
Lawsuit Challenges Defense of Marriage Act, Dept. of Veterans Affairs for Refusing to Recognize Legally Married Same-Sex Couples

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The US Department of Veterans Affairs' (VA) refusal to grant equal disability benefits to an Army veteran in a same-sex marriage is a violation of the veteran's constitutional rights, according to a federal lawsuit filed today by the Southern Poverty Law Center (SPLC) and the law firm of WilmerHale.

The suit, filed in Los Angeles on behalf of veteran Tracey Cooper-Harris and her spouse, Maggie Cooper-Harris, challenges the federal Defense of Marriage Act (DOMA) and the statute that governs the VA policy. It can be read at www.splcenter.org.

"The government's refusal to grant these benefits is a slap in the face to the gay and lesbian service members who put their lives on the line to protect our nation and our freedoms," said Christine P. Sun, deputy legal director for the SPLC. "Especially given the recent repeal of Don't Ask Don't Tell, it's shocking that the federal government continues to demean Tracey's years of service and the service of many others in this way."

While in the Army, Tracey reached the rank of sergeant and served in Kyrgyzstan and Kuwait in support of Operation Enduring Freedom and Operation Iraqi Freedom. She received more than two dozen medals and commendations and was honorably discharged in 2003.

Five years later, she married her partner, Maggie, in Van Nuys, California. In 2010, Tracey was diagnosed with multiple sclerosis (MS), which the VA has determined is connected to her military service. There is no known cure for MS, a disabling disease that attacks the brain and central nervous system.

Tracey received disability benefits, but the VA denied her application for additional compensation to which married veterans are entitled – benefits meant to help ensure financial stability for spouses – even though her marriage is legally recognized in California. The denial also means the couple will

not be permitted to be buried together in a national veteran's cemetery.

The VA's decision was based on its definition of a spouse, spelled out in federal law, as "a person of the opposite sex who is a wife or a husband." Even if the VA were to change its definition of spouse, DOMA would prevent the VA from approving the benefits because it defines marriage for all federal purposes as "a legal union between one man and one woman as husband and wife."

"I dedicated 12 years of my life to serving the country I love," Tracey said. "I'm asking only for the same benefits the brave men and women who served beside me enjoy. By refusing to recognize our marriage, the federal government has deprived Maggie and me of the peace of mind that such benefits are meant to provide to veterans and their families."

The lawsuit, filed in the US District Court for the Central District of California, charges that DOMA is unconstitutional because it discriminates on the basis of gender and sexual orientation. It also challenges the VA's definition of "spouse" as discriminatory.

"This discriminatory policy devalues the military service of countless Americans, solely on the basis of their sexual orientation," said [Randall R. Lee](#), partner-in-charge of WilmerHale's [Los Angeles office](#), which is handling the case on a [pro bono](#) basis. "It sends a disturbing message to gay and lesbian service members that the courage, commitment and sacrifice they make on behalf of their country are not valued as much as the service of heterosexual military veterans."

This is not the first time the SPLC has fought for equal benefits for military personnel. In the early 1970s, the SPLC challenged the military's refusal to grant equal benefits to married servicewomen. Joseph Levin, SPLC's co-founder, argued the case—*Frontiero v. Richardson*—before the US Supreme Court in 1973. The Court held that the military must provide married women in the armed forces with the same benefits as married men. It was the first successful sex discrimination lawsuit against the federal government.

"More than four decades ago, we fought on behalf of female service members when the military refused to provide them the same benefits as male service members," Levin said. "Sadly, we are once again forced to fight for the equal treatment of service members and their families. All service members and their families make the same commitment and sacrifices for their country. They all should receive the same benefits."

The SPLC released a video today that provides additional information about the case and the Cooper-Harris couple. The video can be viewed at www.splcenter.org.

Other attorneys on the case include Caren Short of the SPLC and [Matthew Benedetto](#), [Daniel Noble](#) and [Eugene Marder](#) of WilmerHale.