
Following Supreme Court Ruling Against DOMA, Federal Court Blocks Additional Laws Barring Same-Sex Couple's Right to Veterans Benefits

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A federal judge declared unconstitutional sections of Title 38 – a statute that prevents the US Department of Veterans Affairs (VA) from granting equal benefits to gay and lesbian veterans and their spouses, following the Supreme Court's decision last month declaring the Defense of Marriage Act (DOMA) unconstitutional. The case, *Cooper-Harris v. USA*, is the first to declare that veterans benefits must be provided to a married veteran no matter the sex of her or his spouse.

On May 17, attorneys from WilmerHale and the Southern Poverty Law Center (SPLC) argued on behalf of disabled US Army veteran Tracey Cooper-Harris and her wife Maggie, asking United States District Judge Consuelo B. Marshall to block portions of DOMA and Title 38, which both define "spouse" as "a person of the opposite sex who is a man or a woman." Both DOMA and Title 38, the latter of which specifically governs veterans benefits, prevent veterans in legal same-sex marriages and their spouses from receiving benefits they would otherwise receive if they were married to someone of a different sex. On June 26, the Supreme Court struck down DOMA in *USA v. Windsor*. In a ruling issued yesterday, Judge Marshall declared the Title 38 sections unconstitutional, finding there is no military

purpose that could justify discriminating against veterans with same-sex spouses and that Title 38 is not rationally related to the military's commitment to caring for veteran families.

“We asked the court to declare these laws unconstitutional so that the federal government can honor Tracey's service and Maggie's sacrifice by providing them the same benefits other married veterans and their spouses routinely receive,” said Caren Short, staff attorney for the SPLC. “Our nation has a proud history of honoring service members and their families for their sacrifices; all who have served honorably must be treated fairly by our government when their service is complete. We are gratified that the court agreed.”

Tracey is a veteran of both Operations Enduring Freedom and Iraqi Freedom. In 2010, she was diagnosed with multiple sclerosis—a disabling disease that attacks the brain and central nervous system, for which there is no known cure. The VA determined her multiple sclerosis, as well as post-traumatic stress disorder, to be connected to her military service. As a result, Tracey receives disability compensation from the VA.

Because of the court's ruling, Tracey and Maggie are now eligible for a number of benefits, including additional disability compensation and the right to be buried together in a state or national veterans cemetery. These benefits, and many others, are routinely provided to heterosexual married veterans and their spouses.

“This ruling confirms that the Constitution requires equal treatment of gay and lesbian veterans; Title 38's outdated and unfair definition of ‘spouse’ cannot stand,” said [Adam Romero](#), senior associate at WilmerHale, who argued the case to Judge Marshall. “No military or other rationale justifies

discriminating against veterans with same-sex spouses.”

The couple is a working-class family on a limited budget. Maggie is an apprentice at an electricians union, and Tracey is a graduate student who only recently got a job with the local VA. With yesterday’s ruling, the additional benefits earned through Tracey’s years of military service will offset some of the economic strain resulting from Tracey’s medical condition and enable the couple to pay for measures Tracey’s doctor has recommended to slow the progression of her multiple sclerosis.

“Maggie and I have waited so long to receive the same benefits other married veterans and their spouses receive,” Tracey said. “We are overjoyed that the court has ended the federal government’s discrimination against gay and lesbian veterans and their spouses. Judge Marshall’s ruling confirms that the service of gay and lesbian veterans and the sacrifices of their spouses are valued equally in the eyes of the law.”

The *Cooper-Harris* case is the first to decide whether married gay and lesbian veterans and their spouses should receive the same benefits as their heterosexual counterparts. WilmerHale, which is handling the case on a [pro bono](#) basis, and the SPLC filed this federal lawsuit on behalf of the couple in February 2012.

A video detailing how the Defense of Marriage Act and Title 38 are harming veterans and their families can be viewed at <http://www.splcenter.org/get-informed/news/doj-says-it-will-not-defend-law-denying-spousal-benefits-to-veterans-in-same-sex-m>.