of Marriage Act*, WASH. POST (Feb. 24, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/23/AR2011022303428.html>. For a defense of Obama's decision see Dustin F. Robinson, *A Defense of Non-Defense of the Defense of Marriage Act*, 12 GEO. J. GENDER & L. 701, 710 (2011) ("President Obama's allegiance . . . lies . . . with the Constitution, not DOMA. In that light, his non-defense of the Defense of Marriage Act is entirely defensible.").

43. H.R. 1116, 112th Cong. (2011); S. 598, 112th Cong. (2011). This Bill was also introduced in the preceding session. Respect for Marriage Act of 2009, H.R. 3567, 111th Cong. (2009).

44. Tom Cohen, *Senate Panel Passes Repeal of Defense of Marriage Act*, CNN (Nov. 10, 2011), <http://www.cnn.com/2011/11/10/politics/senate-doma/index.html?iref=obnetwork>.

rights and fringe benefits for federal employees.⁴⁵ The federal government has also made efforts to combat discrimination based on sexual orientation in federal employment and international human rights.⁴⁶ Ironically, even when Don't Ask, Don't Tell kept LGB servicemembers from serving openly in the military, the Department of Defense was prohibited from discriminating against its civilian employees on the basis of sexual orientation.⁴⁷

In May 2012, Vice President Biden and President Obama announced their personal support for same-sex marriage.⁴⁸ President Obama thus became "the first U.S. president in history to fully embrace that level of civil rights for gay[s] and lesbians[]." ⁴⁹

B. State Law on Same-Sex Marriage

Currently, nine states permit same-sex marriage—Connecticut, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, and Washington—as well as Washington, D.C.⁵⁰ Seven states allow civil unions or domestic partnerships which are equivalent to marriage: California, Delaware, Hawai'i, Illinois, Nevada, New Jersey, and Oregon.⁵¹ Two states, New Mexico

45. See, e.g., RAND, SEXUAL ORIENTATION AND U.S. MILITARY PERSONNEL POLICY 74–75 (2010) (describing efforts by the federal government to "expand benefits to same-sex partners," including hospital visitation rights and fringe benefits for federal employees). See also Mary Beth Sheridan & Ed O'Keefe, *Parent One, Parent Two to Replace References to Mother, Father on Passport Forms*, WASH. POST (Jan. 7, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/07/AR2011010706741.html> (reporting that the State Department changed the passport application forms to better reflect different types of families).

46. See, e.g., Scott Wilson, *Obama Orders U.S. Diplomats to Increase Efforts to Fight LGBT Discrimination Abroad*, WASH. POST (Dec. 6, 2011), http://www.washingtonpost.com/blogs/44/post/obama-orders-us-diplomats-to-increase-efforts-to-fight-lgbt-discrimination-abroad/2011/12/06/gIQA93mdZO_blog.html. Additionally, Executive Order 13087 prohibits the federal civilian workforce from discriminating against employees based on sexual orientation. Exec. Order No. 13,087, 63 Fed. Reg. 30,097 (May 28, 1998). But see Catherine Connolly, *Gay Rights in Wyoming: A Review of Federal and State Law*, 11 WYO. L. REV. 125, 153 (2011) (noting that no federal law protects LGBT employees from employment discrimination).

47. U.S. Dep't of Def. Directive 1020.02, Diversity Management and Equal Opportunity (EO) in the Department of Defense (2009); *Civilian Sexual Orientation Policy*, U.S. ARMY (Nov. 17, 2009), <http://cpol.army.mil/library/permis/5236.html>.

48. Michael Barbaro, *A Scramble as Biden Backs Same-Sex Marriage*, N.Y. TIMES (May 6, 2012), <http://www.nytimes.com/2012/05/07/us/politics/biden-expresses-support-for-same-sex-marriages.html>; Peter Wallsten & Scott Wilson, *Obama Endorses Gay Marriage, Says Same-Sex Couples Should Have Right to Wed*, WASH. POST (May 9, 2012), http://www.washingtonpost.com/politics/obama-endorses-same-sex-marriage/2012/05/09/gIQAivsWDU_story.html.

49. Wallsten & Wilson, *supra* note 48.

50. *State by State: The Legal Battle Over Gay Marriage*, NPR, <http://www.npr.org/templates/story/story.php?storyId=112448663> (last visited Mar. 7, 2013) [hereinafter *State by State*]. See also *Defining Marriage: Defense of Marriage Acts and Same-Sex Marriage Laws*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=16430> (last visited Mar. 7, 2013).

51. *State by State*, *supra* note 50.

and Rhode Island, have no formal laws either recognizing or prohibiting same-sex marriage (although Rhode Island recognizes same-sex marriages performed elsewhere).⁵² The remaining states do not recognize same-sex marriage.

The legalization of same-sex marriage at the state level remains in flux. This is especially evident in California. There, in 2008, the California Supreme Court ruled in favor of granting same-sex couples the right to marry.⁵³ In response, California voters passed Proposition 8, which provided that “[o]nly marriage between a man and a woman is valid or recognized in California.”⁵⁴ Subsequently, in 2010, the Northern District of California heard a challenge to Proposition 8 and found it unconstitutional under the Fourteenth Amendment Due Process and Equal Protection clauses.⁵⁵ The Ninth Circuit affirmed this decision, but on state law grounds.⁵⁶ In October 2012, the Supreme Court granted certiorari.⁵⁷

III.

DON’T ASK, DON’T TELL AND ITS REPEAL: HOW THE MILITARY CAME TO VIEW SEXUAL ORIENTATION AS A ‘NONISSUE’

As the law on same-sex marriage recognition evolved over time, attitudes toward LGB servicemembers in the military have likewise evolved. In this Part, I describe the history of Don’t Ask, Don’t Tell (DADT), the responses it generated, and its ultimate repeal. This history reveals that the military’s position on sexual orientation has shifted dramatically in a relatively short time. It went from automatically discharging all LGB servicemembers⁵⁸ to protecting only closeted LGB servicemembers,⁵⁹ and ultimately, to welcoming all eligible LGB citizens into military service.⁶⁰ The military’s current position, that sexual orientation is a nonissue in the military, developed as part of the DADT repeal and was emphasized during the implementation process.⁶¹

The message of this Part—that sexual orientation has become a nonissue for the military—is another building block in my larger argument. Despite the military’s progress, sexual orientation cannot be a true nonissue for military

52. *Id.*

53. *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008).

54. *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 927 (N.D. Cal. 2010), *aff’d, sub nom. Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), *cert. granted sub nom. Hollingsworth v. Perry*, 81 U.S.L.W. 3075 (U.S. Dec. 7, 2012) (No. 12-144).

55. *Perry v. Schwarzenegger*, 704 F. Supp. 2d at 921, 995, 1003. *See also* Theodore B. Olson, *The Conservative Case for Gay Marriage*, NEWSWEEK, Jan. 8, 2010 (plaintiff’s lawyer arguing that conservatives should support gay marriage).

56. *Perry v. Brown*, 671 F.3d 1052, 1086 (9th Cir. 2012).

57. *Perry v. Hollingsworth*, 81 U.S.L.W. 3075 (U.S. Dec. 7, 2012) (No. 12-144).

58. *See infra* Part III.A.1.

59. *See infra* Part III.A.2.

60. *See infra* Part III.C.

61. *See infra* Part IV.B.

families until marriage equality is realized.

A. Military Treatment of LGB Servicemembers Before the DADT Repeal

1. Pre-1993: Military Policy Before DADT

LGB servicemembers have continuously served in the American military since the American Revolution.⁶² During World War II, homosexuality became grounds for exclusion from the military for the first time.⁶³ Throughout American history, up until the DADT policy took effect in 1993,⁶⁴ the military's response to the presence of LGB servicemembers has varied.

In wartime, when the military's need for personnel strength increases, the military has been less likely to discharge LGB servicemembers.⁶⁵ In more peaceful periods, the military resumes automatically discharging more LGB servicemembers,⁶⁶ reasoning that homosexuality is incompatible with military service.⁶⁷ Specifically, the military has argued that the presence of LGB servicemembers would decrease morale, harm recruitment and the military's image, undermine discipline, lead to security breaches due to possible blackmail, and prevent LGB officers from gaining the trust of lower-ranked heterosexual servicemembers.⁶⁸

Until DADT was implemented in 1993, LGB servicemembers were regulated by sodomy prohibitions and military personnel regulations rather than by Congressional statute.⁶⁹ Before 1982, the military lacked any uniform

62. See C. Dixon Osburn, Lawrence J. Korb & Denny Meyer, *Is "Don't Ask, Don't Tell" Good Public Policy?*, 14 DUKE J. GENDER L. & POL'Y 1173, 1196 (2007); DONNA M. DEAN, *WARRIORS WITHOUT WEAPONS: THE VICTIMIZATION OF MILITARY WOMEN* 38 (1997).

63. PHILIP GOLD, *THE COMING DRAFT* 89 (2006). At that time, first time offenders were treated as a medical, not criminal, problem. *Id.* at 89–90.

64. Pub. L. 103-160 § 571(a)(1), 107 Stat. 1670 (1993).

65. See Pamela Lundquist, *Essential to the National Security: An Executive Ban on "Don't Ask, Don't Tell"*, 16 AM. U. J. GENDER SOC. POL'Y & L. 115, 127 (2007–08); Osburn, Korb & Meyer, *supra* note 62, at 1203; Mark Strasser, *Unconstitutional? Don't Ask; If It Is, Don't Tell: On Deference, Rationality, and the Constitution*, 66 U. COLO. L. REV. 375, 445 (1994–95).

66. See, e.g., *Dronenburg v. Zech*, 741 F.2d 1388, 1397–98 (D.C. Cir. 1984) (holding that a navy regulation that mandated discharge for sailors who engaged in homosexual conduct did not violate the sailors' substantive due process); *Beller v. Middendorf*, 632 F.2d 788, 812 (9th Cir. 1980) (holding that navy regulations on discharging sailors did not violate the Due Process Clause).

67. U.S. DEP'T OF DEF., *REPORT OF THE COMPREHENSIVE REVIEW OF THE ISSUES ASSOCIATED WITH A REPEAL OF "DON'T ASK, DON'T TELL"* 21 (Nov. 30, 2010) [hereinafter U.S. DEP'T OF DEF., *REPORT*]; Hugh Aitken, Minter Alexander, Robert Gard & Jack Shanahan, *Report Of The General/Flag Officers' Study Group*, in *ATTITUDES AREN'T FREE: THINKING DEEPLY ABOUT DIVERSITY IN THE US ARMED FORCES* 143 (James E. Parco & David A. Levy eds., 2010).

68. Seth Harris, *Permitting Prejudice to Govern: Equal Protection, Military Deference, and the Exclusion of Lesbians and Gay Men from the Military*, 17 N.Y.U. REV. L. & SOC. CHANGE 171, 174, 200 (1993). See also U.S. GOV'T ACCOUNTING OFFICE, *GAO-95-21, SECURITY CLEARANCES: CONSIDERATION OF SEXUAL ORIENTATION IN THE CLEARANCE PROCESS* 3 (1995) (providing history of using sexual orientation in the security clearance process).

69. *Id.*

standards regulating “separations” (discharges) based on sexual orientation; instead, different branches of the military used inconsistent separation policies. In 1982, in order to “help the [Department of Defense] fend off court challenges,” the military issued directives to create a single, defense-level “automatic discharge” standard.⁷⁰

2. DADT and its Immediate Aftermath

In 1993, President Clinton attempted to fulfill a campaign promise by proposing to allow LGB servicemembers to serve openly.⁷¹ Yet he was unprepared for the military’s backlash.⁷² The ensuing conflict led to an unplanned compromise, *Don’t Ask, Don’t Tell, Don’t Pursue*, which was commonly known as “Don’t Ask, Don’t Tell.”⁷³ It became official United States policy on December 21, 1993.⁷⁴

Don’t Ask, Don’t Tell provided that “a person’s sexual orientation is considered a personal and private matter and is not a bar to service unless manifested in homosexual conduct.”⁷⁵ Yet it also provided that servicemembers would be discharged for engaging or attempting to engage in homosexual conduct, stating they were homosexual or bisexual, or marrying or attempting to marry a person of the same sex.⁷⁶ Advocates for discharging openly LGB servicemembers argued it was appropriate given the uniqueness of the military lifestyle and the importance of unit cohesion.⁷⁷ LGB advocates at the time may have viewed DADT as an improvement over the prior policy that provided

70. Aitken, Alexander, Gard & Shanahan, *supra* note 67, at 143. See also U.S. ARMY FIELD MANUAL 27-1, LEGAL GUIDE FOR COMMANDERS, ¶ 6-8 (1992 ed.) (“Homosexuality is incompatible with military service; homosexual soldiers will be separated. Grounds include pre-service, prior-service, or current-service homosexual acts, admissions of homosexuality or bisexuality, or homosexual marriages. If you have any credible evidence that a basis for separation exists, you will investigate. If you determine that probable cause for separation exists, you must initiate separation action.”).

71. See *A History of ‘Don’t Ask, Don’t Tell’*, WASH. POST, <http://www.washingtonpost.com/wp-srv/special/politics/dont-ask-dont-tell-timeline/> (last visited Jan. 26, 2012) (interactive timeline including Clinton’s campaign promise).

72. Clarence Page, *When Asked, Clinton Should Not Have Told*, CHICAGO TRIBUNE (Dec. 22, 1999), http://articles.chicagotribune.com/1999-12-22/news/9912220060_1_event-in-little-rock-bill-clinton-gays.

73. Strasser, *supra* note 65, at 375.

74. Pub. L. 103-160 § 571(a)(1), 107 Stat. 1670 (1993).

75. Matthew P. Cashdollar, *Not Yes or No, But What If, Implications of Open Homosexuality in the U.S. Military*, in ATTITUDES AREN’T FREE, *supra* note 67, at 163. DADT was implemented through U.S. Department of Defense Instruction 1332.14, Enlisted Administrative Separations; and U.S. Dept. of Defense Instruction 1332.20 Officer Separations. U.S. DEPT OF DEF., SUPPORT PLAN FOR IMPLEMENTATION, REPORT OF THE COMPREHENSIVE REVIEW OF THE ISSUES ASSOCIATED WITH A REPEAL OF “DON’T ASK, DON’T TELL” 15 (Nov. 30, 2010) [hereinafter SUPPORT PLAN].

76. National Defense Authorization Act for Fiscal Year 1994, Pub. L. No. 103-160, § 546, 107 Stat. 1670 (1993) (codified at 10 U.S.C. § 654 (2006)).

77. Sam Nunn, *The Fundamental Principles of the Supreme Court’s Jurisprudence in Military Cases*, 29 WAKE FOREST L. REV. 557, 558, 560–61 (1994).

automatic discharges for LGB servicemembers.

After DADT took effect, over 13,000 LGB servicemembers were discharged based on their sexual orientation⁷⁸ at a cost of over \$360 million.⁷⁹ Among those discharged⁸⁰ were LGB servicemembers with “mission-critical” skills⁸¹ and otherwise impressive credentials.⁸²

3. Debate Over DADT

DADT sparked intensive debate. Some commentators urged the repeal of DADT,⁸³ stating that it (1) violated the Constitution;⁸⁴ (2) disproportionately

78. U.S. DEP’T OF DEF., REPORT, *supra* note 67, at 23. Obtaining a DADT discharge was one of the fastest ways out of the military and was shorter than bad conduct discharges. In this respect, it was an advantage for LGB servicemembers if they suddenly decided they wanted to leave the military.

79. Tammy S. Schultz, *The Sky Won’t Fall: Policy Recommendations for Allowing Homosexuals to Serve Openly in the US Military*, in ATTITUDES AREN’T FREE, *supra* note 67, at 187. See U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-05-229, MILITARY PERSONNEL: FINANCIAL COSTS AND LOSS OF CRITICAL SKILLS DUE TO DOD’S HOMOSEXUAL CONDUCT POLICY CANNOT BE COMPLETELY ESTIMATED 3 (2005) (estimating that DADT cost the Department of Defense “about \$95 million in constant fiscal year 2004 dollars from fiscal year 1994 through fiscal year 2003 to recruit replacements for enlisted servicemembers separated for homosexual conduct.”).

80. It should be noted that because LGB servicemembers, on average, compose three to four percent of the military, such discharges still represent less than one percent of all involuntary discharges from the military. Lundquist, *supra* note 65, at 101; U.S. DEP’T OF DEF., REPORT, *supra* note 67, at 24.

81. Aitken, Alexander, Gard & Shanahan, *supra* note 67, at 149. See, e.g., Laura R. Kesler, *Serving with Integrity: The Rationale for the Repeal of “Don’t Ask, Don’t Tell” and its Ban on Acknowledged Homosexuals in the Armed Forces*, 203 MILITARY L. REV. 284, 291 (2010) (stating 800 mission-critical troops have been discharged under DADT); William H. Michael, *Calls Build for Change in Don’t Ask, Don’t Tell*, ARMY TIMES, July 20, 2009, at 10 (reporting that, since 1993, 323 linguists were discharged for violating DADT); Steve Vogel, *Decorated Airman Anxiously Awaits New Policy on Gays*, WASH. POST (Aug. 3, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/02/AR2009080202152.html> (reporting discharge of a lieutenant colonel with eighteen years of service).

82. See, e.g., *Massachusetts v. U.S. Dep’t of Health and Human Servs.*, 698 F. Supp. 2d 234, 241 (D. Mass. 2010) (describing credentials of a gay veteran who earned two Bronze Stars, two Meritorious Service Medals, a Meritorious Unit Commendation, an Army Commendation Medal, four Good Conduct Medals, and Vietnam Service Medals); Kesler, *supra* note 81, at 285 (noting that one of the soldiers who rescued Jessica Lynch was Yale-educated, Ranger-trained, and gay); Lundquist, *supra* note 65, at 129 (listing flag officers who admitted they are homosexuals); Peter Nixen, *The Gay Blade Unsheathed: Unmasking the Morality of Military Manhood in the 1990s, an Examination of the U.S. Military Ban on Gays*, 62 UMKC L. REV. 715, 727 (1994) (noting that Jose Zuniga, the Soldier of the Year, was discharged for his homosexuality).

83. E.g., Aitken, Alexander, Gard & Shanahan, *supra* note 67, at 146–47 (reporting that the Flag Officers’ Study Group found DADT is not working, because DADT forces commanders to choose between breaking the law and preserving unit cohesion).

84. Strasser, *supra* note 65 (arguing that DADT violates the First Amendment); Kenneth Williams, *Gays in the Military: The Legal Issues*, 28 U.S.F. L. REV. 919, 936 (1994) (arguing that DADT violates the First Amendment and the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment); Harris, *supra* note 68, at 197 (arguing that DADT violates the Equal Protection Clause). See also *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006). *Forum for Academic and Institutional Rights* is a DADT-era case in which law

affected women;⁸⁵ (3) promoted a culture of homophobia and discrimination;⁸⁶ (4) indicated lack of civilian control over the military;⁸⁷ (5) harmed unit cohesion;⁸⁸ and (6) impacted the mental health of LGB servicemembers.⁸⁹ Meanwhile, many other individuals and groups argued for maintaining DADT and preventing its repeal.⁹⁰

schools argued that the federal government violated their First Amendment rights by conditioning their federal aid on a requirement that they permit military employers to recruit law students. 547 U.S. at 51.

85. See Michelle Benecke, *Turning Points: Challenges and Successes in Ending Don't Ask, Don't Tell*, 18 WM. & MARY J. WOMEN & L. 35, 51, 56–57 (2011); Christin M. Damiano, *Lesbian Baiting in the Military: Institutionalized Sexual Harassment Under "Don't Ask, Don't Tell, Don't Pursue"*, 7 AM. U. J. GENDER SOC. & POL'Y L. 499, 502, 509, 514 (1999) (explaining how male servicemembers would use DADT to silence females if females were sexually abused, harassed, or threatened by suggesting that female servicemembers who rejected their advances were lesbians); Montrece McNeill Ransom, *The Boy's Club: How "Don't Ask, Don't Tell" Creates a Double-Bind for Military Women*, 25 L. & PSYCHOL. REV. 161, 165–66 (2001). See also Francine Banner, *"It's Not All Flowers and Daisies:" Masculinity, Heteronormativity and the Obscuring of Lesbian Identity in the Repeal of "Don't Ask, Don't Tell"*, 24 YALE J.L. & FEMINISM 61, 63 (2012) (noting that DADT disproportionately affected women); Diane H. Mazur, *Re-Making Distinctions on the Basis of Sex: Must Gay Women be Admitted to the Military Even if Gay Men Are Not?*, 58 OHIO ST. L.J. 953, 967, 991 (1997) (arguing that DADT excluded lesbians based on justifications that only apply to gay men).

86. Joseph Rocha, *'Don't Ask, Don't Tell' Didn't Protect Me From Abuse In The Navy*, WASH. POST (Oct. 11, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/09/AR2009100902570.html> (stating DADT ironically “protects bigots and punishes gay [servicemembers] who comply.”); Benecke, *supra* note 85, at 74; Kesler, *supra* note 81, at 366–80 (comparing arguments used to exclude people of color, women, and LGBs). See also Nixen, *supra* note 82, at 734 (noting that the arguments used against LGB servicemembers are the same arguments used in the 1940s against racial integration in the military).

87. Diane H. Mazur, *Why Progressives Lost the War When They Lost the Draft*, 32 HOFSTRA L. REV. 553, 601, 604 (2003) (criticizing the military for creating warriors while failing to engender respect for LGB servicemembers).

88. Jackie Gardina, *Let the Small Changes Begin: President Obama, Executive Power, and "Don't Ask Don't Tell"*, 18 B.U. PUB. INT. L.J. 237, 244 (2009) (presenting evidence that “[DADT] . . . interferes with, rather than promotes, unit cohesion.”).

89. Aitken, Alexander, Gard & Shanahan, *supra* note 67, at 147–48; AM. PSYCHOLOGICAL ASS'N, THE PSYCHOLOGICAL NEEDS OF U.S. MILITARY SERVICE MEMBERS AND THEIR FAMILIES: A PRELIMINARY REPORT 48–49 (2007), available at <http://www.ptsd.ne.gov/publications/military-deployment-task-force-report.pdf> (explaining that DADT may cause LGB servicemembers to “struggle with several issues beyond the typical challenges faced by military personnel in a combat zone, includ[ing] the psychological toll of secrecy, judgments and negative attitudes by others, and fears of the consequences of disclosing their orientation”); Kesler, *supra* note 81, at 305 (arguing that DADT may hinder access to psychological treatment). See RAND, *supra* note 45, at 267.

90. See, e.g., KEITH E. BONN, ARMY OFFICER'S GUIDE 108–09 (49th ed. 2002) (stating that the presence of homosexuals creates an unacceptable risk to the high standards of morale, good order, discipline, and unit cohesion); Elaine Donnelly, *Defending The Culture Of The Military*, in ATTITUDES AREN'T FREE, *supra* note 67, at 249, 268–72 (arguing for maintaining DADT, to retain distinctions between the U.S. military and foreign militaries); Charles A. Donovan, *A Clash Of Integrity: Moral And Religious Liberty in the Armed Forces*, BACKGROUNDER (Apr. 2011), http://thf_media.s3.amazonaws.com/2011/pdf/bg2540.pdf (expressing concern that a repeal of DADT would affect the “religious liberty and free speech rights” of servicemembers and chaplains); *Flag & General Officers For the Military*, in ATTITUDES AREN'T FREE, *supra* note 67 (a letter from over 1,000 flag and general officers to President Obama supporting DADT); Sherilyn A. Bunn,

In the 2000's, several attempts were made to repeal DADT or weaken its impact. In 2005, 2007, and 2009, legislation to repeal DADT was introduced, but it never got past committee.⁹¹ In 2010, Former Secretary of Defense Robert Gates limited DADT's impact by imposing more stringent evidence requirements during the discharge process, and former Chairman of the Joint Chiefs Admiral Mike Mullen spoke against DADT.⁹² By the late 2000's, polls revealed that the majority of Americans supported allowing LGB servicemembers to serve openly.⁹³

4. Judicial Responses

Judicial responses to DADT can be divided into two phases. In the first phase, beginning with DADT's enactment in the mid 1990's, courts generally upheld DADT.⁹⁴ This trend continued into the 2000's, even after the Supreme Court, in *Lawrence v. Texas*, struck down a state criminal statute banning homosexual sodomy in 2003.⁹⁵ In 2008, the First Circuit held that DADT violated neither the Fifth Amendment's Equal Protection nor the Due Process

Straight Talk: The Implications of Repealing "Don't Ask, Don't Tell" and the Rationale for Preserving Aspects of the Current Policy, 203 MIL. L. REV. 207, 231-35 (2010) (describing concerns about medical readiness); Elaine Donnelly, *Constructing the Co-Ed Military*, 14 DUKE J. GENDER L. POL'Y 815, 818, 899 (2007) (arguing that repealing DADT could inhibit privacy and noting that participation in the military is a duty, never a right); Adelle M. Banks, *Southern Baptists Convention Fighting 'Don't Ask, Don't Tell' Repeal*, WASH. POST (June 19, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/06/18/AR2010061804890.html>; Anugrah Kumar, *DADT Repeal Unfounded, Defies Religious Freedom, ADF Says*, CHRISTIAN POST, July 23, 2011, at 1 (describing the Alliance Defense Fund's view that the repeal of DADT "threatens religious freedom of troops and chaplains and appears to be groundless").

91. Military Readiness Enhancement Act of 2009, H.R. 1283, 111th Cong. (2009); Military Readiness Enhancement Act of 2007, H.R. 1246 110th Cong. (2007); Military Readiness Enhancement Act of 2005, H.R. 1059, 109th Cong. (2005).

92. RAND, *supra* note 45, at 55 ("In March 2010, new regulations were issued that restricted the information a commander could consider 'credible' and made the investigation and discharge of gay men and lesbians more difficult."); SCHULTZ, *supra* note 79, at 179. In 2009, Colonel Om Prakash won the Secretary of Defense National Security Essay Competition for his article, *The Efficacy of Don't Ask, Don't Tell*, 55 JOINT FORCES Q. 88 (2009), available at <http://www.palmcenter.org/files/active/0/EfficacyofDADT.pdf>.

93. U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 24-25.

94. See *Able v. United States*, 155 F.3d 628, 636 (2d Cir. 1998) (holding that DADT does not violate Fifth Amendment Equal Protection Clause); *Holmes v. Cal Army Nat'l Guard*, 124 F.3d 1126, 1135-36 (9th Cir. 1997) (holding that DADT does not violate the Fifth Amendment Equal Protection Clause or First Amendment); *Philips v. Perry*, 106 F.3d 1420, 1429 (9th Cir. 1997) (holding that DADT does not violate the Fifth Amendment Equal Protection Clause); *Richenberg v. Perry*, 97 F.3d 256, 260, 263 (8th Cir. 1996) (holding that DADT does not violate Fifth Amendment Due Process Clause or First Amendment); *Thomasson v. Perry*, 80 F.3d 915, 927-34 (4th Cir. 1996) (en banc) (holding that DADT does not violate the Fifth Amendment's Equal Protection or substantive Due Process Clauses or the First Amendment right to free speech), *cert. denied*, 519 U.S. 948 (1996).

95. *Lawrence v. Texas*, 539 U.S. 558 (2003) (striking down a Texas statute that banned homosexual sodomy).

Clauses, nor the Free Speech Clause of the First Amendment.⁹⁶ That same year, the Ninth Circuit likewise held that DADT did not violate the Fifth Amendment's Equal Protection Clause, though it remanded the case to develop the plaintiff's substantive due process claim.⁹⁷

The second phase of judicial responses to DADT began during the DADT repeal process. In 2010, the Central District of California held that DADT unconstitutionally violated servicemembers' First Amendment rights and issued an injunction.⁹⁸ The Ninth Circuit stayed the injunction until 2011, when it dismissed the case as moot following the DADT Repeal Act.⁹⁹

B. The DADT Working Group

On March 2, 2010, then Secretary of Defense Robert Gates tasked Jeh Johnson, the general counsel of the Department of Defense, and General Carter Ham to lead a working group¹⁰⁰ to examine the DADT policy and factors relating to its possible repeal.¹⁰¹ The working group surveyed almost 400,000 servicemembers and over 150,000 military spouses, the latter "because of the influence and importance families play in the lives of Service members."¹⁰² The working group also met with partners of LGB servicemembers.¹⁰³ In addition, the military asked RAND to update its survey on DADT; the RAND Survey later formally accompanied the working group report.¹⁰⁴

96. *Cook v. Gates*, 528 F.3d 42, 54 (1st Cir. 2008), *cert. denied*, 129 S. Ct. 2763 (2009).

97. *Witt v. Dep't of the Air Force*, 527 F.3d 806, 817, 821 (9th Cir. 2008).

98. *Log Cabin Republicans v. United States*, 716 F. Supp. 2d 884, 923, 929 (C.D. Cal. 2010).

99. *Log Cabin Republicans v. United States*, 658 F.3d 1162, 1166 (9th Cir. 2011) (per curiam).

100. U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 1, 153–56. The team was assisted by sixty-eight individuals. *Id.* at 31, 157. Their mission was to "1) assess the impact of repeal of Don't Ask, Don't Tell on military readiness, military effectiveness, unit cohesion, recruiting, retention, and family readiness; and 2) recommend appropriate changes, if necessary, to existing regulations, policies, and guidance in the event of repeal." *Id.* at 1, 29–30. For details on the working group's methodology, see generally *id.* at 33–47. See also Jeh Johnson, *Implementation of "Don't Ask, Don't Tell" Repeal*, 5 AL. GOV'T L. REV. 407, 412 (2012) (providing background on the working group and including family readiness among the "big six" areas of importance for the military, along with military readiness, unit cohesion, and recruiting and retention).

101. The working group examined many issues related to repealing DADT, including (1) medical readiness, U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 148–49; (2) re-accession for individuals previously discharged under DADT, U.S. DEP'T OF DEF., REPORT, *supra* note 67 at 149–50; (3) release from service commitments by individuals who morally object to repealing DADT, U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 150; and (4) UCMJ terminology for sexual intercourse, given that sexual intercourse in the UCMJ would have to be revised to apply to both homosexual and heterosexual sex, U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 139. See *infra* Part V.B.4 (describing current UCMJ terminology).

102. U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 1–2. Other fact-finding activities by the working group likewise included both servicemembers and their families. *Id.* at 2, 38 (detailing surveys of spouses).

103. *Id.* at 41; Karen Jowers, *The Other Side of 'Don't Ask': Service Members' Partners Speak Out on a Secret Life*, ARMY TIMES, Oct. 11, 2010, at 12, available at <http://militarypartners.org/wp-content/uploads/2010/10/armytimes.pdf>.

104. RAND, *supra* note 45, at v.

Servicemembers and spouses provided the working group with arguments in favor of¹⁰⁵ and against¹⁰⁶ repealing DADT. In general, the working group found that objections to repealing DADT were driven by moral and religious aversions to homosexuality, misperceptions, and stereotypes.¹⁰⁷

1. General Conclusions

The working group concluded that repealing DADT would have little effect on military readiness.¹⁰⁸ Its determination was partially based on statements from the majority of servicemembers and their families that repealing DADT would have no effect.¹⁰⁹ In addition, the majority of servicemembers stated they had served alongside LGB servicemembers at least once in their career and felt that the presence of LGB servicemembers did not negatively affect unit performance.¹¹⁰ The working group noted in its report that the military had previously integrated African-Americans and women successfully.¹¹¹

The working group also explained that many agencies that work with deployed military servicemembers have openly LGB employees, including the CIA, FBI, United States Agency for International Development (USAID), and State Department.¹¹² Additionally, the working group researched the experiences

105. See U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 56–61 (describing arguments in favor of repealing DADT, which include that (1) LGB servicemembers are already in the military, (2) LGB status is immaterial, (3) manpower is needed, (4) the younger generation is less offended by LGB status, and (5) repeal would remove the burden on LGB servicemembers who serve in silence. See also RAND, *supra* note 45, at 114–19 (describing benefits of disclosing, rather than hiding, one's sexual orientation in the workplace).

106. See U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 50–56 (describing arguments in support of DADT, such as privacy, effects on unit cohesion, religious and moral issues, desire to maintain the status quo, health issues, and erosion of standards). One example of a comment against repeal: "For me personally, it's morally wrong and socially unacceptable." *Id.* at 51.

107. *Id.* at 5.

108. *Id.* at 3, 63–74, 97–113 (finding a low risk to unit cohesion and unit effectiveness, regardless of setting). The working group predicted the repeal might bring about some limited and isolated disruption initially, but that it would have no long-term effects. *Id.* at 3. Additionally, the accompanying RAND study found repealing DADT would have little impact on enlistment rates. RAND, *supra* note 45, at 181–82. The RAND study also determined that potential health concerns related to the repeal, such as HIV prevention, would not have an impact on military readiness. RAND, *supra* note 45, at 218–19.

109. U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 4, 75–76. Those who disagreed were primarily concentrated in the Marines and combat arms. *Id.*

110. *Id.* See also AM. PSYCHOLOGICAL ASS'N, *supra* note 89, at III.D.2 ("A poll of 545 troops who served in Iraq and Afghanistan conducted in October 2006 revealed that 23% said they knew for sure that someone in their unit was gay or lesbian. More than half (55%) of the troops who knew a GLBT peer said the presence of gays or lesbians in their unit was well known by others.") (internal citations omitted).

111. U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 7, 81–88.

112. *Id.* at 9, 93–96. See also RAND, *supra* note 45, at 346–479 (reporting positive experiences for domestic military-like agencies who employ openly LGB people and noting that DOMA creates problems administering benefits to same-sex partners). For example, in 2009, federal employees held a gay pride party in the U.S. Embassy of Baghdad. Al Kamen, *In the Loop*:

of foreign militaries that allowed LGB servicemembers to serve openly¹¹³ and observed that no significant consequences had occurred.¹¹⁴

2. Impact on Families

The working group also examined the impact of a potential DADT repeal on families.¹¹⁵ The majority of families interviewed stated that repealing DADT would improve or not affect their family readiness.¹¹⁶ Additionally, the majority of spouses stated that a repeal would not affect their involvement in family support activities, programs, and events.¹¹⁷ The working group found that LGB servicemembers would begin including their spouses in military events following the repeal.¹¹⁸

3. Benefits and Services

The working group also examined the effect of a potential DADT repeal on the scheme of military benefits, acknowledging that military benefits “play a much larger role in day-to-day military life” than do federal benefits for civilians.¹¹⁹ The working group understood that DOMA would impact military benefits for LGB servicemembers in the event of a DADT repeal.¹²⁰

The working group divided benefits into three categories: member-designated benefits, dependency benefits, and benefits with “complicated” status.¹²¹ Member-designated benefits, which include life insurance, retirement plans, and access to hospital visitation,¹²² permit servicemembers to designate a

A Gay Pride Party at the Baghdad Embassy, WASH. POST (May 22, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/21/AR2009052104048.html>.

113. U.S. DEP’T OF DEF., REPORT, *supra* note 67, at 89–92.

114. *Id.* at 92.

115. *Id.* at 114–15. The working group asked questions about how respondents’ spouses felt about the respondents’ military service. *See id.* at 175–76, 208–09. Questions were also asked about attendance at military functions if LGB servicemembers could bring their same-sex partners. *Id.* at 229–31. The working group asked questions about spouses because of the “inextricable link between the families, servicemembers and readiness.” Michael J. Carden, ‘Don’t Ask, Don’t Tell’ Feedback Sought from Spouses, AM. FORCES PRESS SERV., Aug. 23, 2010, available at <http://www.ng.mil/news/archives/2010/08/082410-dadt-print.aspx>.

116. U.S. DEP’T OF DEF., REPORT, *supra* note 67, at 114–15 (The term “family readiness” refers to “the military family’s ability to successfully meet the challenges of daily living in the unique context of military life, including deployments and frequent relocation.”). For a list of questions asked to military spouses, *see id.* at 235–56.

117. *Id.*

118. *Id.* at 269.

119. *Id.* at 146.

120. *See infra* Part III. *See also* Cashdollar, *supra* note 75, at 174 (recognizing that DOMA’s prohibition against recognizing same-sex marriages would present a “major roadblock” for providing benefits to same-sex partners).

121. U.S. DEP’T OF DEF., REPORT, *supra* note 67, at 142–44.

122. *Id.* at 144; SUPPORT PLAN, *supra* note 75, at 21.

same-sex partner or spouse as the beneficiary.¹²³ In contrast, dependency benefits, which include the with-dependents military housing rate and spousal health care from military providers,¹²⁴ only extend to a legally defined class of “dependents” and do not permit servicemembers to choose beneficiaries. The working group concluded that, in light of DOMA, it would be legally impermissible to extend dependency benefits to same-sex couples.¹²⁵

The working group referred to the third category as “complicated” because military regulations about those benefits are silent on the issue of same-sex beneficiaries; they do not explicitly permit or forbid same-sex partners or spouses to be beneficiaries.¹²⁶ Examples include free legal services from military assistance offices and military housing.¹²⁷

Although military regulations were silent on the issue of housing, the working group recommended that, in light of DOMA, on-post housing for military families be excluded from the category of member-designated benefits.¹²⁸ The working group was concerned with the “complexity” of administering benefits based on the seriousness of a committed same-sex relationship, an option that would not be available to heterosexual couples.¹²⁹

The working group recognized other supports that would not extend to same-sex partners or spouses of LGB servicemembers because of DOMA. First, agreements between host nations and the United States to provide protections for civilians who accompany servicemembers abroad would not include same-sex partners or spouses.¹³⁰ Second, military policies that assign dual-career military married couples to the same area would not extend to same-sex married couples.¹³¹

4. Recommendations for Implementation

The working group recommended that the DADT repeal be accompanied by policies to promote fair and equal treatment for all servicemembers,

123. U.S. DEP’T OF DEF., REPORT, *supra* note 67, at 144.

124. *Id.*

125. *Id.*

126. *Id.* at 144.

127. *Id.*

128. *Id.* at 145.

129. *Id.* at 145–46.

130. U.S. DEP’T OF DEF., REPORT, *supra* note 67, at 147.

131. *Id.* See U.S. Dep’t of Army, Reg. 614-100, Officer Assignment Policies, Details, And Transfers ¶ 1-6(d)(2)(2006) (noting the servicemembers’ marital status is not a factor to consider except to “keep married Army couples together according to current policies.”); *id.* at ¶ 5-3 (describing policies for assignment of dual-military couples); U.S. Dep’t of Army, Reg. 614-200, Enlisted Assignments and Utilization Management ¶ 5-20 to ¶ 5-25 (2011)(describing the Married Army Couples Program); Joan E Darrah, Elizabeth L. Hillman, Joe Lopez & Brian Fricke, *Service Member Experiences*, 14 DUKE J. GENDER L. & POL’Y 1173, 1275. For insight into the experience of a dual-career LGB military couple, see *id.* at 1275.

professionalism, and respect.¹³² However, the working group did not recommend including sexual orientation as a class eligible for diversity programs (alongside, for example, race, religion, and sex).¹³³ The working group also recommended against segregated barracks for LGB servicemembers, reasoning that separate bathroom facilities would do more harm than good and create an expensive logistical burden.¹³⁴

Finally, the working group issued a “Support Plan for Implementation” of the DADT repeal.¹³⁵ The Support Plan emphasized strong leadership for a successful transition following the repeal¹³⁶ and focused on changing leaders’ behavior rather than changing attitudes or culture.¹³⁷ The Support Plan recommended against creating a ‘committed relationship’ status for same-sex relationships to determine benefits eligibility.¹³⁸

C. The DADT Repeal

Following the issuance of the working group report in November 2010, Secretary Gates urged Congress to pass legislation repealing DADT to allow the military time to proceed before the judicially imposed repeal.¹³⁹ In December, Congress passed the Don’t Ask, Don’t Tell Repeal Act of 2010, which President Obama signed into law on December 22, 2010.¹⁴⁰

The military began conducting training related to the repeal. The training was divided into three tiers: Tier 1 for lawyers, chaplains, and human resource specialists; Tier 2 for senior leaders; and Tier 3 for the remaining

132. U.S. DEP’T OF DEF., REPORT, *supra* note 67, at 131–32.

133. *Id.* at 137. See U.S. DEP’T of Army, Reg. 600-20, Army Command Policy at tbl. 6-2 (2011). Nevertheless, the Pentagon subsequently declared June 2012 as Gay Pride Month. Pauline Jelinek, *Pentagon Holds Event to Recognize Gay Troops*, ASSOCIATED PRESS (June 26, 2012), <http://www.armytimes.com/news/2012/06/ap-pentagon-event-recognize-gay-troops-062612/>.

134. U.S. DEP’T OF DEF., REPORT, *supra* note 67, at 140–41. Having “separate but equal” bathroom facilities could lead to additional problems. See also *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954) (suggesting that segregated facilities are inherently unequal).

135. SUPPORT PLAN, *supra* note 75.

136. *Id.* at 5, 11; RAND, *supra* note 45, at 249, 378.

137. SUPPORT PLAN, *supra* note 75, at 7, RAND, *supra* note 45, at 380–81. See Schultz, *supra* note 79, at 182 (describing importance of leadership throughout the repeal process).

138. SUPPORT PLAN, *supra* note 75, at 19.

139. Elisabeth Bumiller, *Pentagon Sees Little Risk in Allowing Gay Men and Women to Serve Openly*, N.Y. TIMES (Nov. 30, 2010), <http://www.nytimes.com/2010/12/01/us/politics/01military.html>.

140. Don’t Ask, Don’t Tell Repeal Act of 2010, Pub. L. No. 111-321, 124 Stat. 3515 (2010). The Act provides the repeal would be effective “60 days after the Secretary of Defense has received DOD’s comprehensive review on the implementation of such repeal, and the President, Secretary, and Chairman of the Joint Chiefs of Staff (JCS) certify to the congressional defense committees that they have considered the report and proposed plan of action, that DOD has prepared the necessary policies and regulations to exercise the discretion provided by such repeal, and that implementation of such policies and regulations is consistent with the standards of military readiness and effectiveness, unit cohesion, and military recruiting and retention.”) *Id.*

servicemembers.¹⁴¹ Both Tier 1 and Tier 2 training included a discussion of military benefits and the anticipated impact of DOMA.¹⁴² During this training period, some Congressional Representatives unsuccessfully attempted to halt the repeal.¹⁴³

On July 22, 2011, Secretary of Defense Leon Panetta and Admiral Mike Mullen, the Chairman of the Joint Chiefs of Staff, provided President Obama with the formal military certification required by the Don't Ask, Don't Tell Repeal Act of 2010.¹⁴⁴ On September 20, 2011, DADT was repealed.¹⁴⁵

In the fall of 2011, the military began openly recruiting LGB servicemembers.¹⁴⁶ On December 21, 2011, a female sailor made history during her ship's homecoming by giving the 'first homecoming kiss' to her girlfriend.¹⁴⁷ In May 2012, Secretary of Defense Panetta stated that the DADT repeal had become "part and parcel of what they've accepted within the military."¹⁴⁸ The Department of Defense recognized June 2012 as Gay Pride Month.¹⁴⁹ In August 2012, Brigadier General Tammy Smith became the first openly gay general officer.¹⁵⁰

IV.

THE MILITARY'S COMMITMENT TO MILITARY FAMILIES

Having detailed the long road that led the military to repeal DADT and finally view sexual orientation as a nonissue, I next turn to the military's evolving position on another important subject: military families.

141. SUPPORT PLAN, *supra* note 75, at 25–26.

142. *Id.* at 53–55.

143. Restore Military Readiness Act, H.R. 337, 112th Cong. (1st Sess. 2011); Donna Cassata, *Lawmakers Seek to Delay End of Military Gay Ban*, ARMY TIMES (Sept. 16, 2011), <http://www.armytimes.com/news/2011/09/ap-lawmakers-seek-to-delay-end-of-military-gay-ban-091611/>.

144. Craig Whitlock, *Military Certifies Repeal of 'Don't Ask' Policy*, WASH. POST (Jul. 22, 2011), http://www.washingtonpost.com/world/national-security/military-certifies-repeal-of-dont-ask-policy/2011/07/22/gIQAye15TI_story.html.

145. Chandler, Ordierno & McHugh, *supra* note 10.

146. Elisabeth Bumiller, *Marines Hit the Ground Running in Seeking Recruits at Gay Center*, N.Y. TIMES (Sept. 20, 2011), <http://www.nytimes.com/2011/09/21/us/marine-recruiters-visit-gay-center-in-oklahoma.html>.

147. Corinne Reilly, *Two Women's First Kiss at Homecoming a First for Navy, Too*, THE VIRGINIA-PILOT (Dec. 21, 2011), <http://hamptonroads.com/2011/12/lesbian-couple-share-first-kiss-navy-homecoming>.

148. Lolita C. Baldor, *Panetta: Gay Ban Repeal Has Not Hurt Morale*, ARMY TIMES (May 10, 2012), <http://www.armytimes.com/news/2012/05/ap-leon-panetta-military-gay-ban-repeal-has-not-hurt-morale-051012/>.

149. See Jelinek, *supra* note 133.

150. Leo Shane III, *Smith Becomes First Gay General Officer to Serve Openly*, STARS & STRIPES (Aug. 10, 2012), <http://www.stripes.com/news/smith-becomes-first-gay-general-officer-to-serve-openly-1.185372>. Smith was subsequently invited to attend the 2013 State of the Union as a guest of the First Lady. THE WHITE HOUSE BLOG, *supra* note 2.

The family is as much a part of today's military as tanks, helicopters, and aircraft. More than anything, it is the military's deep commitment to the family unit that demonstrates why it must advocate for marriage equality. The military recognizes the families of servicemembers for their important role in the military community¹⁵¹ and demonstrates its desire to support them through a vast array of benefits and services.¹⁵² Yet this promise of honor and support is hollow for LGB military families who, even in the wake of the DADT Repeal Act, are forced to adjust to military life largely on their own.¹⁵³

In this Part, I first trace the development of the military's position on military families, from shunning them to embracing them.¹⁵⁴ I then discuss the experience of the modern military family,¹⁵⁵ introducing the unique military community¹⁵⁶ and then turning to the impact of military spouses in advancing the careers of servicemembers.¹⁵⁷ I conclude by describing the array of supports that the military offers to families in recognition of their importance.¹⁵⁸

In reading this Part, it may be useful to remember what will follow. In Part V, I will contrast the experience of LGB military families with that of other military families, revealing the inequalities that LGB families suffer.¹⁵⁹ In Part VI, I suggest how the military can remedy this injustice through same-sex marriage advocacy.¹⁶⁰

A. From Single Soldiers to Embracing Families

Throughout the nineteenth century, the military assumed that servicemembers (then only men) were single,¹⁶¹ and it only reluctantly approved of their marrying.¹⁶² Marriage, although legal, could subject servicemembers to punishment or a denial of reenlistment if it was not properly conducted.¹⁶³ From

151. See *infra* Part IV.B.

152. See *infra* Part IV.C.

153. RAND, *supra* note 45, at 267–68. See also Kesler, *supra* note 81, at 285 n.8 (“[P]artners of gay servicemembers must bear the stresses of life and deployments alone and in secret and are denied all [the] . . . essential services.”).

154. See *infra* Part IV.A.

155. See *infra* Part IV.B.

156. See *infra* Part IV.B.1.

157. See *infra* Part IV.B.2.

158. See *infra* Part IV.C.

159. See *infra* Part V.

160. See *infra* Part VI.

161. BETTY L. ALT, FOLLOWING THE FLAG: MARRIAGE AND THE MODERN MILITARY 21 (2006).

162. *Id.* at 20 (“The old adage ‘If the military wanted you to have a wife, they’d have issued you one,’ was not just a joke. Wives and families were not welcomed; they were only tolerated.”); DEAN, *supra* note 62, at 23 (“If the Navy wanted you to have a wife, you would have been issued one in your seabag.”).

163. See *id.* at 9–10 ([I]f an enlisted man married without permission of his company commander, he could be refused the right to separate rations and was not entitled to post quarters. In addition, he could be denied reenlistment [U]ntil World War II an enlisted man . . . could be

World War II through the Vietnam War, the Army primarily consisted of lower-ranking conscripted soldiers whose wives remained in their hometowns while the soldiers were deployed.¹⁶⁴

The 1973 elimination of the draft¹⁶⁵ forced the military to reevaluate its stance on marriages and families.¹⁶⁶ Once the military could no longer use the draft to satisfy its labor needs, it recognized that maintaining an active duty force required providing for and accommodating the families of servicemembers.¹⁶⁷ This realization led to the quip that the military “enlists servicemembers but reenlists families.”¹⁶⁸ Indeed, spousal satisfaction has been identified as the greatest determinant of whether servicemembers stay in the military.¹⁶⁹

In recent years, statements made by generals,¹⁷⁰ Dr. Jill Biden,¹⁷¹ First Lady Michelle Obama,¹⁷² and President Obama¹⁷³ have demonstrated the federal

discharged for the convenience of the government if he married without the written permission of his superior officer.”).

164. BONN, *supra* note 90, at 429.

165. Act of Sept. 28, 1971, Pub. L. No. 92-129, 85 Stat. 348 (codified at 50 U.S.C. App. § 467(c)).

166. BONN, *supra* note 90, at 429.

167. ALT, *supra* note 161, at 20.

168. ALT, *supra* note 161, at 19; ELAINE GRAY DUMLER, I’M ALREADY HOME: KEEPING YOUR FAMILY CLOSE WHEN YOU’RE ON DUTY 1 (2003) (“The military doesn’t enlist only soldiers; they enlist families.”). See also Marcy Karin, *Time Off for Military Families: An Emerging Case Study in a Time of War . . . and the Tipping Point for Future Laws Supporting Work-Life Balance?*, 33 RUTGERS L. REV. 46, 47 (2009) (arguing that Operation Iraqi Freedom “solidified the military’s embrace of the concept of recruiting a soldier and retaining a family”) (citing Sheila Casey, Chief Operating Officer, The Hill, Panelist at Workplace Flexibility 2010 Briefing: Supporting our Nation’s Military Families: The Role of Workplace Flexibility (Dec. 18, 2008), <http://www.law.georgetown.edu/webcast/eventDetail.cfm?eventID=690>)).

169. DOROTHY SCHNEIDER & CARL J. SCHNEIDER, SOUND OFF! AMERICAN MILITARY WOMEN SPEAK OUT 189 (1988). As to current satisfaction levels, a March 2011 newspaper article reported that “[a]rmy spouses are increasingly satisfied with their way of life.” Karen Jowers, *Survey: More Spouses Satisfied with Army Life*, ARMY TIMES (Mar. 7, 2011), <http://www.armytimes.com/news/2011/03/army-family-survey-spouses-satisfied-030711w/>.

170. See, e.g., Jim Greenhill, *Mullen: Family Support Vital to War Effort*, NAT’L GUARD BUREAU (Aug. 2, 2010), <http://www.ng.mil/news/archives/2010/08/080310-Mullen-print.aspx> (reporting Chairman of the Joint Chiefs of Staff Admiral Mullen’s equating of military readiness with family readiness); Kate Brannen, *Casey: Families, Modernization Top Priorities*, ARMY TIMES (Jan. 6, 2011), <http://www.armytimes.com/news/2011/01/army-casey-end-strength-010611w/> (reporting U.S. Army Chief of Staff General Casey’s view that “programs that support families” are one of three items that need to be protected in the Army’s budget).

171. Dr. Jill Biden, THE WHITE HOUSE, <http://www.whitehouse.gov/administration/jill-biden> (last visited Jan. 2, 2012) (highlighting Dr. Biden’s work to support military families).

172. THE WHITE HOUSE, STRENGTHENING OUR MILITARY FAMILIES, MEETING AMERICA’S COMMITMENT 1 (2011), available at http://www.defense.gov/home/features/2011/0111_initiative/strengthening_our_military_january_2011.pdf [hereinafter STRENGTHENING OUR MILITARY FAMILIES]; Stacey A. Anderson, *First Lady Honors Military Mothers, Wives*, ARMY TIMES (May 10, 2012), <http://www.armytimes.com/news/2012/05/ap-first-lady-michelle-obama-honors-military-mothers-wives-051012/> (reporting on the White House’s festivities to celebrate Military Spouse Appreciation Day and Mother’s Day); Stacey A. Anderson, *First Lady Announces Family Fitness Options*, ARMY TIMES (May 9, 2011), <http://www.armytimes.com/news/2011/05/ap-first-lady->

government's commitment to military families.¹⁷⁴ Statements in support of the military family abound within the military as well. For instance, the Air Force designated July 2009 through July 2010 as the Year of the Air Force Family,¹⁷⁵ and the Army created the "Army Family Covenant" to formally recognize military families.¹⁷⁶ Additionally, the Army ordered that the word "family" be capitalized in official correspondence to acknowledge the role of families in the military.¹⁷⁷ November is Military Family Appreciation Month¹⁷⁸ and April is the Month of the Military Child.¹⁷⁹

Demographics also reflect the military's shift from unaccompanied servicemembers to military families. The overwhelming majority of servicemembers during the Vietnam War were single, whereas today over 57% of servicemembers are married and, of those, 46% have children.¹⁸⁰

announces-family-fitness-options-050911/ (reporting how Michelle Obama announced three new physical fitness opportunities for military families); Karen Jowers, *First Lady Pushes Spousal License Portability*, ARMY TIMES (Feb. 15, 2012), <http://www.armytimes.com/news/2012/02/military-first-lady-pushes-spousal-license-portability-021512/> (reporting on Michelle Obama's announcement of an initiative for states to pass legislation to make it easier for military spouses to "transfer professional licenses and certifications from one state to another") [hereinafter Jowers, *Spousal License Portability*]; Karen Jowers, *First Lady Praises Plan to Hire Vets, Spouses*, ARMY TIMES (Oct. 19, 2011), <http://www.armytimes.com/news/2011/10/military-first-lady-praises-plan-to-hire-vets-spouses-101911/> (highlighting programs to hire military spouses); THE WHITE HOUSE, *supra* note 1 (detailing the First Lady's 2012 State of the Union guests, including a civilian military spouse, one half of a dual-military couple, and an openly lesbian Air Force Colonel).

173. STRENGTHENING OUR MILITARY FAMILIES, *supra* note 172, at 1.

174. *Id.* This report describes a government-wide effort to "[e]nhance the well-being and psychological health of the military family" and "[d]evelop career and educational opportunities for military spouses," among other goals. *Id.* at 2–3.

175. Year of the Air Force Family, U.S. AIR FORCE, <http://www.af.mil/yoaff/index.asp> (last visited Jan. 2, 2012).

176. Army Family Covenant, MYARMYONESOURCE, <http://www.myarmyonesource.com/CommunitiesandMarketplace/ArmyFamilyCovenant/default.aspx> (last visited Jan. 2, 2012). The Army Family Covenant "commits the Army to improve Family readiness by:

Standardizing Family programs and services
Increasing accessibility to health care
Improving Soldier and Family housing
Ensuring excellence in child, youth and school services
Expanding education and employment opportunities for Family members."

Id.

177. Sara M. Root, *Capitalizing "F" is Not Enough: The Army Should Revise Its Postpartum Leave Policies to Better Support the Army Family*, 201 MIL. L. REV. 132 (2009).

178. THE WHITE HOUSE, PRESIDENTIAL PROCLAMATION—MILITARY FAMILY MONTH (2012) <http://www.whitehouse.gov/the-press-office/2012/11/01/presidential-proclamation-military-family-month-2012>; Military Family Appreciation Month—November 2011, U.S. DEP'T OF DEF., http://www.defense.gov/home/features/2011/1111_militaryfamily/ (last visited Jan. 2, 2012).

179. See Month of the Military Child—April 2011, U.S. DEP'T OF DEF., http://www.defense.gov/home/features/2011/0411_militarychild/ (last visited Jan. 2, 2012).

180. DUMLER, *supra* note 168, at 3; GOLD, *supra* note 63, at 42 (reporting over half of all military personnel are married; collectively, they have nearly 1.25 million kids, more than 500,000 under age five); *The Army Strong Bonds Program, FAQ*, U.S. ARMY, <http://www.strongbonds.org/skins/strongbonds/display.aspx?moduleid=9eed30c4-706f-4895->

Servicemembers who reenlist now tend to be older, more frequently married, and more likely to have children.¹⁸¹ The Marines are now outnumbered by their dependents.¹⁸²

B. The Modern Military Family

Over time, the military came to support military families not merely in order to entice married servicemembers to enlist,¹⁸³ but also because family readiness¹⁸⁴ correlates with combat readiness.¹⁸⁵ In particular, military spouses can significantly impact servicemembers' careers and thus improve military readiness.¹⁸⁶ The link between strong military families and military readiness powerfully demonstrates why the military must advocate for nationwide same-sex marriage recognition and support for LGB military families.

In this Part, I begin with a brief introduction to the military community, a world of its own that is unknown to many civilians.¹⁸⁷ I then explain the career impact of the military spouse in the context of the military community.¹⁸⁸

1. The Military Community

Commentators have repeatedly stated the obvious: the military is a separate

8532-14bac5c094ec&mode=user&CategoryID=dc607770-7cbe-407a-90d6-2e0f518e2892&Action=display_user_category_objects (last visited Aug. 24, 2012) (reporting that fifty-six percent of soldiers are married).

181. GOLD, *supra* note 63, at 42.

182. SCHNEIDER & SCHNEIDER, *supra* note 169, at 189; Michelle Tan & John Ryan, *Redeployments, BRAC leads to crowded posts*, ARMY TIMES (Dec. 18, 2011), <http://www.armytimes.com/news/2011/12/army-redeployments-brac-lead-to-crowded-posts-121811w/> (providing demographics for major army installations).

183. See, e.g., *Battalion Family Readiness Officer*, MARINES, <http://www.marines.mil/unit/marforres/4thMarDiv/4thTankBn/Pages/fro.aspx> (last visited Sep. 29, 2012) (stating that Marines cannot "remain fully focused on the mission" if they are worried about their families.).

184. For a definition of family readiness, see U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 114–15.

185. See, e.g., SUPPORT PLAN, *supra* note 75, at 41 ("Readiness of Service members' families has a direct impact on the overall military readiness of the force."); MARGARET C. HARRELL, NELSON LIM, LAURA WERBER CASTANEDA & DANIELA GOLINELLI, RAND NATIONAL DEFENSE RESEARCH INSTITUTE, WORKING AROUND THE MILITARY: CHALLENGES TO MILITARY SPOUSE EMPLOYMENT AND EDUCATION 1 (2004) ("[T]he Chairman of the Joint Chiefs of Staff, General Richard B. Myers, has recently asserted that he views 'all of the Quality of Life issues as inseparable from overall combat readiness.'" (citation omitted); Marine Corps Order No. 1754.9 ¶ 3.a.1.(a) (May 27, 2010), available at <http://www.usmc-mccs.org/upfrp/documents/MCO%201754.9%20signed%2027MAY2010.pdf> ("The Corps' most valuable resource is the individual Marine and his family. It is imperative to the success of [the Marines] that commanders ... [acknowledge] the link that exists between personal and family readiness and operational readiness.").

186. See *infra* Part IV.B.2.

187. See *infra* Part IV.B.1.

188. See *infra* Part IV.B.2.

community from the civilian world.¹⁸⁹ Its culture reflects a unique sense of camaraderie and a shared mission,¹⁹⁰ the extreme interconnectedness of personal and professional life,¹⁹¹ the control exerted by the military over everyday behavior,¹⁹² the looming presence of deployments,¹⁹³ and the fact that servicemembers are constantly on duty.¹⁹⁴

The cornerstone of the military community is tradition.¹⁹⁵ Traditions surround both military events and personal milestones, such as military weddings, receptions for spouses, and the birth of children.¹⁹⁶ One particularly important military tradition is a deep respect for hierarchy; the significance of rank pervades the military community and influences the interactions of all its

189. DEAN, *supra* note 62, at 92–93 (“Military life for anyone, male or female, is significantly different from civilian life.”); Richard I. Ridenour, *The Military, Service Families, and the Therapist*, in *THE MILITARY FAMILY: DYNAMICS AND TREATMENT 2* (Florence W. Kaslow & Richard I. Ridenour eds., 1984) (describing the differences between military and civilian families); SCHNEIDER & SCHNEIDER, *supra* note 169, at 221–22 (“To move into the military is to experience culture shock, for it is a distinct world, with its own citizenry, territory, language, and ethos. . . . In the military world, servicewomen interact mostly with other military members. If servicewomen live on base, they neighbor with their colleagues.”); ALT, *supra* note 161, at ix (“A military installation is a small town.”). *See also* Parker v. Levy, 417 U.S. 733, 743 (1974) (“This Court has long recognized that the military is . . . a specialized society [that] developed [its own] laws and traditions.”).

190. BONN, *supra* note 90, at 195 (emphasizing the ties of neighborliness and friendship in military communities and explaining that they exist because everyone has the same underlying mission to protect the nation’s security); PAVLICIN, *supra* note 32, at 1, 25, 145 (“Camaraderie is unsurpassed in the military community. A special bond, first developed among its service members, soon reaches beyond to the families included in its holds.”).

191. RAND, *supra* note 45, 111 (“[The military is] unique in the extent to which family and personal life overlap with the work setting.”).

192. DEAN, *supra* note 62, at 92–93 (“The total lack of control over one’s own life in the military is often incomprehensible to civilians.”); HELEN ROGAN, *MIXED COMPANY: WOMEN IN THE MODERN ARMY* 29 (1981) (“Because the Army is authoritarian, behavior can, and must, be controlled in a way that cannot be achieved in the civilian world.”).

193. PAVLICIN, *supra* note 32, at 1, 25, 145 (“Separation is one of the most heart-wrenching facts of military life. . . . No matter what our differences . . . in the military we all share a common unspoken bond—the fear, frustration, stress, exhaustion, and pride that comes with the realities, challenges, and life or death promises of the military way of life.”); Ruth Ann O’Keefe, Melanie C. Eyre & David L. Smith, *Military Family Service Centers*, in *THE MILITARY FAMILY*, *supra* note 189, at 260 (“The stresses most common to military families include frequent relocation, separation from family of origin, deployment, separation from immediate family, and increased risk of injury or death.”).

194. SCHNEIDER & SCHNEIDER, *supra* note 169, at 83, 167 (noting “the armed forces . . . demand full-time availability” and servicemembers are “still working, even when [they]’re off duty.”).

195. TANYA BIANK, *ARMY WIVES, THE UNWRITTEN CODE OF MILITARY MARRIAGE* xii (2006) (describing military communities as “. . . a whole community [] with arcane traditions.”); ROGAN, *supra* note 194, at 311 (“the army is all traditions”). *See also* BONN, *supra* note 90, at 410–11 (“Army social customs can clearly be traced to historical practices, many of which have their origin in necessity or practicality. As the Army has evolved, many of what were once practical necessities have now become traditions.”).

196. BONN, *supra* note 90, at 15.

members.¹⁹⁷ For example, officers do not fraternize with enlisted soldiers in ordinary social affairs.¹⁹⁸ The website of Fort Carson in Colorado even includes separate links for spouses of enlisted servicemembers¹⁹⁹ and spouses of officers.²⁰⁰

2. *The Career Impact of the Military Spouse on Servicemembers*

Military spouses impact servicemembers' careers in myriad ways. As one officer noted, a "supportive spouse has almost become a prerequisite for soldiers who aspire to a high rank."²⁰¹ The military recognizes this reality in its treatment of military spouses; for instance, the military offers courses to company, battalion, and brigade commanders that include lessons for the spouses of future commanders.²⁰²

Through their participation in social events²⁰³ and Family Readiness Groups,²⁰⁴ military spouses support each other, network, and advance the careers of their spouses in uniform. In so doing, military spouses increase the opportunities of servicemembers to participate as meaningfully as possible in military service.

DOMA, state laws, or military regulations do not formally bar the spouses and partners of LGB servicemembers from attending social events. However, in practice, the military's refusal to recognize them as 'married' has prevented them

197. BIANK, *supra* note 195 (noting that, "a well-defined military caste system thrives" in military communities); DEAN, *supra* note 62, at 16 ("Titles, exact terms, and other indications of power, position, and authority are matters of great importance in the military."); SCHNEIDER & SCHNEIDER, *supra* note 169, at 22 ("[The military is] an organization where almost everything depends on rank").

198. BONN, *supra* note 90, at 20.

199. *Enlisted Spouses Charitable Organization*, FORT CARSON, <http://www.carson.army.mil/UNITS/esco/> (last visited Jan. 2, 2012).

200. *Officer's Spouses Club*, FORT CARSON, <http://www.carson.army.mil/OSC/index.html> (last visited Jan. 2, 2012).

201. Tim Hsia, *The Increasing Role and Influence of Military Spouses*, N.Y. TIMES (Aug 13, 2010), <http://atwar.blogs.nytimes.com/2010/08/13/the-increasing-role-and-influence-of-military-spouses/>.

202. *School for Command Prep*, U.S. ARMY COMBINED ARMS CENTER, <http://usacac.army.mil/cac2/CGSC/SCP/> (last visited May 23, 2012) ("The School for Command Preparation develops and supports U.S. Army Field Grade Commanders, CSMs [Command Sergeants Major] and spouses"). See also U.S. ARMY WAR COLLEGE: THE BATTALION COMMANDER'S HANDBOOK 122 (1996), available at <http://www.au.af.mil/au/awc/awcgate/army-usawc/bchandbook.htm> (providing tips for spouses of battalion commanders); *Gonna Be a Commander's Wife*, LIFE LESSONS OF A MILITARY SPOUSE, <http://lifelessonsformilitarywife.com/?p=186> (last visited May 23, 2012) (providing tips to spouses of commanders); Kevin Baron, Foreign Policy, *Generals Know Better: An Inside Look at the Military's Charm Schools* (Nov. 16, 2012, 1:24 PM), http://foreignpolicy.com/posts/2012/11/16/generals_know_better_an_inside_look_at_the_military_s_charm_schools.

203. See *infra* Part IV.B.2.a.

204. See *infra* Part IV.B.2.b.

from participating in this aspect of military life.²⁰⁵ I will return to this issue in more detail in Part V.²⁰⁶

a. Social Events

Social events are an integral aspect of the military community,²⁰⁷ reflecting the adage that “the unit that plays together, stays together.”²⁰⁸ Social events allow servicemembers and their spouses to become better acquainted in an informal atmosphere.²⁰⁹ Yet social events still occur within the military community and are critical to the military profession. Planning, attending, and networking at social events can greatly impact servicemembers’ careers.²¹⁰

Spouses are particularly central to many military social events. Some social activities are meant to include spouses in addition to servicemembers.²¹¹ For example, Army guidelines recommend that during “social calls” (visits between officers), if the spouse of a married commander is present, “the spouse of the officer making the visit should also attend.”²¹² Other social activities, such as coffees, teas, and informal get-togethers, are meant for spouses alone.²¹³ Some events are further limited to the spouses of officers.²¹⁴

Many military social events feature networking between military spouses. This reflects the traditional notion—widely acknowledged, although not always applauded²¹⁵—that servicemembers and their spouses form a team and that

205. See *infra* Part V.B.

206. See *infra* Part V.

207. BIANK, *supra* note 195, at 16 (“[M]any Army couples enjoy the military tradition of entertaining in their homes.”).

208. BONN, *supra* note 90, at 343.

209. *Id.* at 415.

210. *Id.* at 413 (warning that servicemembers’ careers will be jeopardized if servicemembers miss social engagements that they previously stated they would attend).

211. *Id.* at 420 (describing receiving lines at formal receptions, in which a guest first greets the commander, the commander’s spouse, the honored guest, and then the honored guest’s spouse).

212. U.S. ARMY, ARMY PAMPHLET 600-60, A Guide to Protocol and Etiquette for Official Entertainment ¶ 1-4(a)(3) (2001).

213. BIANK, *supra* note 195, at 24–25 (“Each battalion also has its own officers’ wives’ coffee groups . . . the commander’s wife—the leader of the coffee—introduces new wives and bids farewell to those departing, discusse[s] upcoming events and battalion news . . . and address[es] any concerns the ladies have.”). See U.S. ARMY, ARMY PAMPHLET 608-47 ¶ 2-3 (Jan. 1988 ed.) (listing officer wives’ coffee groups and NCO wives’ coffee groups as informal social groups).

214. BONN, *supra* note 90, at 197; SCHNEIDER & SCHNEIDER, *supra* note 169, at 51. See e.g., BELVOIR OFFICERS SPOUSES’ CLUB, <http://belvoirosc.org/> (last visited Jan. 2, 2012).

215. Tradition once dictated that spouses of officers (historically wives) should not work, but instead support the careers of their husbands. ALT, *supra* note 161, at 37. The idea that married wives would seek work was “not acceptable to all elements of the military. Officers’ wives particularly were still considered an important adjunct to their husbands’ careers.” *Id.* A March 1988 study found “the wife was essential to a command because she sets the family atmosphere and tone for everyone in the unit.” *Id.* at 38 (quoting a Blue Ribbon Panel on Spouse Issues). The military also noted that voluntary participation of spouses was essential for running base support activities. ALT, *supra* note 161, at 40. Accordingly, many officers and their wives felt that a lack of on-base

spouses must support servicemembers' careers.²¹⁶ Although networking is based in tradition, it also has important consequences, such as for Army decisionmaking regarding advancement and command assignments.²¹⁷ To illustrate: one Army spouse ensured that her Christmas party guest list "included everybody who was anybody—even members of the '[Fort] Bragg mafia,' the insiders who ran the post and handpicked officers for important positions."²¹⁸

Through social events and networking, servicemembers and their spouses can advance through the ranks together.²¹⁹ As servicemembers earn promotions, the titles of spouses likewise advance from executive officer's spouse to commander's spouse.²²⁰ Moreover, as the military unit that a servicemember commands increases in size, a spouse's role becomes more important.²²¹ As servicemembers advance through the ranks, their spouses attend more social events and acquire even greater responsibility for networking with other spouses.²²² As one spouse observed, "Being an officer's wife meant being

volunteering on the wife's behalf would be noticeable and thus detrimental to the husband's promotion opportunities. *Id.* Nevertheless, the military has emphasized that whether a spouse works is not a factor "used to affect the evaluation, promotion, or assignment of the military member." *Id.* at 39–40 (quoting an Air Force Memorandum). See also U.S. Dept' of Army, Reg. 600-20, Army Command Policy, ¶ 4-18(a) (2012) (stating that the Army will not interfere with spousal employment).

216. ALT, *supra* note 161, at 38 ("[T]he wife of a military officer is considered an integral part of his career—a husband/wife team."). For example, both the General of the National Guard Bureau and his wife printed welcome letters in the first issue of *National Guard Soldier & Family Foundations*. Carolyn K. Vaughn, *Thank You Note*, 1 NAT'L GUARD SOLDIER & FAM. FOUND., Jan.–Feb. 2009, 7, available at <http://www.arng.army.mil/SiteCollectionDocuments/Family%20Services/Foundations01.pdf>.

217. See, e.g., BIANK, *supra* note 195, at 22 ("Army life had taught Andrea Lynne well. She felt as if she helped turn a wheel in the great military machine. As far as she was concerned, it was really the wives who ran Fort Bragg."). See also Elisabeth Bumiller, *Unlikely Tutor Giving Military Afghan Advice*, N.Y. TIMES (July 17, 2010), <http://www.nytimes.com/2010/07/18/world/asia/18tea.html?pagewanted=all> (reporting that a group of military wives told their husbands to read the book *Three Cups of Tea*, and generals subsequently began inviting the author to advise military units).

218. BIANK, *supra* note 195, at 14.

219. *Id.* at 22 ("What an officer's wife did affected her husband's career, and, just as [the officer] had mastered his command and risen through the ranks, [his wife], too, had to take on increasing responsibilities."); Hsia, *supra* note 201 ("As a soldier rises in the ranks, the roles and responsibilities expected of his or her spouse also greatly increase.").

220. E.g., JACK CANFIELD, MARK VICTOR HANSEN, CINDY PEDERSEN, & CHARLES PRESTON, CHICKEN SOUP FOR THE MILITARY WIFE'S SOUL 279 (2003) ("Over the next decade, as my husband progressed through the ranks, I begrudgingly wore the required proverbial hats of 'XO's wife' and the 'commander's wife.'").

221. ALT, *supra* note 161, at 38 ("Like it or not, spouses were and are key players in the success of a command. The larger the unit and the more senior the military member, the greater the importance of the spouse."). See also Darrah, Hillman, Lopez & Fricke, *supra* note 131, at 1281 (suggesting that one reason for an "officers' wives' club" is that family becomes increasingly important as a servicemember's career progresses).

222. BIANK, *supra* note 195, at 163 ("December is a busy social month on Army posts. The higher in rank your husband is, the more invitations you receive.").

onstage, working the crowd.”²²³

When servicemembers retire, their spouses are also recognized at retirement ceremonies.²²⁴ Sometimes, spouses may even receive awards from the military for their contributions.²²⁵

Even Congress has recognized the impact of spouses on the careers of servicemembers and taken steps to protect it. The Uniformed Services Former Spouses Protection Act authorizes courts to treat military retirement pay as property of both servicemembers and their spouses upon divorce.²²⁶ Legislative hearings acknowledged how spouses contribute to servicemembers’ careers,²²⁷ and evidence presented included evaluations of officers’ spouses as part of the officers’ evaluations.²²⁸

Just as the positive actions of spouses can benefit the careers of servicemembers, the negative actions of spouses or other family members can damage the reputations of servicemembers.²²⁹ Thus, one Army wife “couldn’t stand the fact that something she or her children . . . did would result in a citation in her husband’s file.”²³⁰ One Army captain felt that dating the widow of a

223. *Id.* at 20. See also Tamara Keith, *Holly Petraeus: An Army Wife Takes Command*, NPR (Apr. 25, 2011), <http://www.npr.org/2011/04/25/135540594/holly-petraeus-an-army-wife-takes-command> (describing how Holly Petraeus, the wife of then-General Petraeus, conducted listening sessions with servicemembers).

224. ROGAN, *supra* note 192, at 311 (describing author’s experience at a retirement ceremony).

225. *Volunteer Awards Program*, U.S. ARMY RECRUITING COMMAND, <http://www.usarec.army.mil/hq/hrd/VolunteerAwards/index.htm> (last visited Jan. 2, 2012) (providing overview of awards available to spouses). The military provides awards for servicemembers and civilians. *E.g.*, U.S. Dep’t of Army, Reg. 600-8-22, Military Awards (2011) (describing army’s award program to servicemembers); U.S. Dep’t of Army, Reg. 672-20, Incentive Awards (1999) (describing army’s award program to civilians).

226. Uniformed Services Former Spouses Protection Act, Pub. L. No. 97-252, tit. X, §§ 1002(a), 1408(c)(1), 96 Stat. 730, 731-32 (1982) (codified as amended at 10 U.S.C. § 1408(c)(1) (2006)). The military now focuses on providing career and educational opportunities for military spouses. STRENGTHENING OUR MILITARY FAMILIES, *supra* note 172, at 16–20.

227. *Id.* at 250–51.

228. *Id.* at 251. Additionally, USFSPA recognized that the frequent moves of military servicemembers meant it was difficult for military spouses to establish careers and accumulate retirement benefits. *Id.*

229. BONN, *supra* note 90, at 93 (“An act of social misconduct on the part of the spouse will probably not directly damage the officer’s career, but it could be an indirect factor both by its effect on the surrounding community and by its effect on the personal security and confidence of the officer.”); Theodore G. Williams, *Substance Misuse and Alcoholism in the Military Family*, in THE MILITARY FAMILY, *supra* note 189 (“There remains a strong stigma against a military wife embarrassing her husband in any way, and thereby negatively affecting his profession, particularly among officers. It is not uncommon for servicemembers to receive precipitous transfer orders because of a spouse’s embarrassing social behavior while intoxicated.”). The same standard applied to children. See WILLIAM JAY SMITH, ARMY BRAT 67 (1991).

230. BIANK, *supra* note 195, at 39. For two less recent examples, see DEAN, *supra* note 62, at 73 (describing a husband in 1974 who was punished for failing to control his wife) and SCHNEIDER & SCHNEIDER, *supra* note 169, at 236 (noting that in 1971, a traffic ticket for a wife went to her husband).

colonel would hinder his career.²³¹

b. Family Readiness Groups

The military is a “family of families”²³² with camaraderie between military spouses.²³³ Family Readiness Groups (FRGs) demonstrate how spouses of married servicemembers serve as resources for each other, strengthen military families, and help servicemembers advance their military careers.

Although they began as coffee groups for officers’ wives,²³⁴ today FRGs are military-sponsored self-help organizations for the families of servicemembers stationed together.²³⁵ Each unit (listed in increasing size: company, battalion, brigade, division) typically has its own FRG, and those that are active “do a lot of good [for families], especially during deployments.”²³⁶

FRGs also demonstrate how military spouses ascend through the ranks together, gaining influence in the military community along the way. Although FRG leaders can be selected from any position, leadership is often associated with rank.²³⁷ Thus, the spouse of a unit’s commander will typically lead that unit’s FRG.²³⁸ Similarly, the spouses of company commanders or company executive officers often lead company FRGs.²³⁹ For example, in the 101st

231. BIANK, *supra* note 195, at 201–02. See BONN, *supra* note 90, at 93 (“It is not sufficient to strive through job performance to construct a good image. You must also strive to avoid any tarnish to the image you have fashioned in the minds of others.”).

232. BONN, *supra* note 90, at 427. See also PAVLICIN, *supra* note 32, at 269–70 (describing a military spouse who felt she had gained a Marine Corps family).

233. ALT, *supra* note 161, at 99 (“Many of the wives mentioned the camaraderie that exists between military spouses. Since they are away from close family most of their lives, they come to depend on the friendships and support of the women they meet. Many still belong to the military clubs, especially for those who are with spouses at overseas locations.”).

234. Kristina Kauffman, *Army Must Better Support Extended Family*, STARS & STRIPES, May 13, 2009, at 13.

235. See U.S. Dep’t of Army, Reg. 600-20, Army Command Policy, ¶ 5-10(a)(2)(b) (2012); U.S. Dep’t of Army, Reg. 608-1, Army Community Service Center, App. J (2010); Army FRG, ARMYFRG.ORG (last visited Jan. 2, 2012). See also U.S. ARMY, ARMY PAMPHLET 608-47 (1993 ed.), at ¶ 1-8 (noting that command support is needed to separate the FRG from a mere social group). There is a Marine equivalent for FRGs. U.S. Marine Corps Order 1754.9, (2010), available at <http://www.usmc-mccs.org/upfrp/documents/MCO%201754.9%20signed%2027MAY2010.pdf>; U.S. MARINE CORPS, KEY VOLUNTEER NETWORK (May 1994), available at <http://www.militarywives.com/images/stories/kvn/Mc2919.pdf>.

236. BIANK, *supra* note 195, at 71.

237. BONN, *supra* note 90, at 431. But see *id.* at 430–31 (noting that FRGs work best when the spouses of NCOs and junior officers with energy and interest serve in leadership roles).

238. BIANK, *supra* note 195, at 24; Hsia, *supra* note 201 (“There is an expectation that spouses married to someone in a senior leadership position should also be leaders within the F.R.G. and military community.”). Nevertheless, even for spouses of high-ranking servicemembers, FRG participation is not mandatory. U.S. ARMY, ARMY PAMPHLET 608-47 ¶ 2-1(f) (1993 ed.). Cf. *id.* at 2-2(a) (explaining that the best FRG leaders are those who truly volunteer, not those who assume a position of leadership because of the spouse’s military position).

239. Gregg Zoroya, *Lengthy Volunteer Stints Burn Out Military Wives*, USA TODAY (Jan. 16, 2008), http://www.usatoday.com/news/nation/2008-01-15-military-wives_N.htm. See Greg Jaffe,

Airborne Division, the wives of the commanding general and the division sergeant major collaborated to lead other spouses during the division's deployment.²⁴⁰ Likewise, in the 82nd Airborne Division, the wife of the commanding general chaired meetings of senior wives, providing information that the senior wives would then convey to their coffee groups and FRGs.²⁴¹

C. Support Programs for Military Families

In recognition of the significance of families to the military community, the military has developed many programs to assist families. For the 2013 fiscal year, the Army plans to spend \$1.7 billion on family programs.²⁴² This level of spending results in a range of support services and financial benefits for military families.

In this section, I detail the support available to military families—evidence of the military's commitment to them. I return to the topic of supports for families again in Part V, where I contrast the vastly inferior experience of LGB military families.

1. Housing and Financial Benefits

Perhaps most critical to military families are the financial benefits provided by the military: pay; free on-post housing or housing allowances; and other forms of financial assistance. As explained below, married servicemembers receive more of these benefits than single servicemembers do.

a. Housing and Housing Allowances

Marital status is the most relevant factor in determining the quality of government-provided housing for servicemembers. The military provides servicemembers with free on-post housing²⁴³ or a "basic allowance for housing" (BAH), which is a tax-free subsidy to servicemembers to offset the cost of

Facebook Brings the Afghan War to Fort Campbell, WASH. POST (Nov. 5, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/04/AR2010110407505.html> (describing the wife of the Gator Company commander who runs Gator Company's FRG).

240. Wayne Drash, *Battle Buddies Share 'the Toughest Job in the Army'*, CNN (Sept. 21, 2010), <http://www.cnn.com/2010/LIVING/09/21/army.battle.buddies/index.html?hpt=C1>.

241. BIAN, *supra* note 195, at 173. See Zoroya, *supra* note 239 (reporting how the wife of a command sergeant major was a supervising volunteer leader and that the FRG system parallels the military hierarchy with "the wife of a division commander overseeing family support within the division, the wife of a brigade commander doing the same at that level and so on" and that one woman's qualification was "being an officer's wife who volunteered to run [the FRG].").

242. JACQUELINE M. HAMES, 67 SOLDIERS MAGAZINE no.2, 18, 22 (June 2012).

243. See *Family Housing*, GOARMY.COM, <http://www.goarmy.com/soldier-life/being-a-soldier/housing/family-housing.html> (last visited Jan. 2, 2012); *Army Housing*, GOARMY.COM, <http://www.goarmy.com/soldier-life/army-family-strong/army-daily-life/army-housing.html> (last visited Jan. 2, 2012).

housing when they do not receive military-provided housing.²⁴⁴ Housing allowances are based on rank, duty locations, and dependency status—which encompasses marital status.²⁴⁵ Married servicemembers and servicemembers with dependent children receive higher housing allowances than unmarried servicemembers.²⁴⁶

The military also affords consideration to dual military couples—couples in which both spouses are servicemembers. Army policies encourage and support married dual-serving couples living in the same location, but do not require or guarantee that they will be in the same location.²⁴⁷

b. Pay

Servicemembers' pay has several components.²⁴⁸ The primary component is basic pay, which is determined by rank and years of service.²⁴⁹ Other components of servicemembers' pay, such as hazardous duty incentive pay or hostile fire pay, are determined by servicemembers' assignments and duty locations.²⁵⁰ Still other components of servicemembers' pay are determined by servicemembers' marital or parental status. For example, married servicemembers assigned to an unaccompanied tour may earn a family separation allowance of \$250 a month.²⁵¹

c. Other Financial Assistance

Aside from pay and housing or pay and housing allowances, the military provides other forms of financial assistance to servicemembers and, importantly,

244. *Basic Allowance for Housing*, U.S. DEP'T OF DEF., <http://militarypay.defense.gov/pay/bah/> (last visited Jan. 2, 2012).

245. U.S. DEP'T OF DEF., A PRIMER ON BASIC ALLOWANCE FOR HOUSING (BAH) FOR THE UNIFORMED SERVICES 3 (2011), available at <http://www.defensetravel.dod.mil/Docs/perdiem/BAH-Primer.pdf>. To clarify, "dependency" could refer to an opposite-sex spouse or a minor child. Thus, a same-sex couple with a minor child would receive the dependency rate because of their child, not because of their same-sex marriage.

246. *Id.* at 8 (indicating the comparison between dependent and non-dependent rates). While the military's allowance for dependents is now gender-neutral, before *Frontiero v. Richardson*, 411 U.S. 677 (1973) (plurality opinion), the military provided a higher allowance to male servicemembers with female dependents than to female servicemembers with male dependents. *Id.* at 678–79.

247. U.S. DEP'T of Army, Reg. 614-100, Officer Assignment Policies, Details, And Transfers ¶ 5-3 (2006).

248. See generally 37 U.S.C. §§ 201–439 (2006) (describing the various types of military pay); Pay Table 2012, DEF. FIN. ACCOUNTING SERV., www.dfas.mil/dms/dfas/militarymembers/pdf/MilPayTable2012/MilPayTable2012_1.pdf (last visited Jan. 2, 2012) (listing rates for base pay, basic allowance for sustenance, sea pay, aviation pay, and medical incentive pay).

249. DEF. FIN. ACCOUNTING SERV., *supra* note 248. Other components of pay are likewise based on rank and years of services, including sea pay, flight pay, and medical variable pay. *Id.*

250. *Id.*

251. *Family Separation Allowance*, MILITARY.COM, <http://www.military.com/benefits/military-pay/family-separation-allowance> (last visited Jan. 2, 2012).

to their spouses. These include emergency loans,²⁵² reimbursement for adoption costs,²⁵³ tuition assistance,²⁵⁴ health care for spouses,²⁵⁵ and the use of commissaries (low-cost grocery stores)²⁵⁶ and post or base exchanges (low-cost department stores).²⁵⁷

Additionally, the military provides servicemembers with two and a half days of leave per month.²⁵⁸ The army authorizes up to thirty days of leave in emergency situations within soldiers' families. Family is defined to include certain family members of either the soldier or the soldier's spouse.²⁵⁹ When servicemembers die, the military provides monthly income to eligible surviving dependents, including surviving spouses who have not remarried.²⁶⁰

2. Support Services

The military provides support resources for military families even before military service begins. At the onset, recruiting websites describe to interested civilians the lifestyle of the military family.²⁶¹ The websites of three Army posts

252. See General Dennis Reimer, *Message from the President*, ARMY EMERGENCY RELIEF, <http://www.aerhq.org/dnn563/MessagefromthePresident.aspx> (last visited Jan. 2, 2012) (noting that Army Emergency Relief includes "emergency financial aid.").

253. U.S. Dep't Of Def., Dep't Of Def. Instruction No. 1341.09, DoD Adoption Reimbursement Policy (2007) available at <http://www.dtic.mil/whs/directives/corres/pdf/134109p.pdf>; *Adoption Assistance*, MY ARMY BENEFITS, http://myarmybenefits.us.army.mil/Home/Benefit_Library/Federal_Benefits_Page/Adoption_Assistance.html (last visited Jan. 2, 2012).

254. The military provides up to \$4,500 a year in tuition assistance to servicemembers. *Tuition Assistance Policies*, GO ARMY ED., https://www.goarmyed.com/public/public_tuition_assistance_policies.aspx (last visited Jan. 2, 2012). It also provides up to \$2,000 a year to military spouses through Military Spouse Career Advancement Accounts.

255. *Eligibility*, TRICARE, <http://www.tricare.mil/Welcome/Eligibility.aspx> (last visited Dec. 24, 2012); *Marriage*, TRICARE, <http://www.tricare.mil/LifeEvents/Marriage.aspx> (last visited Dec. 24, 2012).

256. *History of U.S. Military Commissaries*, COMMISSARIES.COM, <http://www.commissaries.com/history.cfm> (last visited Jan. 2, 2012) ("Surveys consistently rate the commissaries as one of the military's top nonpay benefits. . . . The average level of savings is 30%").

257. *Military Newcomers Guide*, THE EXCHANGE, <http://www.shopmyexchange.com/AboutExchange/military-newcomers.htm/> (last visited Jan. 2, 2012). Only certain individuals can use the Exchange, including dependents of servicemembers, *Authorized Patrons*, THE EXCHANGE, <http://www.shopmyexchange.com/ExchangeStores/PatronsMerchandise/patrons.htm> (last visited Jan. 2, 2012).

258. U.S. Dep't of Army, Reg. 600-8-10, *Leaves and Passes* ¶ 2-3(a) (2011).

259. *Id.* at ¶ 6-1(d).

260. 10 U.S.C. § 1448 (2006) (describing Survivor Benefit Plan); *Survivor Benefits Plan*, MY ARMY BENEFITS, http://myarmybenefits.us.army.mil/Home/Benefit_Library/Federal_Benefits_Page/Survivor_Benefit_Plan_%28SBP%29.html (last visited Jan. 2, 2012).

261. *E.g.*, *Parents & Family*, U.S. AIR FORCE, <http://www.airforce.com/parents-family/> (last visited Sep. 29, 2012); *Soldier Life: Army Families are Army Strong*, GO ARMY, <http://www.goarmy.com/soldier-life/army-family-strong.html> (last visited Sep. 29, 2012); U.S. ARMY, *WELCOME TO THE ARMY FAMILY: A FIRST GUIDE FOR ARMY SPOUSES AND FAMILY MEMBERS* (2005), <http://www.westpointmwr.com/ACTIVITY/ACS/Welcome%20to%20the%20Army%20Family%20Guidebook.pdf> (providing an overview of military life for family

that conduct basic training provide an online orientation for military spouses.²⁶²

Once families officially enter the world of the military, the resources expand. The websites for Fort Hood, a large Army post in Killeen, Texas, and Army OneSource, an online informational resource, provide examples of the range of supports available to families in different locations.²⁶³ These include financial planning,²⁶⁴ spouse and child abuse prevention,²⁶⁵ employment assistance,²⁶⁶ support to parents of newborns,²⁶⁷ services to families with special needs children,²⁶⁸ family-life consultants,²⁶⁹ services to family members of servicemembers who died on active duty,²⁷⁰ information and services to assist families throughout the deployment cycle,²⁷¹ and a forum for families to provide

members of servicemembers).

262. *428th Field Artillery Brigade, New Spouse Orientation*, U.S. ARMY, <http://sill-www.army.mil/428thfa/tradocvimeo.htm> (last visited Jan. 2, 2012); *Fort Benning, 198th Infantry Brigade*, U.S. ARMY, <http://www.benning.army.mil/infantry/198th/> (click on Spouse Orientation Brief) (last visited Jan. 2, 2012); *Fort Jackson, New Spouse Orientation*, U.S. ARMY, <http://www.jackson.army.mil/sites/info/pages/262> (last visited Jan. 2, 2012).

263. *Focus on Families*, FORT HOOD, <http://www.hood.army.mil/family.focus.aspx> (last visited Jan. 2, 2012); *Family Programs and Services*, MYARMYONESOURCE, <https://www.myarmyonesource.com/familyprogramsandservices/default.aspx> (last visited Jan. 2, 2012).

264. *See, e.g., Financial Readiness Branch*, FORT HOOD MWR, <http://hoodmwr.com/acs/frb.html> (last visited Jan. 2, 2012); *Financial Readiness*, MYARMYONESOURCE, <https://www.myarmyonesource.com/FamilyProgramsandsServices/FinancialReadiness/Default.aspx> (last visited Jan. 2, 2012).

265. *See, e.g., Advocacy and Prevention*, FORT HOOD MWR, <http://hoodmwr.com/acs/apb.html> (last visited Jan. 2, 2012); *Family Advocacy Program*, MYARMYONESOURCE, <https://www.myarmyonesource.com/FamilyProgramsandsServices/FamilyPrograms/FamilyAdvocacyProgram/default.aspx> (last visited Jan. 2, 2012).

266. *See, e.g., Employment Readiness*, FORT HOOD MWR, <http://hoodmwr.com/acs/erb.html> (last visited Jan. 2, 2012).

267. *See, e.g., New Parent Support Program*, MYARMYONESOURCE, <https://www.myarmyonesource.com/FamilyProgramsandsServices/FamilyPrograms/NewParentSupportProgram/Default.aspx> (last visited Jan. 2, 2012).

268. *See, e.g., Exceptional Family Member Program*, FORT HOOD MWR, <http://hoodmwr.com/acs/efmp.html> (last visited Jan. 2, 2012); *Exceptional Family Member Program*, MYARMYONESOURCE, <https://www.myarmyonesource.com/FamilyProgramsandsServices/FamilyPrograms/ExceptionalFamilyMemberProgram/default.aspx> (last visited Jan. 2, 2012).

269. *See, e.g., Military Family Life Consultants*, FORT HOOD MWR, http://hoodmwr.com/acs/sfrb_mflc.html (last visited Jan. 2, 2012) (addressing issues regarding adjustment, stress, marriage conflict, anxiety, depression, deployment concerns, and aggression, among others).

270. *See, e.g., Survivor Outreach Services*, FORT HOOD MWR, <http://hoodmwr.com/acs/sos.html> (last visited Jan. 2, 2012); *Survivor Outreach Services*, MYARMYONESOURCE, <https://www.myarmyonesource.com/familyprogramsandservices/familyprograms/survivoroutreachservices/default.aspx> (last visited Jan. 2, 2012). *See also* ALT, *supra* note 161, at 93 (“[T]he military works hard to [e]nsure that loved ones are promptly notified and [provided support].”).

271. *See, e.g., Fort Hood Soldier and Family Readiness Branch*, FORT HOOD MWR, <http://www.hoodmwr.com/acs/sfrb.html> (last visited Jan. 2, 2012); *Mobilization and Deployment*, MYARMYONESOURCE, <https://www.myarmyonesource.com/FamilyProgramsandsServices/FamilyPrograms/MobilizationandDeploymentReadiness/Default.aspx> (last visited Jan. 2, 2012).

feedback to Army leadership.²⁷² Some services are mandated and governed by Army regulations, including the Family Advocacy Program,²⁷³ Army Family Team Building (AFTB),²⁷⁴ the Exceptional Family Member Program (EFMP),²⁷⁵ and the process for family members to address their concerns to the Army.²⁷⁶

A newer source of support is the Family Support Center, which consolidates resources for military families. The most advanced of such centers are “state-of-the-art, [and] staffed by professional counselors, who assist military families in every imaginable way.”²⁷⁷ They can offer couples support groups and classes on: stress and anger management skills, parenting skills, couples communication, and budgeting and financial management.²⁷⁸

There are also many non-military sources of support. A multitude of non-governmental organizations exist to support military families, including the National Military Family Association,²⁷⁹ Military Spouse,²⁸⁰ CinCHouse.com,²⁸¹ the Army Wife Network,²⁸² and the National Association of Military Moms and Spouses,²⁸³ among others.²⁸⁴ A variety of books have been published to support

272. See, e.g., *Army Family Action Plan*, FORT HOOD MWR, http://www.hoodmwr.com/acs/sfrb_afap.html (last visited Jan. 2, 2012).

273. U.S. Dep’t of Army, Reg. 608-18, Army Family Advocacy Program ¶ 1-6 (2011) (“The objectives of the FAP are to prevent spouse and child abuse, to encourage the reporting of all instances of such abuse, to ensure the prompt assessment and investigation of all abuse cases, to protect victims of abuse, and to treat all Family members affected by or involved in abuse.”).

274. U.S. Dep’t of Army, Reg. 608-48, Army Family Team Bldg. (Aftb) Program ¶ 1-1 (2005) (“The Army Family Team Building (AFTB) Program is a global educational program whose primary objective is to improve the overall readiness of the force by teaching and promoting personal and family readiness through standardized, progressive, and sequential education of family members; however, the program can be used flexibly to meet the needs of the individual audience. Its purpose is to assist members of the Army in adapting to Army life, manage change, and accept challenges.”).

275. U.S. Dep’t of Army, Reg. 608-75, Exceptional Family Member Program ¶ 1-6 (2006) (“The EFMP . . . provides a comprehensive, coordinated, multiagency approach for community support, housing, medical, educational, and personnel services to Families with special needs.”).

276. U.S. Dep’t of Army, Reg. 608-47, Army Family Action Plan (Aftap) Program ¶ 4-1(a) (2003).

277. SCHNEIDER & SCHNEIDER, *supra* note 169, at 207. See PAVLICIN, *supra* note 32, at 208, 218–21 (explaining that an on-base Family Resource Center is the “base commander’s primary resource for coordinating family programs.”).

278. See PAVLICIN, *supra* note 32, at 208, 218–21.

279. NAT’L MILITARY FAMILY ASSOC., <http://www.militaryfamily.org/> (last visited Jan. 2, 2012).

280. MILITARY SPOUSE, <http://www.milspouse.com/default.aspx> (last visited Jan. 2, 2012).

281. CINCHOUSE, <http://cinchouse.com/> (last visited Jan. 2, 2012).

282. ARMY WIFE NETWORK, <http://www.armywifetwork.com/> (last visited Jan. 2, 2012).

283. NAT’L ASSOC. OF MILITARY MOMS & SPOUSES, <http://www.nmmas.org/> (last visited Jan. 2, 2012).

284. E.g., *About*, BLUE STAR FAMILIES, <http://www.bluestarfam.org/about> (last visited Jan. 2, 2012) (“Our Story . . . Is Military Families Supporting Each Other”) (ellipses in original); HOOAH WIFE, <http://hooahwife.com/> (last visited Jan. 2, 2012); MARRIED TO THE ARMY, <http://marriedtothearmy.com/> (last visited Jan. 2, 2012); MILITARY FAMILIES UNITED, <http://www.militaryfamiliesunited.org/> (last visited Jan. 2, 2012); USMC GALS,

military spouses and families,²⁸⁵ and there is even a military family research institution at Purdue University.²⁸⁶ In some circumstances, the military requires servicemembers themselves to support their families.²⁸⁷

The federal government also offers support for military families. The Department of Defense offers services and information for the families of both active members of the military²⁸⁸ and reservists.²⁸⁹ In 2008, following a recommendation to strengthen family support programs, Congress amended the Family Medical Leave Act (FMLA) by adding two new provisions for military families that addressed dependents with serious illnesses²⁹⁰ and supplemented paternal leave.²⁹¹

Finally, support to families continues after servicemembers leave the military through the Department of Veterans Affairs (VA).²⁹²

<http://www.usmcgals.com/> (last visited Jan. 2, 2012); Mission Statement and Statement of Purpose, VETERANS AND MIL. FAMILIES FOR PROGRESS, <http://www.vmfpro.org/about/mission-statement-and-statement-of-purpose-2/> (last visited Jan. 2, 2012).

285. E.g., MEREDITH LEYVA, *MARRIED TO THE MILITARY: A SURVIVAL GUIDE FOR MILITARY WIVES, GIRLFRIENDS, AND WOMEN IN UNIFORM* (2003); PAVLIN, *supra* note 32; GENE THOMAS GOMULKA, *THE SURVIVAL GUIDE FOR MARRIAGE IN THE MILITARY: FOR DATING AND MARRIED COUPLES* (2004); CANFIELD, HANSEN, PEDERSEN & PRESTON, *supra* note 220; LISA MCGRATH, *THE COMPLETE IDIOT'S GUIDE TO LIFE AS A MILITARY SPOUSE* (2008).

286. THE MILITARY FAMILY RESEARCH INSTITUTE AT PURDUE UNIVERSITY, <http://www.cfs.purdue.edu/mfri/public/default.aspx> (last visited Oct. 20, 2012).

287. U.S. Dep't of Army, Reg. 608-99, Family Support, Child Custody, and Paternity ¶ 2-1(a) (2003) (requiring Soldiers to provide financial support to their family members). See *infra* notes 362–365 and accompanying text (describing military's ban on adultery).

288. See ARMED FORCES CROSSROADS, <http://www.afcrossroads.com/> (last visited Jan. 2, 2012); *Military Homefront*, U.S. DEP'T DEF., <http://www.militaryhomefront.dod.mil/> (last visited Jan. 2, 2012) ("Military[Homefront] is the Department of Defense website for official Military Community and Family Policy (MCFP) program information, policy and guidance designed to help troops and their families, leaders, and service providers."); U.S.A. 4 *Military Families*, U.S. DEP'T DEF., <http://www.usa4militaryfamilies.dod.mil/> (last visited Jan. 2, 2012) (describing a program to work with states to improve quality of life issues for military families); *About IMCOM*, U.S. ARMY INSTALLATION MGMT. COMMAND, <http://www.imcom.army.mil/hq/about/> (last visited Jan. 2, 2012) ("Our mission is to provide Soldiers, Civilians and their Families with a quality of life commensurate with the quality of their service.").

289. See *National Guard Bureau Family Programs*, JOINT SERVS. SUPPORT, <http://www.jointservicessupport.org/FP/Default.aspx> (last visited Jan. 2, 2012) (listing family support services geared to National Guard members); *Soldier Family Support Services*, U.S. ARMY NAT'L GUARD, <http://www.arng.army.mil/familyservices/Pages/default.aspx> (last visited Jan. 2, 2012); ARMY RESERVE FAMILY PROGRAMS, <http://www.arfp.org> (last visited Sept. 30, 2012). Additionally, the National Guard publishes a monthly magazine "to encourage the Families and friends who keep our Soldiers strong." Vaughn, *supra* note 216.

290. Karin, *supra* note 168, at 48 (citing National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 585 (2008)).

291. Root, *supra* note 177, at 147–48.

292. U.S. DEP'T OF VETERANS AFFAIRS, <http://www.va.gov> (last visited Oct. 20, 2012).

V.

THE MILITARY MUST LEAD: WHY THE MILITARY'S VIEW OF SEXUAL ORIENTATION AS A NONISSUE AND ITS COMMITMENT TO MILITARY FAMILIES CANNOT BE RECONCILED WITHOUT MARRIAGE EQUALITY

We have seen that, since the DADT repeal, the military views sexual orientation as a nonissue.²⁹³ We have also seen that the military is committed to recognizing and supporting military families, who strengthen the military community in various ways.²⁹⁴ I now turn to the intersection of those two topics and the issue at the heart of this article: LGB military families. Despite the military's progress, LGB military families have been left behind.

In this Part, I will detail the hardships endured by LGB military families and explain why the military must lead in the fight for same-sex marriage recognition. First, I describe the tensions that emerged in the aftermath of the DADT Repeal Act, which revealed that the repeal did not successfully render sexual orientation a nonissue in the military.²⁹⁵ I then outline the many restrictions that DOMA places on LGB families in terms of their social lives, financial benefits, housing, services, and even prosecutions under the Uniform Code of Military Justice.²⁹⁶ Next, I describe the additional obstacles for LGB families created by inconsistent state same-sex marriage laws.²⁹⁷ Finally, I address the concerns that opponents to my argument might raise and demonstrate that they are not impediments to military advocacy for marriage equality.²⁹⁸

A. Tension Following the DADT Repeal

Conflicts between the DADT repeal and DOMA promptly surfaced during and after the DADT repeal. The military and Congress clashed over whether military chaplains may conduct same-sex marriages, and politicians sparred over whether to resurrect DADT. Additionally, several lawsuits were filed, urging the military and the VA to recognize LGB military families. These incidents all suggest that the DADT repeal did not truly render sexual orientation a nonissue in military life.

1. Military Chaplains

The DADT repeal did not immediately resolve the issue of whether military chaplains could marry same-sex couples. In May 2011, before the DADT repeal, the Navy announced that it would allow its chaplains to conduct same-sex

293. See *supra* Part III.

294. See *supra* Part IV.

295. See *infra* Part V.A.

296. See *infra* Part V.B.

297. See *infra* Part V.C.

298. See *infra* Part V.D.

marriages in states that recognized same-sex marriage,²⁹⁹ only to reverse its decision less than a month later.³⁰⁰ The House Armed Services Committee stated that DOMA prevented any federal support for same-sex marriage.³⁰¹ Nevertheless, when DADT was repealed in September 2011, the Pentagon reversed course and authorized chaplains to conduct same-sex marriages in states that recognized same-sex marriage.³⁰² The Pentagon's reversal was harshly criticized by the Archdiocese for the Military Services and the Concerned Women for America.³⁰³

In October 2011, Representative Howard McKeon stated that he would not allow the defense authorization bill to advance unless it banned chaplains from performing same-sex marriages.³⁰⁴ In November 2011, the Senate passed an amendment to ensure that chaplains who opposed same-sex marriage were not forced to perform them.³⁰⁵

In May 2012, the House Armed Services Committee passed two amendments to the defense authorization bill: the first to "protect service members, especially chaplains, from persecution for opposing the presence of gays in the military,"³⁰⁶ and the second to prohibit "same-sex marriages or a

299. Charley Keyes, *Navy Plan to Allow Same-Sex Marriage on Bases Draws Opposition*, CNN (May 10, 2011), <http://www.cnn.com/2011/US/05/09/navy.same.sex.marriage/index.html>.

300. Charley Keyes, *Navy Reverses Itself on Gay Marriages on Military Bases*, CNN (May 11, 2011), <http://www.cnn.com/2011/US/05/11/navy.same.sex.marriages/index.html>; Ed O'Keefe & Craig Whitlock, *Navy Revokes Guidance on Same-Sex Marriage*, WASH. POST (May 11, 2011), http://www.washingtonpost.com/blogs/federal-eye/post/navy-revokes-guidance-on-same-sex-marriages/2011/05/10/AFg5BmlG_blog.html.

301. Rick Maze, *Panel Seeks Service Chiefs' Say on DADT Repeal*, ARMY TIMES (May 12, 2011), <http://www.armytimes.com/news/2011/05/military-house-panel-dont-ask-dont-tell-repeal-051211/>.

302. Memorandum from Clifford L. Stanley, Under Sec'y of Def., Dep't of Def., to the Secretaries of the Military Dep'ts (Sept. 30, 2011), available at <http://cmrlink.org/CMRDocuments/Johnson-Stanley0911.pdf>; Ed O'Keefe, *Gay Weddings May Be Performed by Military Chaplains, Pentagon Says*, WASH. POST (Sept. 30, 2011), http://www.washingtonpost.com/politics/gay-weddings-may-be-performed-by-military-chaplains-pentagon-says/2011/09/30/gIQAgkJ8AL_story.html; Andrew Tilghman, *Chaplains Can Preside Over Same-Sex Weddings*, ARMY TIMES (Sept. 30, 2011), <http://www.armytimes.com/news/2011/09/military-chaplains-same-sex-weddings-093011w/>.

303. *Congress Must Protect Defense of Marriage Act in the Military*, CTR. MIL. READINESS (Oct. 26, 2011), <http://www.cmrlink.org/HMilitary.asp?docID=403>; Andrew Tilghman, *Church Leader Opposes DoD on Same-Sex Weddings*, ARMY TIMES (Sept. 30, 2011), <http://www.armytimes.com/news/2011/09/military-same-sex-weddings-church-opposes-093011w/> (reporting the Catholic Church's opposition to the Pentagon's decision).

304. Josh Gerstein & Charles Hoskinson, *Buck McKeon: No Defense Bill Without Gay Marriage Ban, Detainee Provisions*, POLITICO (Oct. 7, 2011), http://www.politico.com/blogs/joshgerstein/1011/Buck_McKeon_no_defense_bill_without_gay_marriage_ban_detainee_provisions.html.

305. Rick Maze, *Senate Lets Chaplains Opt Out of Gay Weddings*, ARMY TIMES (Nov. 30, 2011), <http://www.armytimes.com/news/2011/11/military-senate-gay-marriage-chaplains-113011w/>.

306. Rick Maze, *Committee OKs Allowing Chaplains to Oppose Gays*, ARMY TIMES (May 10, 2012), <http://www.armytimes.com/news/2012/05/military-house-committee-allows-chaplains->

‘marriage-like ceremony’ that involves same-sex couples from being held at any military installation.”³⁰⁷ Thus, same-sex marriages by chaplains became restricted and highly regulated.

2. Attempts to Resurrect DADT

Politicians attempted to resurrect DADT in the wake of the repeal. In February 2012, an Oklahoma Representative proposed legislation that would reinstate DADT in the Oklahoma National Guard.³⁰⁸ During the 2012 presidential campaign, Republican candidate Rick Santorum vowed to reinstate DADT and Republican candidate Rick Perry criticized the DADT repeal in a campaign advertisement.³⁰⁹

In June 2012, Democratic Representative Adam Smith pushed back, introducing a bill to define a spouse “for purposes of military personnel policies and military and veteran benefits” using the definitions of spouse in the state where the couple married.³¹⁰ He reasoned that “[s]pouses of service members should not be prevented from receiving the benefits they have earned simply because they are the same sex as their partner.”³¹¹

Yet Republicans continued to be dissatisfied with the DADT repeal. In July 2012, Congressional Republicans criticized the Pentagon’s decision to grant a one-time waiver to allow servicemembers to wear their uniform while marching in San Diego’s gay pride parade.³¹² Congressional Republicans pointed to defense regulations prohibiting servicemembers from attending political events while wearing their military uniforms.³¹³ Ultimately, servicemembers were allowed to wear their uniforms.³¹⁴

oppose-gays-051012/.

307. *Id.*

308. H.B. 2195, 53d Leg., 2d Sess. (Okla. 2012).

309. E.g., Peter Catapano, *Don’t Ask*, N.Y. TIMES (Sept. 23, 2011), <http://opinionator.blogs.nytimes.com/2011/09/23/dont-ask/> (reporting that Republican candidate Rick Santorum would reinstate DADT); Jennifer Rubin, *Perry’s Ad Misfires Badly*, WASH. POST (Dec. 13, 2011), http://www.washingtonpost.com/blogs/right-turn/post/perrys-ad-misfires-badly/2011/12/12/gIQAe9llqO_blog.html (commenting on Rick Perry’s ad criticizing the DADT repeal).

310. H.R. 6046, 112th Cong. (2012).

311. Rick Maze, *Bill Offers Benefits to Gay Military Couples*, ARMY TIMES (June 28, 2012), <http://www.armytimes.com/news/2012/06/military-adam-smith-seeks-same-sex-benefits-military-couples-062812w/>.

312. Donna Cassata, *GOP Challenges Military March in Gay Parade*, ARMY TIMES (July 24, 2012), <http://www.armytimes.com/news/2012/07/ap-gop-challenges-military-gay-pride-parade-072412/>.

313. Dep’t Of Def., DoD Directive 1344.10, Political Activities By Members Of The Armed Forces ¶ 4.1.4 (2008), available at <http://www.dtic.mil/whs/directives/corres/pdf/134410p.pdf>.

314. *Now It’s History: San Diego Gay Pride Parade 2012*, LOS ANGELES TIMES (July 22, 2012), <http://latimesblogs.latimes.com/lanow/2012/07/now-its-history-san-diego-gay-pride-parade-2012.html> (referring to the “the Department of Defense decision to allow marchers to wear their uniforms.”).

3. Lawsuits

Lawsuits after the DADT repeal demonstrated that sexual orientation remained an issue for LGB military families. In October 2011, a veteran filed suit after the Department of Veterans Affairs denied her request to increase her monthly disability compensation following her marriage to her same-sex partner.³¹⁵ The VA explained that DOMA prevented it from recognizing the veteran's marriage.³¹⁶ In February 2012, another veteran sued the VA claiming that she and her same-sex spouse, who were legally married, "were denied military benefits granted to straight spouses."³¹⁷

In October 2011, several current and former servicemembers filed suit in the United States District Court for the District of Massachusetts seeking "the same recognition, family support and benefits for their same-sex spouses that the military has provided and currently provides to opposite-sex spouses of current and former service members."³¹⁸ Meanwhile, plaintiffs in an on-going class action lawsuit, brought by individuals discharged because of their sexual orientation under DADT, claim that the discharged servicemembers should receive full compensation rather than the 50% compensation they are currently receiving.³¹⁹

B. DOMA Is an Obstacle for LGB Military Families

The task force examining the DADT repeal determined that sexual orientation should be a nonissue in the military.³²⁰ In a statement accompanying the DADT Repeal Act, the Army announced that it would apply its regulations and policies "uniformly without regard to sexual orientation, which is a personal and private matter."³²¹ Indeed, the military does ensure that a few of its internal

315. In the Appeal of Carmen J. Cardon, No. 11-01921 (Bd. of Veteran's Appeal, Aug. 30, 2011) (finding the veteran entered into a valid marriage under VA law, but unable to recognize the veteran's same-sex spouse as a spouse for VA purposes).

316. *Id.* See also James Dao, *Denied Veterans Benefits over Same-Sex Marriage, Ex-Sailor Challenges Law*, N.Y. TIMES (Oct. 12, 2011), <http://www.nytimes.com/2011/10/13/us/denied-veterans-benefits-over-same-sex-marriage-carmen-cardona-sues.html>.

317. Jessica Gresko, *Gay Veteran Sues Over Denial of Spouse Benefits*, ARMY TIMES (Feb. 1, 2012), <http://www.armytimes.com/news/2012/02/ap-gay-verteran-sues-over-denial-of-spouse-benefits-020112/>. As with other challenges to DOMA, Attorney General Eric Holder has declined to defend the government on this issue. Josh Gerstein, *Justice Department Gives Up in Another Same-Sex Marriage Case*, POLITICO (Feb. 17, 2012), <http://www.politico.com/blogs/under-the-radar/2012/02/justice-department-gives-up-in-another-samesex-marriage-114890.html>.

318. Complaint, *McLaughlin v. Panetta*, No. 1:11-cv-11905 (D. Mass. filed Oct. 27, 2011), available at http://sldn.3cdn.net/2d3f59bfb3218eae20_c5m6b5twn.pdf.

319. Plaintiff's Response to Defendant's Motion to Dismiss, *Collins v. United States*, No. 1:10-cv-00778-CCM (Fed. Cl. filed June 10, 2011). See *Collins v. United States—Class Action for Military Separation Pay*, ACLU (Oct. 18, 2011), <http://www.aclu.org/lgbt-rights/collins-v-united-states-class-action-military-separation-pay> (providing overview of *Collins v. United States*).

320. See *infra* Part III.

321. See Chandler, Ordierno & McHugh, *supra* note 10 (statement by the Army); *Don't Ask, Don't Tell*, U.S. AIR FORCE, <http://www.af.mil/dontask%2Cdonttell/> (last visited Sep. 22, 2012).

regulations and policies, such as member-designated benefits, do not negatively affect LGB military families.³²² Yet the promise of equal treatment was largely a false promise.

The federal Defense of Marriage Act (DOMA) requires the military to continue distinguishing between LGB military families and other military families. DOMA prohibits the military from recognizing same-sex marriages,³²³ yet marital status triggers acceptance into the military community, financial benefits, housing, and support services from the military.³²⁴ As a result of DOMA, the military essentially views LGB servicemembers with families as single and unattached.³²⁵

1. Lack of Access to the Military Community for LGB Military Spouses

On a basic level, LGB military families lack access to the military community. Simply entering a military installation is currently a challenge for LGB military spouses and partners. While opposite-sex spouses of servicemembers may obtain military ID cards by presenting a certified original marriage certificate,³²⁶ DOMA prevents the federal government from recognizing the lawfully issued marriage certificates of spouses in same-sex marriages.³²⁷ As a result, the simple act of entering a base to attend a social event, receive support from a Family Resource Center, or even receive medical attention is challenging for LGB military families.³²⁸

(statement by the Air Force).

322. To review, “member-designated benefits” permit servicemembers to choose LGB spouses or partners as beneficiaries. See U.S. DEP’T OF DEF., REPORT, *supra* note 67, at 142–44. The Department of Defense has identified six new member-designated benefits in addition to the eight benefits that were already outlined in its original Quick Reference Guide. Am. Forces Press Serv., *Department Reminds Troops of Member-Designated Benefits*, NAT’L GUARD (Oct. 28, 2011), <http://www.ng.mil/news/archives/2011/10/102811-Department.aspx>. Further evidence of the military’s more inclusive policies took place in October 2011, when a female soldier in the New Hampshire National Guard was permitted to bring her female partner to a “yellow ribbon” reintegration. *Gay Partner Allowed to Attend N.H. Guard Event*, ARMY TIMES (Oct. 19, 2011), <http://www.armytimes.com/news/2011/10/ap-gay-partner-allowed-to-attend-new-hampshire-guard-event-101911/>.

323. 1 U.S.C. § 7 (2006).

324. See *infra* Parts V.B.1–3.

325. Tom Philpott, *Married Gays, Lesbian Still Viewed as ‘Single’ by Military*, STARS & STRIPES (Nov. 29, 2012), <http://www.stripes.com/news/special-reports/don-t-ask-don-t-tell/married-gays-lesbian-still-viewed-as-single-by-military-1.198758>.

326. U.S. COAST GUARD, U.S. DEP’T OF HOMELAND SEC., Comdtinst M5512.1a, Identification Cards for Members of the Uniformed Services, Their Eligible Family Members, and Other Eligible Personnel ¶ 2.4 (2010), available at http://www.uscg.mil/directives/cim/5000-5999/CIM_5512_1A.pdf; Documents Required for Issuance of DoD ID Cards, U.S. DEP’T OF DEF., <http://www.dmdc.osd.mil/rsl/html/RequiredDocuments.html> (last visited Jan. 2, 2012).

327. 1 U.S.C. § 7 (2006). However, the military will recognize a state’s determination of an existing common-law marriage. U.S. COAST GUARD, *supra* note 326, ¶ 2.4.2.

328. See Sheridan & O’Keefe, *supra* note 45 (reporting how one’s partner “is essentially on his own: He can’t visit the base without a visitor’s badge or enjoy discounts at military grocery [M]ost troubling for [the spouse], he’s officially barred from the military’s network of spousal

DOMA may also deny LGB servicemembers the career benefits of spousal networking and socializing. Because the military does not recognize or promote acceptance of same-sex marriages, LGB military spouses and partners are unlikely to be shown as much respect as heterosexual spouses in meetings, gatherings, and parties.³²⁹ This is particularly true given the military community's general deference to tradition and military authority.³³⁰ LGB families may also lack access to Family Resource Groups, which are dominated by heterosexual spouses, and the emotional support that such groups offer families.³³¹ Such is the situation at Fort Bragg, in North Carolina. There, the Association of Bragg Officers' Spouses denied the membership request of Ashley Broadway, the same-sex spouse of a Lieutenant Colonel recently assigned to Fort Bragg.³³² After Broadway submitted her request, the Association amended its by-laws to require members to have a dependent military ID, which was unavailable to Broadway.³³³

2. *Inferior Housing Assignments, Allowances, and Other Financial Benefits*

a. *Housing Assignments*

The military's own interpretation of DOMA during the DADT repeal process has effectively prohibited LGB families from living on-post—a significant handicap.³³⁴ Yet DOMA also presents several more nuanced housing problems for LGB servicemembers and their families, who must make difficult decisions about whether to live together or pursue military career goals.

The military designates certain generals and other senior positions as “key and essential personnel” whose duties require their “immediate availab[ility] on

support groups.”).

329. Catherine Welch, *A New Husband Reflects on Returning to Afghanistan*, NPR (Jan. 14, 2011), <http://www.npr.org/2011/01/14/132930179/a-new-husband-reflects-on-returning-to-afghanistan> (stating that “spouses are ‘taken more seriously when [they’re the] wife, compared to the girlfriend.’”).

330. See *supra* Part IV.B.1.

331. See *supra* Part III.A.2-3.

332. Bill Briggs, *Same-Sex Wife of Army Officer Banned from Joining Fort Bragg Spouses Club*, NBCNEWS.COM (Dec. 14, 2012), http://usnews.nbcnews.com/_news/2012/12/14/15889461-same-sex-wife-of-army-officer-banned-from-joining-fort-bragg-spouses-club?lite. See also Ashley Broadway, *Denied Because I'm a Same-Sex Spouse? An Open Letter to the President of the Association of Bragg Officers' Spouses*, HUFFINGTON POST (Dec. 11, 2012), http://www.huffingtonpost.com/ashley-broadway/association-of-bragg-officers-spouses-same-sex-military-spouse-denied-membership_b_2277589.html.

333. Briggs, *supra* note 332.

334. To clarify, on-post housing falls under a category of benefits under which current military regulations do not recognize same-sex partners, yet are not statutorily precluded from recognizing same-sex partners. The working group recommended that military family housing (on-post housing) be excluded from becoming a member-designated benefit. U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 144-45.

the installation due to military necessity.”³³⁵ Housing regulations state that such servicemembers must “[t]herefore . . . reside in Government housing.”³³⁶ Key and essential personnel vary by post³³⁷ but typically include the senior leaders for the post and for the units stationed there.³³⁸ Housing regulations recommend that generals and their spouses not only live on base,³³⁹ but conduct inspections together,³⁴⁰ and the military authorizes an additional allowance for furnishings related to the generals’ entertainment responsibilities.³⁴¹

Because DOMA prevents LGB spouses from living on-post, LGB servicemembers who are offered key and essential positions that require on-post living have to choose between two terrible options: decline a prominent position, which will likely hamper their future career, or accept the position, move on-post, and live apart from their spouse. Accordingly, LGB servicemembers selected to command a brigade or battalion might enthusiastically accept such positions at Fort Hood, which does not consider brigade or battalion commanders to be key or essential personnel who must live on Fort Hood. Yet those same LGB servicemembers might decline identical positions at Fort Campbell, Fort Carson, or Fort Drum, which all consider brigade and battalion commanders to be key or essential personnel who must live on-post.³⁴²

DOMA also affects LGB military families in the context of assignments outside the United States. Currently, U.S. Army Europe requires servicemembers in the grade of E6 (staff sergeant) or below to live on-post, and U.S. Army

335. U.S. Dep’t of Army, Reg. 210–50, Housing Management ¶ 3–11a (1999).

336. *Id.* ¶ 3–11a.

337. *Id.* (“Key and essential positions as established by the installation commander.”).

338. *E.g.*, III CORPS & FORT HOOD PAMPHLET 210–48, KEY AND ESSENTIAL PERSONNEL HOUSING AND FAMILY HOUSING ASSIGNMENT POLICIES ¶ 1–4 (2010), *available at* <http://www.hood.army.mil/dhr/pubs/fhpam210-48.pdf> (listing key and essential personnel for post); Fort Campbell, Cam Reg. 420–3, On And Off Post Family Housing Management ¶ 5 (2008) (same), *available at* http://www.campbellcrossingllc.com/files/ftcampbellfh_com/CAM%20Reg%20420-3%20On%20and%20ff%20Post%20pd%28APPROVED%20VERSION%2912NOV08.pdf; Memorandum from Mark A. Graham (Apr. 15, 2008) (same), *available at* <http://www.carson.army.mil/IG/documents/22%20Key%20Personnel.pdf>; Memorandum from Michael L. Oates (May 31, 2007) (same), *available at* http://www.fortdrummch.com/files/fortdrum_mch_com/Key%20and%20Essential%20Policy.pdf.

339. U.S. Dep’t of Army, Reg. 210–50, Housing Management ¶¶ 13–9c, 13–26a (1999). *E.g.*, FORT BENNING DIRECTORATE OF FAMILY AND MORALE, WELFARE AND RECREATION, FORT BENNING’S SELF-GUIDED TOUR, *available at* <http://www.benningmwr.com/documents/Tour.pdf> (last visited Sept. 29, 2012) (describing Riverside, the home of the Fort Benning Commandant); Vince Little, *Riverside Marks its 100th Year at Benning*, U.S. ARMY (June 13, 2009), http://www.army.mil/article/22649/Riverside_marks_its_100th_year_at_Benning/ (same); *Home of the Commandants*, U.S. MARINE CORPS, <http://www.marines.mil/unit/barracks/pages/homeofthecommandants.aspx> (last visited Jan. 2, 2012) (describing the home of the Commandant of the Marine Corps); III CORPS & FORT HOOD PAMPHLET 210–48, KEY AND ESSENTIAL PERSONNEL HOUSING AND FAMILY HOUSING ASSIGNMENT POLICIES ¶ 2–1 (2010), *available at* <http://www.hood.army.mil/dhr/pubs/fhpam210-48.pdf> (listing the homes for specific positions).

340. U.S. Dep’t of Army, Reg. 210–50, Housing Management ¶¶ 13–38 (1999).

341. *Id.* at app. J.

342. *See supra* note 335 (describing key and essential personnel for various posts).

Europe provides housing for them and their families.³⁴³ Yet DOMA prevents LGB servicemembers E6 and below (along with all other LGB servicemembers) from residing on-post with their spouses or partners. As a result, LGB servicemembers assigned to locations in Europe must either pay the additional costs of renting off-post lodging or remain separated from their families, who would have to stay in the United States. Similarly, U.S. Army Korea limits on-post housing to command-sponsored families, a designation unavailable to LGB military families because of DOMA.³⁴⁴ Thus, senior LGB servicemembers eligible for command-sponsored tours to Korea will not be able to bring their families, unlike their heterosexual peers selected for command-sponsored tours.

Finally, DOMA affects the living arrangements of LGB dual military families. In general, the military tries to assign servicemembers married to one another to the same locations and deployments.³⁴⁵ Yet because the military does not recognize same-sex marriages, LGB military families do not receive such consideration.

b. Housing Allowances and Other Financial Benefits

As explained below, married servicemembers receive larger housing allowances and greater overall financial assistance than unmarried servicemembers. Because DOMA prevents the military from recognizing same-sex marriages, LGB military families are unable to receive the higher monetary benefits available to families.

To illustrate, let us return to the example of Colonel Wallace, the previously mentioned guest at the 2012 State of the Union,³⁴⁶ and her same-sex partner, Kathy Knopf.³⁴⁷ Colonel Wallace's monthly housing allowance is \$2,748; if the military recognized her marriage, her monthly housing allowance would increase by \$516 to \$3,264.³⁴⁸ If Colonel Wallace were to complete a standard three-year tour at the Pentagon, she would be short \$18,576 in a tax-free allowance that her

343. *Housing*, U.S. ARMY GARRISON BADEN-WUERTEMBERG, <http://www.bw.eur.army.mil/Newcomers/housing.html> (last visited Jan. 2, 2012).

344. *Housing, Active Duty Military*, U.S. ARMY GARRISON HUMPHREYS, <http://humphreys.korea.army.mil/Military-Housing> (last visited Jan. 2, 2012); *Housing FAQs*, U.S. ARMY GARRISON HUMPHREYS, <http://humphreys.korea.army.mil/Housing-FAQs> (last visited Jan. 2, 2012). In February 2013, the military announced that it would extend benefits to servicemembers which "may" include housing privileges. Ernesto Londoño, *Pentagon to Extend Certain Benefits to Same-Sex Spouses*, WASH. POST (Feb. 5, 2013), http://www.washingtonpost.com/world/national-security/pentagon-to-extend-certain-benefits-to-same-sex-spouses/2013/02/05/3f68a638-6fc6-11e2-ac36-3d8d9dcaa2e2_story.html.

345. *See supra* note 131.

346. *See supra* Introduction.

347. Housing allowances are tax-free subsidies to servicemembers who do not receive government-provided housing to offset the cost of housing. *See supra* Part IV.C.1.a.

348. BAH Calculator, DEFENSE TRAVEL MGMT. OFFICE., <http://www.defensetravel.dod.mil/site/bahCalc.cfm> (last updated June 18, 2012) (enter 22101 for zip code [McLean's zip code] and O-6 for rank).

fellow colonels in heterosexual marriages would receive.

If Colonel Wallace deploys to Afghanistan, as her White House biography suggests she may,³⁴⁹ she and Kathy will not receive the additional \$225 monthly family separation allowance that their peers in opposite-sex marriages would receive.³⁵⁰ Yet Kathy experiences the same hardships that all other servicemembers' spouses face.

Moreover, because the military does not recognize same-sex marriage, Colonel Wallace cannot add Kathy to her health insurance.³⁵¹ Nor could Kathy take advantage of the tuition assistance available to spouses, valued at up to \$4,000.³⁵²

3. Lack of Access to Support Services

The military offers an array of support services to families, ranging from financial planning to marriage counseling.³⁵³ Yet LGB families may not have access to many of those services, particularly if they are consolidated in an on-base Family Resource Center.³⁵⁴ To return to the example of Colonel Wallace and Ms. Knopf: because Ms. Knopf is currently unable to obtain a military ID, she cannot shop on her own at the Fort Meyer Commissary for groceries or the Fort Meyer Post Exchange for household goods.³⁵⁵

The obstacles DOMA creates for LGB military families are perhaps most poignantly apparent in the context of emergency military leave.³⁵⁶ A deployed LBG servicemember cannot take leave to attend the funeral of his or her civilian, same-sex spouse. Due to DOMA, the military would not recognize the servicemember's partner as a qualifying "family member."³⁵⁷

Nevertheless, there are some services that LGB spouses and partners often receive, including servicemember-designated benefits. LGB spouses and partners can be listed as emergency contacts, given hospital visitation rights, and made beneficiaries for certain member-designated benefits, such as life insurance.³⁵⁸

349. THE WHITE HOUSE, *supra* note 1.

350. *Family Separation Allowance*, MILITARY.COM, <http://www.military.com/benefits/military-pay/family-separation-allowance> (last visited Jan. 2, 2012).

351. *See supra* note 255 and accompanying text; *supra* note 125 and accompanying text.

352. *My CAA Scholarship Home*, U.S. AIR FORCE, <https://aiportal.acc.af.mil/mycaa/Default.aspx> (last visited Dec. 24, 2012).

353. *See supra* Part IV.C.2.

354. As mentioned previously, LGB spouses and partners have difficulty even entering military bases. *See infra* Part V.B.1.

355. *See BONN supra* note 90 (describing commissaries); Amy Bushatz, *Gay Military Families Come Out and Find Acceptance*, MILITARY.COM (Sept. 17, 2012), <http://www.military.com/daily-news/2012/09/17/gay-military-families-come-out.html> (describing how one same-sex spouse was unable to enter a military installation).

356. *See* U.S. ARMY, *Leaves and Passes*, Army Reg. 600-8-10, ¶ 6-1(d) (2011).

357. Osburn, Korb & Meyer, *supra* note 62, at 1187.

358. *See supra* Part III.B.3. (describing benefits). *See also* AM. MIL. PARTNER ASSOC.,

4. Different Treatment Under the Uniform Code of Military Justice

DOMA has one less-damaging consequence for LGB military families. In the event that an LGB servicemember in a relationship commits adultery or wrongful cohabitation, that crime would not be prosecuted under the Uniform Code of Military Justice (UCMJ). While I do not advocate for criminalizing intimate relationships, I do want to highlight this issue as another example of the military's general failure to maintain the same standards and requirements for all servicemembers.

The military considers adultery to be "clearly unacceptable conduct" that "reflects adversely on the service record of the military member."³⁵⁹ As a result of adultery charges, the military discharged General Kevin Byrnes, a four-star general;³⁶⁰ it has also pursued charges of adultery against Kelly Flinn, the first woman to fly the B-52 bomber, in conjunction with other charges.³⁶¹ One element of adultery under the UCMJ is that "at the time, the accused or the other person was married to someone else."³⁶² Accordingly, the military is unable to charge LGB servicemembers in same-sex relationships with adultery.³⁶³ (It may, however, be able to charge LGB servicemembers with "fraternization" under certain circumstances.³⁶⁴)

Punishment for wrongful cohabitation is similarly impossible for LGB servicemembers in same-sex relationships. Under the UCMJ, wrongful

BENEFITS GUIDE TO LGB MILITARY FAMILIES 3-4 (2012), available at <http://militarypartners.org/ampa-benefits-guide-to-lgb-military-families/> (describing servicemember-designated benefits).

359. UCMJ art. 134-(Adultery)(c)(1) at IV-114 (2008). For arguments against criminalizing adultery in the military, see DEAN, *supra* note 62, at 27 (describing adultery as "one of the most time-honored pursuits in the military."); Martha Chamallas, *The New Gender Panic: Reflections on Sex Scandals and the Military*, 83 MINN. L. REV. 305, 343 (1998) (arguing that the potential harms of adultery do not justify its criminalization); C. Quince Hopkins, *Rank Matters But Should Marriage?: Adultery, Fraternization, and Honor in the Military*, 9 U.C.L.A. WOMEN'S L. J. 177, 202, 211, 234 (1998) (arguing that adultery should not be illegal and adultery in the military is commonplace); Christopher Scott Maravilla, *The Other Don't Ask, Don't Tell: Adultery Under the Uniform Code of Military Justice After Lawrence v. Texas*, 37 CAP. U. L. REV. 659, 660 (2009) (arguing that adultery should be decriminalized and adultery is charged arbitrarily).

360. Josh White, *4-Star General Relieved Of Duty*, WASH. POST (Aug. 10, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/09/AR2005080900515.html>.

361. *Judge Denies Delay in Air Force Adultery Court-Martial*, CNN (May 17, 1997), <http://www.cnn.com/US/9705/17/airforce.pilot/index.html>. Nevertheless, despite these examples, relatively few servicemembers are actually prosecuted for adultery. Chamallas, *supra* note 359.

362. UCMJ art. 134-(Adultery)(c)(1) at IV-114 (2008).

363. 1 U.S.C. § 7 (2006). Charging LGB servicemembers with adultery may also be problematic because while the adultery offense does not define sexual intercourse, the definition of sexual intercourse under article 120 refers to "any penetration, however slight, of the female sex organ by the penis," which excludes homosexual sex. BONN, *supra* note 90, at 265-66 (citing UCMJ art. 120).

364. LGB servicemembers may be charged with "fraternization" under circumstances similar to adultery, but only when one individual is an officer and the other individual is enlisted. UCMJ art. 134-(Fraternization)(b). Thus, a gay officer married to a civilian who cheats with a gay enlisted soldier may be charged with fraternization, but not adultery. Meanwhile, a married male officer who cheats with a female enlisted soldier may be charged with both adultery and fraternization.

cohabitation requires that “during a certain period of time, the accused and another person openly and publicly lived together as husband and wife, holding themselves out as such.”³⁶⁵

LGB servicemembers may benefit from this consequence of DOMA. However, this benefit reveals that the UCMJ is applied differently to heterosexual and LGB servicemembers. Unequal treatment under the UCMJ demonstrates on a broader level that sexual orientation is not a nonissue in the military.

Nevertheless, there are still other aspects of military legal proceedings that result in unequal treatment for LGB servicemembers. For instance, DOMA prevents LGB spouses from benefiting from evidence privileges. The Military Rules of Evidence contain a “marital privilege,” which provides that a “person has a privilege to refuse to testify against his or her spouse” in military legal proceedings.³⁶⁶ Yet DOMA prevents extending this privilege to same-sex couples.³⁶⁷ Thus, DOMA prevents the UCMJ from being uniformly applied to all servicemembers.

C. Harmful Effects of Inconsistent State Same-Sex Marriage Laws on LGB Military Families

Even if DOMA is repealed, the military can and must advocate for same-sex marriage recognition at the state level.³⁶⁸ The current variation in states’ recognition of same-sex marriage influences how LGB military families request assignments and conduct their daily affairs.³⁶⁹ In fact, LGB military families are disadvantaged twice; not only are they affected by the routine inconsistencies in state laws that affect all servicemembers, but they are also affected by the variations in states’ recognition of same-sex marriages. Simply trying to get married in the first place can depend on where LGB servicemembers are assigned.³⁷⁰

State variations in same-sex marriage law particularly impact LGB military families in the area of family law. One notable example is adoption.³⁷¹ The

365. UCMJ art. 134-(Cohabitation, Wrongful)(b).

366. MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. 502(a) (2008) [hereinafter MCM].

367. See 1 U.S.C. § 7 (2006).

368. The military has a presence in all fifty states, plus the District of Columbia. The presence can range from major installations, to ROTC programs, to recruiters. Every state, and D.C., has a National Guard, although the size of each state’s National Guard varies.

369. See *supra* Part II.B for a list of states recognizing same-sex marriages.

370. E.g., Tim Mak, *Post-‘Don’t Ask’, Gay Navy Lt. Marries*, POLITICO (Sept. 20, 2011), <http://www.politico.com/news/stories/0911/63909.html> (reporting how a gay graduate of the Navy Academy traveled with his partner to Vermont to marry, as Vermont is one of the states which recognizes same-sex marriages).

371. For an overview of adoption issues related to same-sex couples, see generally DAVID M. BRODZINSKY, THE EVAN B. DONALDSON ADOPTION INST., EXPANDING RESOURCES FOR WAITING CHILDREN III: RESEARCH-BASED BEST PRACTICES IN ADOPTION BY GAYS AND LESBIANS (2011),

military provides reimbursement for married servicemembers who adopt³⁷² and every state permits LGB individuals to adopt.³⁷³ However, states vary as to whether the same-sex spouse or partner of an LGB individual may adopt.³⁷⁴ That is, some states prevent same-sex couples from adopting, even if those states permit a single LGB individual to adopt. Thus, LGB military families assigned to states that do not permit both members of same-sex couples to adopt, such as Mississippi³⁷⁵ or Utah,³⁷⁶ are unable to take advantage of the military adoption reimbursement that is available to heterosexual military families.

Variances in state same-sex marriage law may also affect where LGB military families request their assignments. In general, servicemembers can request assignments to certain locations, subject to the needs of the military.³⁷⁷ But LGB servicemembers might be inclined to request assignments to Fort Drum, New York or Fort Meade, Maryland to benefit from those states' recognition of same-sex marriage.³⁷⁸ Conversely, LGB servicemembers may strenuously avoid assignments to Fort Stewart, Georgia, or Fort Bliss, Texas, as Georgia and Texas do not recognize same-sex marriage.³⁷⁹ Married LGB military spouses then face an additional hurdle when moving: the possibility that their marriages might not be recognized by the state to which they must move.

The lack of uniform marriage equality on the state level also causes confusion in the context of nongovernmental entities that assist military spouses, including corporations, nonprofit organizations, and universities. For example, it is unclear whether the U.S. Chamber of Commerce, which runs a "military

available at http://www.adoptioninstitute.org/publications/2011_10_Expanding_Resources_Best_Practices.pdf.

372. U.S. Dep't. Of Def., Instr. 1341.09, DoD Adoption Reimbursement Policy (Sep. 29, 2012).

373. THE EVAN B. DONALDSON ADOPTION INST., EXPANDING RESOURCES FOR WAITING CHILDREN I: ELIMINATING LEGAL AND PRACTICE BARRIERS TO GAY AND LESBIAN ADOPTION FROM FOSTER CARE 47-49 (2008), available at http://www.adoptioninstitute.org/publications/2008_09_Expanding_Resources_Legal.pdf [hereinafter DONALDSON REPORT]. Since the Donaldson Report's 2008 issuance in 2010, the Third District Court of Appeals of Florida struck down a Florida statute that prohibited homosexuals from becoming adoptive parents. *In re Gill*, 45 So. 2d 79 (Fla. Dist. Ct. App. 2010), available at http://www.aclu.org/files/assets/In_re_Gill_-_Appeals_Court_Opinion.pdf.

374. DONALDSON REPORT, *supra* note 373, at 47-49; HUMAN RIGHTS CAMPAIGN, PARENTING LAWS: JOINT ADOPTION (2011), available at http://www.hrc.org/files/assets/resources/parenting_laws_maps.pdf; HUMAN RIGHTS CAMPAIGN, PARENTING LAWS: SECOND PARENT ADOPTION, available at http://www.hrc.org/files/assets/resources/parenting_laws_maps.pdf.

375. MISS. CODE ANN. § 93-17-3(5) (West 2011) ("Adoption by couples of the same gender is prohibited.").

376. UTAH CODE ANN. § 78B-6-117(3) (West 2011) ("A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state."). *See id.* § 30-1-2(5) (prohibiting marriages "between persons of the same sex.").

377. U.S. Dep't of Army, Reg. 614-100, Officer Assignment Policies, Details, And Transfers ¶ 1-6(D)(2), 5-3 (2006); U.S. Dep't of Army, Reg. 614-200, Enlisted Assignments And Utilization Management ¶ 5-20 to ¶ 5-25 (2011).

378. *See supra* Part II.B.

379. *Id.*

spouse business alliance” and job fairs for military spouses, defines “spouse” as a person with a dependent military ID; if it does, it would exclude LGB military spouses.³⁸⁰ Similarly, some colleges that provide discounted tuition rates to military spouses do not state whether they would do so for LGB spouses.³⁸¹ Likewise, the organizations that support veterans, wounded servicemembers, and their families are silent as to whether same-sex spouses are eligible to participate.³⁸² There are, however, some large businesses that do provide benefits to same-sex spouses and partners.³⁸³

Differences between states’ same-sex marriage laws also affect the National Guard. The National Guard serves both the state and the federal government.³⁸⁴ The governor of each state controls that State’s National Guard until the Guard is federally mobilized.³⁸⁵ If DOMA is repealed but state bans of same-sex marriage remain, problems for the families of LGB guardmembers could ensue. For example, some states provide that servicemembers of their state National Guard who are called to state active duty³⁸⁶ will receive the same pay and allowances as

380. *Military Spouse Program*, U.S. CHAMBER OF COMMERCE, <http://www.uschamber.com/hiringourheroes/military-spouse-business-alliance-msba> (last visited Sep. 29, 2012); Karen Jowers, *Huge Spouse Job Fair Set for D.C. on Friday*, ARMY TIMES (Jan. 12, 2012), <http://www.armytimes.com/news/2012/01/military-spouse-job-fair-washington-011211w/>.

381. *Military Spouse Program*, *supra* note 380; Karen Jowers, *Huge Spouse Job Fair Set for D.C. on Friday*, ARMY TIMES (Jan. 12, 2012), <http://www.armytimes.com/news/2012/01/military-spouse-job-fair-washington-011211w/>.

382. *Join*, AMERICAN VETERANS NATIONAL LADIES AUXILIARY, <http://www.amvetsaux.org/join.htm> (last visited Sep. 4, 2012) (providing membership criteria for wives of servicemembers); *The Ladies Auxiliary*, THE MILITARY ORDER OF THE PURPLE HEART, <http://www.purpleheart.org/LAMOPH/default.aspx> (last visited Sep. 4, 2012) (same); *Family Support Retreat*, WOUNDED WARRIOR PROJECT, <http://www.woundedwarriorproject.org/programs/family-support/family-support-retreat.aspx> (last visited Sep. 4, 2012); *Alumni and Family Support Registration*, WOUNDED WARRIOR PROJECT, <http://www.woundedwarriorproject.org/programs/alumni-and-family-caregiver-registration.aspx> (last visited Sep. 4, 2012) (same). Moreover, several veterans’ organizations are federally chartered and DOMA may, therefore, prohibit them from recognizing same-sex spouses. *E.g.*, Gold Star Wives of America, 36 U.S.C. § 80502(a) (2006); Navy Wives Clubs of America, 36 U.S.C. § 154502(a) (2006).

383. *See Best Places to Work 2012*, HUMAN RIGHTS CAMPAIGN, <http://www.hrc.org/resources/entry/best-places-to-work-2012> (last visited Sep. 29, 2012).

384. *Guard Basics*, U.S. NAT’L GUARD, <http://www.nationalguard.com/guard-basics> (last visited Sep. 29, 2012) (“The National Guard serves both state and federal governments. The difference between the Guard and other branches is that while Guard units . . . can be deployed overseas, they are just as likely to serve in their home communities.”). For example, my unit in the Pennsylvania Army National Guard was mobilized into federal service to deploy to Iraq in 2009 and was activated by the Governor to respond to flooding from a hurricane in 2011 and a snowstorm in 2012.

385. *E.g.*, TENN. CODE ANN. § 58-1-106(a) (2011) (“The governor shall have the power . . . to order into the active service of the state . . . all or any part of the national guard.”); *id.* at § 58-1-108 (“The governor is authorized and empowered to call individual members of the national guard to active state duty with their consent.”).

386. State active duty is different than federal active duty for the Guard. From my personal experience, an example of the former is when my Guard unit responded to natural disasters; an example of the latter is when my Guard unit deployed to Iraq.

their federal active duty equivalent.³⁸⁷ If DOMA is repealed, the active duty equivalent would authorize a higher rate for married LGB guardsmen,³⁸⁸ yet the state might not recognize same-sex marriage.³⁸⁹

The inconsistencies in states' recognition of same-sex marriages will likely increase the workload for Judge Advocates General (JAGs) and burdens for LGB military families.³⁹⁰ It is in the military's interest to reduce these inconsistencies and the hardship they cause by advocating for state-level marriage equality.

D. Potential Arguments Against Military Advocacy for Same-Sex Marriage Recognition, and Why They Are Unavailing

I have shown that, through the DADT repeal, the military has come to view sexual orientation as a nonissue in military life.³⁹¹ In addition, I have detailed the military's historic support for military families in general.³⁹² To make good on its promises, the military must support all military families, regardless of sexual orientation. Yet DOMA and inconsistent state same-sex marriage laws prevent the military from doing so.³⁹³ The military must advocate for marriage equality to ensure that LGB military families receive the equal treatment they need and deserve.

This Part addresses two potential arguments that critics might raise in response to this article: that marriage equality would be too costly for the Department of Defense, and that it would be inappropriate for the military to enter this seemingly political debate.³⁹⁴

1. The Financial Cost of Marriage Equality

Critics of my argument may highlight the additional cost of providing benefits to LGB military families as the Department of Defense (DOD) budget decreases.³⁹⁵ The DADT working group estimated that the cost of changing all military benefits to member-designated benefits, which would include LGB

387. COLO. REV. STAT. § 28-3-904 (2011) (Colorado National Guard members called to state active duty are entitled to receive the same pay and allowances as members of "similar rank and length of service in the regular Army."); DEP'T OF MIL. VETS. AFF., REG. 612: COLORADO NATIONAL GUARD STATE ACTIVE DUTY app. J at 37 (2010), *available at* <http://www.dmva.state.co.us/pages/51/data/00514CA2529C1256.pdf> (same); TENN. CODE ANN. § 58-1-109 (West 2011) (same); UTAH CODE ANN. § 39-1-51(1)(a) (West 2011) (same).

388. *See supra* Part IV.C.1.b.

389. *E.g.*, COLO. REV. STAT. ANN. § 14-2-104(1)(b) (West 2011) (defining marriage as one man and one woman). *See supra* Part II.A.2.

390. Bonn, *supra* note 90, at 248–49.

391. *See supra* Part III.

392. *See supra* Part IV.

393. *See supra* Part V.B–C.

394. I do not respond to arguments made in favor of resurrecting DADT, as that is now moot.

395. *See supra* note 32.

spouses and partners, would be \$30 to \$40 million annually.³⁹⁶ Major Bunn, an Army JAG, argued that “it will be impossible to plan” for the costs of providing housing allowances to LGB military families.³⁹⁷ Major Bunn expressed concern that if same-sex marriage were recognized, LGB civilians would marry LGB servicemembers in order to receive military health care benefits.³⁹⁸

The best response to this argument was supplied by Major Kesler, another Army JAG. As Major Kesler noted, there is currently no limitation on the number of heterosexual servicemembers who can marry, nor is there any DOD policy restricting marriage to a certain percentage of servicemembers.³⁹⁹ Heterosexual couples are permitted to marry for many reasons (including to receive military health care benefits), and military benefits are automatically conferred upon marriage in all cases.⁴⁰⁰ Ultimately, cost is not relevant in the context of heterosexual military marriages, and the same should hold true for LGB military marriages.

2. Political Impropriety

Opponents of my argument may also claim that it is improperly political for the military to enter the national discourse on same-sex marriage, which is better left to partisan debate at the federal and state levels. Indeed, the military has historically emphasized its nonpartisan nature.⁴⁰¹ For instance, Army regulations caution that “officials shall not . . . engage in any activity that could be interpreted as associating the U.S. Army with particular partisan causes or candidates.”⁴⁰²

Yet the military has previously commented on seemingly political social policies that have affected military readiness. In fact, it has taken civil rights positions that entire states have actively opposed. For example, when the military integrated African-Americans,⁴⁰³ the DOD placed African-American children into DOD schools six years prior to *Brown v. Board of Education*.⁴⁰⁴ The military also recognized interracial marriages at a time when most states outlawed them.⁴⁰⁵

More recently, military commanders have commented on the need for diversity and affirmative action in schools. In 2003, the Supreme Court cited the

396. U.S. DEP’T OF DEF., REPORT, *supra* note 67, at 151.

397. Bonn, *supra* note 90, at 227.

398. *Id.* at 234–35.

399. Kesler, *supra* note 81, at 302.

400. *Id.*

401. See U.S. Dep’t of Def. Directive 1344.10, Political Activities by Members of the Armed Forces (Feb. 19, 2008); U.S. Dep’t of Army, Reg., 600-20, Army Command Policy ¶ 5-3 (2012).

402. U.S. Dep’t of Army, Reg., 1-20, Legislative Liaison ¶ 2-1 (2004).

403. Exec. Order No. 9981 (July 26, 1948).

404. 347 U.S. 483 (1954).

405. Kesler, *supra* note 81, at 358.

brief of “high-ranking retired officers and civilian leaders of the United States military” who expressed their concerns that eliminating educational affirmative action plans would hamper the military.⁴⁰⁶

Finally, the military has already become part of the political conversation by not providing benefits to LGB military families. Denying benefits is arguably as much of an action as providing benefits would be.

VI.

HOW THE MILITARY CAN ADVOCATE FOR MARRIAGE EQUALITY

To support all military families, the military must assume a leadership role in the fight for nationwide marriage equality. In this Part, I will demonstrate *how* the military can conduct this advocacy. I acknowledge that I am not an expert in legislative advocacy, and my suggestions are few and modest.

First, I explain why I believe the most appropriate method of advocacy at the federal level⁴⁰⁷ is testimony before Congress.⁴⁰⁸ Second, I propose several possible themes to highlight in that testimony, including the link between marriage equality and military readiness; comparisons to policies in other nations; and army values.⁴⁰⁹

A. Testimony Before Congress

The military frequently testifies before Congress. Army regulations even encourage contact between army officials and members of Congress.⁴¹⁰ In 2010, the military testified that repealing DADT, then a U.S. law, would not impact military readiness.⁴¹¹ It would therefore be appropriate and powerful for the military to testify before Congress in support of same-sex marriage.

Of course, the military has not always been successful in getting the attention of legislators. For example, the military has been unable to pressure Congress to provide soldiers with additional equipment.⁴¹² It is therefore imperative that the military use particularly moving and effective advocacy strategies to promote same-sex marriage.

406. *Grutter v. Bollinger*, 539 U.S. 306, 331 (2003).

407. I do not address advocacy at the state level.

408. See *infra* Part VI.A.

409. See *infra* Part VI.B.

410. U.S. Dep’t of Army, Reg., 1-20, Legislative Liaison ¶ 2-1 (2004).

411. See Bumiller, *supra* note 139.

412. However, whether Congress pays proper attention to military testimony is a different subject entirely. See Dana Milbank, *Troops Need Equipment? Let ‘Em Drink Beer*, WASH. POST (Mar. 3, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/02/AR2011030206041.html>.

B. Possible Themes for Congressional Testimony

What follows are a number of themes that might assist the military in making a successful argument for marriage equality before Congress.

1. Military Readiness

In testimony before Congress, the military can focus on the link between marriage equality for servicemembers and military readiness. The military already has significant evidence to demonstrate the correlation between family readiness and military readiness.⁴¹³

Concern over military readiness has previously shaped national policy significantly. For example, military studies on malnutrition in American schoolchildren led the federal government to subsidize school meals, to ensure that schoolchildren would be physically fit to enter military service.⁴¹⁴ In addition, President Eisenhower's experience with military convoys helped create the interstate highway system, and the highway system continues to reflect defense needs.⁴¹⁵ Military readiness is a goal that can motivate policymakers, and it could be an effective theme in promoting same-sex marriage recognition.

2. Comparative Perspective

In Congressional testimony, the military should also reference the same-sex marriage policies of other nations. In its study before the DADT repeal, RAND examined the experiences of countries that allow LGB servicemembers to openly serve: Australia, Canada, Germany, Israel, Italy, the Netherlands, and the United Kingdom.⁴¹⁶ None of those countries reported problems with recruiting, retention, or performance, and they noted that LGB servicemembers were able to

413. See *supra* Part III.B.

414. See National School Lunch Act, Pub. L. 79-396, 60 Stat. 230 (1946) §2, available at <http://www.kosd.org/education/components/scrapbook/default.php?sectiondetailid=2074> (noting school lunch act is "a measure of national security").

415. *Highway Systems*, MILITARY SURFACE DEPLOYMENT & DISTRIB. COMMAND, TRANS. ENGINEERING ACTIVITY, <http://www.tea.army.mil/dodprog/hnd/systems.htm> (last modified Oct. 2, 2008); See 23 C.F.R. § 470.107(b)(3) (2011).

416. RAND, *supra* note 45, at 275. See also Suzanne B. Goldberg, *Open Service and Our Allies: A Report on the Inclusion of Openly Gay and Lesbian Servicemembers in U.S. Allies' Armed Forces*, 17 WM. & MARY J. WOMEN & L. 547, 557 (2011) (reporting no problems have arisen in the militaries of Australia, Canada, Israel, and the U.K. when they began allowing LGB servicemembers to openly serve). Aside from Italy, these countries all provide for at least some same-sex benefits either through same-sex marriages, civil partnerships (the functional equivalent), or via court rulings. RAND, *supra* note 45, at 311. Their military benefits evolved over time and followed national legislation. *Id.* at 314. In contrast, Bulgaria, Jordan, Poland, Turkey, and the United Arab Emirates exclude LGB servicemembers or prohibit them from openly serving. U.S. DEP'T OF DEF., REPORT, *supra* note 67, at 89.

devote their full attention to their job.⁴¹⁷ The British and Australian militaries additionally provide on-post housing for same-sex couples.⁴¹⁸

3. *Army Values*

In its statement accompanying the DADT Repeal Act, the military emphasized the seven Army values: loyalty, duty, respect, selfless service, honor, integrity, and personal courage.⁴¹⁹ Together, these values spell the acronym, "LDRSHIP."⁴²⁰ The military rightly views itself as a leader and a national role model, and it should apply its values to further the cause of marriage equality.

The military can urge Congress to show respect for the immense contributions of LGB military families and properly honor their service. It should emphasize the integrity inherent in equal treatment for all families. It should highlight the tremendous loyalty and personal courage that LGB military families have demonstrated in the face of personal and professional adversity.

VII.

CONCLUSION

Kathy Knopf⁴²¹ and Tracey Hepner⁴²² are military spouses; they experience the joys, worries, and hardships that are common to all military spouses and the military family experience. However, they are not full members of the military community simply because their military spouses are of the same-sex. Because they are LGB military families, they are unable to receive the same benefits and services that the military community provides to other military families. This occurs despite the military's expressed commitment to families⁴²³ and its emphasis that sexual orientation should be a nonissue.⁴²⁴

The military developed its more inclusive position on sexual orientation over time. I have detailed the old Don't Ask, Don't Tell policy from its beginning⁴²⁵ to its examination by the working group⁴²⁶ to the repeal process, which cast sexual orientation as a nonissue.⁴²⁷

417. RAND, *supra* note 45, at 275.

418. Osburn, Korb, & Meyer, *supra* note 62, at 1200.

419. Chandler, Ordierno, & McHugh, *supra* note 10; see also *Army Values*, U.S. ARMY, <http://www.army.mil/values/> (last visited Jan. 2, 2012) (describing the army values).

420. See *Army Values*, *supra* note 419. See generally U.S. Dep't of Army, Reg. 600-100, *Army Leadership* (2007) (describing Army's policy for developing leaders); U.S. Army, *Army Field Manual 6-22 Army Leadership* (2006) (same).

421. See *supra* Introduction.

422. See *id.*

423. See *supra* Part IV.

424. See *supra* Part III.

425. See *supra* Part III.A.

426. See *supra* Part III.B.

427. See *supra* Part III.C.

The military has also evolved on the issue of family. It went from preferring single servicemembers to embracing families, recognizing the strong relationship between military readiness and family readiness.⁴²⁸ Now, in the modern military, families, spouses, and servicemembers all work together to support each other.⁴²⁹ The military, recognizing this relationship, provides a variety of financial, social, and other support to military families.⁴³⁰

Yet the Defense of Marriage Act⁴³¹ and various state laws⁴³² prevent sexual orientation from being a true nonissue for LGB military families. As one same-sex spouse wrote, “Gay military spouses sacrifice just as much as their straight brothers and sisters Despite this, we are denied the support and safety nets afforded our straight counterparts.”⁴³³ He asked, “Why should [LGB servicemembers] and their partners be treated as second-class citizens?”⁴³⁴

The United States Military must lead in advocating for marriage equality at the federal and state levels, through testimony before Congress or other means.⁴³⁵ Only when it does so can it support all military families.

428. See *supra* Part IV.A.

429. See *supra* Part IV.B.

430. See *supra* Part IV.C.

431. See *supra* Part V.B.

432. See *supra* Part V.C.

433. Laurence Watts, *DADT Gone, But Unequal Treatment of Gays Still Here*, CNN (Sept. 20, 2011), http://www.cnn.com/2011/09/20/opinion/watts-dadt-equality/index.html?hpt=hp_bn9.

434. *Id.* See also Tracy Johnson, *A Law that Adds to Gay Military Widows' Grief*, WASH. POST (Feb. 10, 2013), http://www.washingtonpost.com/opinions/defense-of-marriage-act-adds-to-gay-military-widows-grief/2013/02/10/a687ebfa-722b-11e2-8b8d-e0b59a1b8e2a_story.html (describing how a military widow was denied the ceremonies and survival benefits available to surviving spouses, because the widow and spouse were of the same-sex).

435. See *supra* Part VI.

