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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRACEY COOPER-HARRIS and
MAGGIE COOPER-HARRIS,

Plaintiffs,

v.

UNITED STATES OF AMERICA;
ERIC H. HOLDER, JR., in his official
capacity as Attorney General; and
ERIC K. SHINSEKI, in his official capacity
as Secretary of Veterans Affairs,

Defendants.

Case No. **CV 12 0887**-CBM
(ASX)
**COMPLAINT FOR
DECLARATORY,
INJUNCTIVE, AND OTHER
RELIEF**

**[Violation of Equal Protection
under the Fifth Amendment
to the U.S. Constitution]**

PRELIMINARY STATEMENT

1. This is an action by a disabled and decorated United States Army veteran and her same-sex spouse, who seek recognition by the U.S. Department of Veterans Affairs ("VA") of their lawful marriage so that they may receive the same benefits afforded to other married veterans and their spouses.

2. Plaintiff Tracey Cooper-Harris ("Tracey") served honorably in the United States Army for approximately twelve years, nine in active duty, reaching the rank of Sergeant. In 2002, Tracey was deployed to Kyrgyzstan in support of Operation Enduring Freedom, and in 2003 Tracey was stationed in Kuwait in support of

Wilmer Cutler Pickering Hale and Dorr LLP
350 South Grand Avenue, Suite 2100
Los Angeles, California 90071

1 JOSEPH J. LEVIN, JR. (*pro hac vice motion pending*)
joe.levin@splcenter.org

2 CHRISTINE P. SUN (SBN 218701)
christine.sun@splcenter.org

3 CAREN E. SHORT (*pro hac vice motion pending*)
caren.short@splcenter.org

4 SOUTHERN POVERTY LAW CENTER
400 Washington Avenue
5 Montgomery, AL 36104
Telephone: (334) 956-8200
6 Facsimile: (334) 956-8481

7 RANDALL R. LEE (SBN 152672)
randall.lee@wilmerhale.com

8 MATTHEW BENEDETTO (SBN 252379)
matthew.benedetto@wilmerhale.com

9 WILMER CUTLER PICKERING HALE AND DORR LLP
350 South Grand Avenue, Suite 2100
10 Los Angeles, CA 90071
Telephone: (213) 443-5300
11 Facsimile: (213) 443-5400

12 DANIEL S. NOBLE (*pro hac vice motion pending*)
daniel.noble@wilmerhale.com

13 WILMER CUTLER PICKERING HALE AND DORR LLP
399 Park Avenue
14 New York, NY 10022
Telephone: (212) 230-8800
15 Facsimile: (212) 230-8888

16 EUGENE MARDER (SBN 275762)
eugene.marder@wilmerhale.com

17 WILMER CUTLER PICKERING HALE AND DORR LLP
950 Page Mill Road
18 Palo Alto, California 94304
Telephone: (650) 858-6000
19 Facsimile: (650) 858-6100

20 Attorneys for Plaintiffs
TRACEY COOPER-HARRIS and MAGGIE COOPER-HARRIS
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1 Operation Iraqi Freedom, from which she was sent on frequent missions into Iraq.
2 For Tracey's distinguished service to the military and our nation, the United States
3 government awarded her with over two dozen medals and commendations, including
4 three Army Commendation medals, five Army Achievement Medals, two Army Good
5 Conduct Medals, and one Air Force Commendation Medal. In 2003, Tracey
6 completed her military service and received an honorable discharge.

7 3. In November 2008, Tracey married her same-sex spouse, plaintiff
8 Maggie Cooper-Harris ("Maggie"), in Van Nuys, California. The State of California
9 legally recognizes Tracey and Maggie's marriage and provides them with the same
10 status, responsibilities, and protections as other legally married couples under state
11 law.

12 4. In 2010, Tracey was diagnosed with multiple sclerosis by a neurologist at
13 her local VA hospital. Multiple sclerosis is a chronic, often disabling disease that
14 attacks a person's brain and central nervous system, and for which there is no known
15 cure. After being diagnosed with multiple sclerosis, Tracey began making end-of-life
16 preparations, including those to ensure some level of financial security for Maggie
17 after Tracey's death.

18 5. In 2011, the VA determined that Tracey's multiple sclerosis is service-
19 connected. As a result, Tracey receives disability compensation from the VA for her
20 condition. Tracey also receives disability compensation from the VA for other
21 service-connected conditions, including post-traumatic stress disorder ("PTSD"), an
22 anxiety disorder common among veterans that can be triggered by a traumatic event.

23 6. The VA provides a number of significant benefits to married veterans
24 and their families, including additional disability benefits; Dependency and Indemnity
25 Compensation, which provides monthly benefits to a surviving spouse after a veteran
26 has died from a service-connected injury or disease; and joint burial benefits for the
27 veteran and the veteran's spouse at a veterans' cemetery.
28

1 7. Solely because of Tracey's sexual orientation and her sex in relation to
2 her spouse, Tracey is barred from receiving those benefits, which similarly-situated
3 heterosexual married veterans routinely receive. If Tracey were a man, or if she were
4 married to a man, she would receive all of the benefits that our nation affords to
5 married veterans.

6 8. Solely because of Maggie's sexual orientation and her sex in relation to
7 her spouse, Maggie is barred from receiving those benefits, which similarly-situated
8 spouses of heterosexual married veterans routinely receive. If Maggie were a man, or
9 if she were married to a male veteran, she would receive all of the benefits that our
10 nation affords to spouses of married veterans.

11 9. In April 2011, Tracey filed a claim with the VA to add Maggie as her
12 spouse and obtain additional dependency compensation based on her service-
13 connected conditions. The VA denied Tracey's claim because the statute that governs
14 veterans' benefits defines "spouse" as "a person of the opposite sex who is a wife or a
15 husband." 38 U.S.C. § 101(31). The statute similarly limits "surviving spouse" to "a
16 person of the opposite sex." *Id.* § 101(3) (collectively "Title 38").

17 10. Even if Title 38 recognized Tracey and Maggie's marriage for the
18 purpose of veterans' benefits eligibility, Section 3 of the so-called Defense of
19 Marriage Act ("DOMA") would prevent the VA from recognizing their marriage.
20 DOMA provides that, for purposes of federal statutes, the word "marriage" means
21 only "a legal union between one man and one woman as husband and wife," and the
22 word "spouse" means only "a person of the opposite sex who is a husband or a wife."
23 1 U.S.C. § 7.

24 11. As a result, the VA has denied, and will continue to deny, Tracey and
25 Maggie the veterans' benefits that would be available to them if they were in a
26 heterosexual marriage. This unequal treatment of Tracey and Maggie's marriage
27 under federal law demeans not only their marriage but also the remarkable sacrifices
28 of Tracey, a woman who gave more than nine years of her life in active-duty military

1 service to this country. This discrimination also demeans the integral role that
 2 Maggie—like other spouses of disabled veterans—plays in Tracey’s continued health
 3 and well-being.

4 12. This action seeks declaratory and injunctive relief pursuant to 28 U.S.C.
 5 §§ 2201-2202 and Fed. R. Civ. P. 57. It seeks a determination that the definitions of
 6 “spouse” and “surviving spouse” in Title 38 of the United States Code violate on their
 7 face the United States Constitution by denying benefits to Tracey and Maggie and
 8 other married veterans and their spouses solely because they are married to a person of
 9 the same sex. This action also seeks a determination that DOMA, as applied to
 10 plaintiffs, violates the United States Constitution by denying them benefits that
 11 similarly-situated married veterans and their spouses in heterosexual marriages
 12 receive.

13 JURISDICTION AND VENUE

14 13. This action arises under the Constitution of the United States and the
 15 laws of the United States. This Court has jurisdiction over this action pursuant to 28
 16 U.S.C. § 1331 and 28 U.S.C. § 1346(a)(2).

17 14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) and 28
 18 U.S.C. § 1402(a)(1) because plaintiffs Tracey Cooper-Harris and Maggie Cooper-
 19 Harris reside in this district and the events giving rise to these claims arose in this
 20 district.

21 PARTIES

22 15. Plaintiff Tracey Cooper-Harris is a United States citizen and a resident of
 23 Pasadena, California. She is legally married under the laws of the State of California
 24 to Plaintiff Maggie Cooper-Harris, who is also a United States citizen and a resident
 25 of Pasadena, California.

26 16. The United States of America is named as a defendant because this action
 27 challenges the constitutionality of an Act of Congress. See 28 U.S.C. § 2403(a).
 28

18. Defendant Eric K. Shinseki is the duly appointed, confirmed, and acting Secretary of Veterans Affairs of the United States. In that official capacity, Defendant Shinseki is the federal official responsible for the administration of Veterans Affairs. Defendant Shinseki is named in his official capacity only.

Tracey Cooper-Harris's Background and Military Service

20. In January 1991, when she was a senior in high school, Tracey enlisted in the United States Army. After graduating high school in June 1991, Tracey entered basic training in July 1991 at Fort Jackson, South Carolina.

22. After completing her training, Tracey was assigned to the 64th Medical Detachment and stationed at Bitburg Air Base in Bitburg, Germany, where she served from January 1992 to December 1993. Tracey was then assigned to the Northeast District Veterinary Command and stationed at Brunswick Naval Air Station in Maine,

1 where she served from January 1994 to September 1998. Tracey then received orders
2 to transfer to Seoul, South Korea, where she served with the 129th Medical
3 Detachment at the Yongsan Army Post for approximately one year.

4 23. In October 1999, Tracey completed her required active duty service and
5 moved to South Carolina, in part to be close to her then-ailing mother. Tracey
6 enrolled at Clemson University in the fall of 1999 and joined the South Carolina
7 National Guard. After her mother's death in June 2001, Tracey withdrew from
8 Clemson and moved to Claremont, California, where she continued her military
9 service in the Army Reserves with the 109th Medical Detachment out of Stanton,
10 California.

11 24. In October 2001, the United States commenced Operation Enduring
12 Freedom in Afghanistan. In July 2002, Tracey was called back to active duty. One
13 month later, she reported to Camp Doha, the Army's main military base in Kuwait,
14 where she then was assigned to the 376th Expeditionary Medical Group, 376th Air
15 Expeditionary Wing of the United States Air Force in Kyrgyzstan. Around the same
16 time, Tracey was promoted to Sergeant.

17 25. While in Kyrgyzstan, Tracey was responsible for the health and well-
18 being of over fifty military working dogs from the United States and Europe. She
19 provided medical care to Military Police dogs so that they could safeguard military
20 bases and detect bombs and explosives to protect the lives of American troops.
21 Tracey conducted veterinary first-aid training for the handlers of military working
22 dogs and ensured that the dogs were properly cared for. She also developed a
23 contingency plan to execute in the event of an attack, explosion, or other emergency
24 that might result in the injury of numerous working dogs.

25 26. According to an Air Force Commendation Medal that Tracey received
26 from Lieutenant General T. Michael Mosely for her service in Kyrgyzstan, Tracey
27 "distinguished herself by outstanding achievement" through, among other things,
28 providing outstanding veterinary care, coordinating emergency veterinary treatment,

1 developing training in dog handling and first aid, refurbishing the veterinary facilities
2 “in extremely austere conditions,” helping to coordinate a local food procurement
3 program, and being “always the true team player.”

4 27. While Tracey was stationed in Kyrgyzstan, the United States
5 commenced Operation Iraqi Freedom. In February 2003, Tracey was transferred back
6 to Camp Doha in Kuwait and was sent on frequent missions into southern Iraq to
7 assist military veterinarians and maintain the health and well-being of military
8 working dogs on United States military bases.

9 28. Over the course of her military career, including her service in
10 Operations Enduring Freedom and Iraqi Freedom, Tracey was awarded, among other
11 honors, three Army Commendation Medals; the Air Force Commendation Medal; five
12 Army Achievement Medals; two Army Good Conduct Medals; the Armed Forces
13 Reserve Medal with Mobilization Device; two National Defense Service Medals; an
14 Iraq Campaign Medal with two Bronze Service Stars; the Global War on Terrorism
15 Expeditionary Medal; the Global War on Terrorism Service Medal; two Overseas
16 Service Ribbons; and the Joint Meritorious Unit Award.

17 29. Although Tracey’s enlistment contract expired in January 2003, Tracey
18 did not return to the United States until May 2003 as a result of the military’s “stop-
19 loss” program. In June 2003, after more than nine years of active duty and
20 approximately three years of reserve duty, Tracey was honorably discharged from the
21 United States Army.

22 30. After leaving the army, Tracey returned to California. Like many
23 soldiers returning from war, Tracey underwent a difficult transition back to civilian
24 life. Her relationship at the time ended, and she began receiving treatment at her local
25 VA hospital for PTSD, which continues to this day.

26 31. After some time, Tracey was able to resume her college studies. In
27 December 2010, she received a Bachelor of Science in Kinesiology from California
28 State University at Northridge.

1 32. In January 2012, Tracey was accepted into the Master of Public
2 Administration program at Clemson University, which she will attend via online
3 courses.

4 Tracey and Maggie's Relationship

5 33. Tracey first met Maggie when Tracey moved to California in 2001,
6 during Tracey's service in the Army Reserves and before her deployment to the
7 Middle East. Tracey and Maggie played on opposing rugby teams and met during a
8 game.

9 34. Maggie was born in Ventura County, California, and received a Bachelor
10 of Arts in Cognitive Science from Occidental College in Los Angeles, California, in
11 1999. Maggie was a teacher until 2009, when she became a transportation
12 electrician's apprentice with the International Brotherhood of Electrical Workers.

13 35. After Tracey returned to California in May 2003, she joined Maggie's
14 rugby club team. Tracey found a support system in the rugby team, and Maggie and
15 her roommates at the time offered Tracey a place to stay while Tracey looked for an
16 apartment during her transition back to civilian life.

17 36. Tracey and Maggie became close friends and, in the fall of 2005, they
18 started dating. A year later, Tracey moved in with Maggie.

19 37. On November 1, 2008, Tracey and Maggie were married in Van Nuys,
20 California, pursuant to a duly issued marriage license from the State of California.
21 The State of California legally recognizes Tracey and Maggie's marriage and provides
22 them with the same status, responsibilities, and protections as other legally married
23 couples under state law.

24 38. Tracey and Maggie currently reside together in Pasadena, California.

25 Tracey's Service-Connected Conditions and Claim for Spousal Benefits

26 39. Tracey receives monthly disability compensation for a number of
27 conditions that have been determined by the VA to be service-connected, including
28 multiple sclerosis and PTSD.

1 40. On April 19, 2011, Tracey filed VA Form 21-686c, Declaration of Status
2 of Dependents, indicating her desire to add her spouse, Maggie, for purposes of
3 receiving additional dependency compensation that the VA provides to married
4 disabled veterans. Along with that form, Tracey submitted a copy of the marriage
5 certificate issued to her and Maggie by the State of California.

6 41. In a letter dated May 2, 2011, the VA Regional Office denied Tracey's
7 claim. The sole basis for denial cited by the letter was that "a veteran may only
8 receive additional compensatory benefits for a spouse of the opposite sex."

9 42. Tracey timely filed a Notice of Disagreement along with a request for a
10 personal hearing. On June 22, 2011, Tracey appeared at a hearing held before a
11 Decision Review Officer.

12 43. By letter dated August 8, 2011, the VA Regional Office again denied
13 Tracey's claim on the grounds that "[t]he veteran's marriage is not valid for VA
14 purposes." The letter stated:

15 For VA purposes and under VA Law 38 CFR 3.50(a) a
16 veteran may only receive additional compensatory benefits
17 for a spouse of the opposite sex. Although you have a valid
18 marriage to Mrs. Maggie Lorraine Cooper in the state of
19 California, this marriage is not valid under current Federal
20 Regulations.

21 The testimony at your present hearing was very thorough
22 and complete, however, our regulation defining marriage
23 states that for VA purposes, a "spouse" means a person of
24 the opposite sex whose marriage to the veteran meets the
25 requirements [of] CFR 3.1 (which defines a veteran.)

26 You are a veteran and have served honorably, however we
27 must deny your claim for dependency at this time. Your VA
28 payments will remain as a single veteran.

Federal Benefits for Married Veterans

44. The United States government provides a number of benefits to active duty military service members, retired service members, and veterans to ease the burden that military service imposes on a service member and the service member's family, as well as to honor the veteran's service and the sacrifices made by the veteran's family, among other reasons. The military often emphasizes the importance of providing support to service members, veterans, and their families in order to increase recruitment and retention and to boost morale among the troops.

45. One significant benefit that the VA provides to veterans and their families is compensation for conditions and disabilities that the VA has determined are "service-connected." See U.S. Dep't of Veterans Affairs, Federal Benefits for Veterans, Dependents and Survivors 25-26 (2011), available at http://www.va.gov/opa/publications/benefits_book/federal_benefits.pdf (hereinafter "Dependents and Survivors").

46. The VA determines monthly compensation for veterans with service-connected disabilities based on a system of percentages. For example, under the current Veterans Compensation Benefits Rate Table, a veteran (with no dependents) who is rated as 10% disabled receives \$127 per month; a veteran (with no dependents) who is rated as 100% disabled receives \$2,769 per month. See U.S. Dep't of Veterans Affairs, Veterans Compensation Benefits Rate Tables – Effective 12/1/11, <http://www.vba.va.gov/bln/21/Rates/comp01.htm> (last visited Jan. 11, 2012).

47. For veterans who are rated as 30% disabled or higher, VA compensation increases with the number of dependents that the veteran claims. For example, under the current Veterans Compensation Benefits Rate Table, a veteran who is rated as 30% disabled with no dependents receives \$389 per month; a married veteran who is rated as 30% disabled receives \$435 per month; and a married veteran who is rated as 30% disabled with a child receives \$469 per month. Compensation also increases where a veteran has dependent parents. See id.

1 48. Based on her service-connected conditions, Tracey is currently rated as
2 80% disabled and is legally married in California. Under the current Veterans
3 Compensation Benefits Rate Table, married veterans rated as 80% disabled receive
4 \$1,602 per month. However, because Maggie is not recognized by the VA as
5 Tracey's legal spouse, Tracey is treated as a single veteran and receives only \$1,478
6 per month.

7 49. The VA also provides Disability and Indemnity Compensation to
8 surviving spouses of (1) veterans whose death resulted from a service-connected
9 injury or disease, and (2) veterans whose death resulted from a non-service-connected
10 injury or disease and who were receiving, or entitled to receive, VA compensation for
11 a service-connected disability that was rated as totally disabling for a specified
12 number of years. See Dependents and Survivors 103-05. Effective December 1,
13 2011, eligible surviving spouses are entitled to receive a minimum monthly
14 compensation of \$1,195. See U.S. Dep't of Veterans Affairs, Dependents Indemnity
15 Compensation – Effective 12/1/11, <http://www.vba.va.gov/bln/21/Rates/comp03.htm>
16 (last visited Jan. 11, 2012). Tracey and Maggie are not eligible to receive this benefit
17 because the VA does not recognize Tracey and Maggie's marriage and considers
18 Tracey to be a single veteran.

19 50. Another important benefit that the VA provides to veterans and their
20 spouses is burial benefits. Burial benefits include a gravesite at a veterans' cemetery;
21 a government headstone or marker; a burial flag; spousal burial with the veteran, even
22 if the spouse predeceases the veteran; inscription of the veteran's and spouse's name
23 and dates of birth and death; and perpetual care. See Dependents and Survivors
24 69-72. When Tracey inquired about obtaining burial benefits for her and Maggie, she
25 was told that Maggie was not eligible to receive those benefits because federal law
26 does not recognize their marriage and considers Tracey to be a single veteran.

The Definition of “Spouse” in Title 38

51. Title 38 of the United States Code, which governs veterans’ benefits, recognizes that the federal government should defer to the states when determining whether a person is legally married: “In determining whether or not a person is or was the spouse of a veteran, their marriage shall be proven as valid for the purposes of all laws administered by the Secretary according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued.” 38 U.S.C. § 103(c). This includes common law marriages that are recognized in the jurisdiction where the veteran resides.

52. Another section of Title 38, however, defines the term “spouse” as “a person of the opposite sex who is a wife or husband.” 38 U.S.C. § 101(31). Similarly, the term “surviving spouse” is defined as “a person of the opposite sex who was the spouse of a veteran at the time of the veteran’s death” *Id.* § 101(3).

53. The legislative history behind Title 38’s definition of “spouse” as “a person of the opposite sex” does not reflect Congressional intent to preclude veterans in same-sex marriages from obtaining spousal benefits. Rather, this language represents a legislative effort to create gender equality in the statute. In 1975, two years after the Supreme Court ruled that the military could not distribute benefits differently based on gender in Frontiero v. Richardson, 411 U.S. 677, 93 S. Ct. 1764, 36 L.Ed.2d 583 (1973), Congress removed references to exclusively male veterans and their “widows” from Title 38. The legislative history of this revision contains no discussion of veterans who are in same-sex marriages. Instead, the Senate Committee on Veterans Affairs explained that it “add[ed] the term ‘spouse’ to mean wife *or* husband and the term ‘surviving spouse’ to mean widow *or* widower” to the definition section of Title 38 and substituted these terms throughout the title in order “to eliminate unnecessary gender references.” S. Rep. No. 94-532, at 78 (1975) (emphasis added). Thus, the definition of “spouse” as a “person of the opposite sex” manifests Congress’s commitment to equality—not intent to deny spousal benefits to

1 same-sex spouses of veterans or to create a federal definition of marriage for the
2 purpose of excluding same-sex couples.

3 54. Although the Congressional intent behind the definitions found at
4 38 U.S.C. § 101(3) and (31) did not contemplate precluding veterans in same-sex
5 marriages from receiving spousal benefits, those definitions now bar Tracey and
6 Maggie from receiving additional benefits solely because of their sexual orientation
7 and because of their sex in relation to each other.

8 The Defense of Marriage Act

9 55. Even if the definitions of “spouse” and “surviving spouse” in Title 38
10 were amended to include same-sex spouses, Section 3 of the so-called Defense of
11 Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996) (codified as amended at 1
12 U.S.C. § 7) (“DOMA”), would prohibit the VA from recognizing Tracey and
13 Maggie’s marriage for purposes of determining the couple’s eligibility to receive
14 benefits.

15 56. Section 3 of DOMA provides, in pertinent part:

16 Sec. 3 DEFINITION OF MARRIAGE

17 (a) IN GENERAL – Chapter 1 of title 1, United States Code
18 is amended by adding at the end of the following:

19 §7. Definition of ‘marriage’ and ‘spouse’

20 “In determining the meaning of any Act of Congress,
21 or of any ruling, regulation, or interpretation of the various
22 administrative bureaus and agencies of the United States, the
23 word ‘marriage’ means only a legal union between one man
24 and one woman as husband and wife, and the word ‘spouse’
25 refers only to a person of the opposite sex who is a husband
26 or a wife.”

27 57. The federal government does not have a rational basis for, much less a
28 compelling or important interest in, so defining “spouse” or “marriage” for purposes

1 of federal benefits and burdens. According to the House Report on DOMA, H.R. Rep.
2 No. 106-664 (1996), Congress offered four justifications for treating an individual
3 married to a person of the same sex differently from an individual married to a person
4 of a different sex. All are irrational.

5 58. First, Congress claimed that DOMA advances the government's interest
6 in defending and nurturing the institution of traditional heterosexual marriage. See id.
7 at 12. This so-called rationale simply restates the government's intent to discriminate
8 against same-sex couples and provides no independent justification for the
9 government's discriminatory action. The federal government has long accepted state
10 determinations of marital status, even in the face of changes in marriage licensing by
11 the states. The only state-licensed marriages it categorically refuses to respect are
12 those of same-sex couples. The federal government's refusal to recognize Tracey and
13 Maggie's marriage does not nurture, improve, stabilize, or enhance the marriages of
14 other married couples. Nor would the federal government's recognition of their
15 marriage have any negative impact on the marriages of other married couples.

16 59. Second, Congress claimed an interest in defending traditional notions of
17 morality. See id. at 15. This so-called justification is simply another reframing of
18 Congress's disapproval of lesbians and gay men. Lesbians and gay men are a
19 minority group that has suffered a long history of public and private discrimination.
20 Discrimination for its own sake is not a legitimate purpose upon which
21 disadvantageous classifications may be imposed. Moreover, sexual orientation is an
22 immutable characteristic that bears no relation whatsoever to an individual's ability to
23 participate in or contribute to society.

24 60. Third, Congress claimed that DOMA advances the government's interest
25 in protecting state sovereignty and democratic self-governance. See id. at 16. On the
26 contrary, DOMA infringes state sovereignty because it refuses to respect state
27 decisions as to the licensing and recognition of marriages, a key component of states'
28 long-recognized authority to regulate domestic relations. Prior to DOMA's passage,

1 states such as California determined the marital status of their citizens, and the federal
 2 government deferred to a state's determination of marriage in the application of
 3 federal law. Far from protecting state sovereignty in enacting DOMA, Congress in
 4 fact violated the sovereignty of the states that license or recognize marriages of same-
 5 sex couples.

6 61. Fourth, Congress claimed that DOMA advances the government's
 7 interest in preserving scarce government resources. See id. at 18. In fact, according
 8 to the Congressional Budget Office, the recognition of marriages of same-sex couples
 9 will not deplete scarce government resources; rather, recognition of same-sex
 10 marriages will *increase* annual net federal revenue. See Cong. Budget Office, U.S.
 11 Cong., The Potential Budgetary Impact of Recognizing Same-Sex Marriages 1 (June
 12 21, 2004), <http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf>.
 13 Moreover, while the federal government's fiscal health is always a matter of concern,
 14 the government cannot advance this interest by singling out a similarly-situated
 15 minority group, such as individuals in same-sex marriages, for discrimination based
 16 on their sexual orientation and sex in relation to the sex of their spouse. There was
 17 and is no valid justification to deny veterans and their same-sex spouses the federal
 18 benefits available to similarly-situated veterans and their spouses in heterosexual
 19 marriages.

20 FIRST CLAIM FOR RELIEF

21 62. Plaintiffs re-allege and incorporate by reference each and every allegation
 22 contained in the preceding paragraphs as if set forth fully herein.

23 63. As a result of the definitions of "spouse" and "surviving spouse" in
 24 38 U.S.C. § 101 (3) and (31), the federal government treats veterans in same-sex
 25 marriages differently from veterans in heterosexual marriages. Because of this
 26 disparity in treatment, Tracey Cooper-Harris is unable to have her spouse recognized
 27 by the VA and receive all the benefits afforded to similarly-situated married veterans
 28

1 based solely on her sexual orientation and her sex in relation to the sex of her spouse.

2 64. As a result of the definitions of “spouse” and “surviving spouse” in
 3 38 U.S.C. § 101 (3) and (31), the federal government treats the spouses of veterans in
 4 same-sex marriages differently from the spouses of veterans in heterosexual
 5 marriages. Because of this disparity in treatment, Maggie Cooper-Harris is not
 6 recognized as a spouse by the VA and is ineligible to receive all the benefits afforded
 7 to similarly-situated spouses of married veterans based solely on her sexual
 8 orientation and her sex in relation to the sex of her spouse.

9 65. Because the definitions of “spouse” and “surviving spouse” in 38 U.S.C.
 10 § 101 (3) and (31) on their face require this disparity of treatment with regard to
 11 veterans’ eligibility for spousal benefits from the VA, the definitions create a
 12 classification that singles out one class of valid marriages—those of same-sex
 13 couples—and subjects persons in those marriages to differential treatment compared
 14 to other similarly-situated married couples without justification in violation of the
 15 right to equal protection secured by the Fifth Amendment to the Constitution of the
 16 United States.

17 **SECOND CLAIM FOR RELIEF**

18 66. Plaintiffs re-allege and incorporate by reference each and every allegation
 19 contained in the preceding paragraphs as if set forth fully herein.

20 67. Even if the definitions of “spouse” and “surviving spouse” in 38 U.S.C.
 21 § 101(3) and (31) allowed for recognition of a veteran’s spouse of the same sex,
 22 DOMA prevents the VA from recognizing veterans in legal same-sex marriages.
 23 Accordingly, Tracey Cooper-Harris would continue to be denied the recognition of
 24 her spouse by the VA and the benefits afforded to similarly-situated married veterans
 25 based solely on her sexual orientation and her sex in relation to the sex of her spouse.

26 68. Even if the definitions of “spouse” and “surviving spouse” in 38 U.S.C.
 27 § 101(3) and (31) allowed for recognition of a veteran’s spouse of the same sex,
 28 DOMA prevents the VA from recognizing veterans in legal same-sex marriages.

1 Accordingly, Maggie Cooper-Harris would continue to be denied the recognition as a
2 spouse by the VA and the benefits afforded to other similarly-situated spouses of
3 married veterans based solely on her sexual orientation and her sex in relation to the
4 sex of her spouse.

5 69. Because DOMA, as applied to plaintiffs, requires this disparity of
6 treatment with regard to their eligibility to receive spousal benefits from the VA, it
7 creates a classification that singles out one class of legal marriages—those of same-
8 sex couples—and subjects the persons in those marriages to differential treatment
9 compared to similarly-situated married couples without justification in violation of the
10 right to equal protection secured by the Fifth Amendment to the Constitution of the
11 United States.

12 PRAYER FOR RELIEF

13 WHEREFORE, Plaintiffs Tracey Cooper-Harris and Maggie Cooper-Harris
14 pray for relief as follows:

15 a. A declaration that paragraphs (3) and (31) of 38 U.S.C. § 101 violate, on
16 their face, the right to equal protection secured by the Fifth Amendment to the
17 Constitution of the United States.

18 b. A declaration that Section 3 of DOMA, 1 U.S.C. § 7, as applied to the
19 plaintiffs, violates the right to equal protection secured by the Fifth Amendment to the
20 Constitution of the United States.

21 c. Enjoin the defendants from continuing to discriminate against Tracey
22 Cooper-Harris by treating her differently from similarly-situated veterans in
23 heterosexual marriages and refusing to recognize Maggie Cooper-Harris as her
24 spouse.

25 d. Enjoin the defendants from continuing to discriminate against Maggie
26 Cooper-Harris by treating her differently from similarly-situated spouses of veterans
27 in heterosexual marriages and refusing to recognize Tracey Cooper-Harris as her
28 spouse.

1 e. Award the plaintiffs costs and reasonable attorneys' fees and expenses
2 pursuant to 28 U.S.C. § 2412 or other applicable statute.

3 f. Such other relief as the Court deems just and appropriate.
4

5 DATED: February 1, 2012
6

7 Respectfully submitted,

8 WILMER CUTLER PICKERING HALE
9 AND DORR LLP

10 BY: Randall R. Lee M/D/B
11 RANDALL R. LEE
12 350 South Grand Avenue, Suite 2100
13 Los Angeles, CA 90071
14 (213) 443-5300
15 randall.lee@wilmerhale.com

16 *On behalf of Attorneys for Plaintiffs*
17 *Tracey Cooper-Harris and Maggie Cooper-*
18 *Harris*
19
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Wilmer Cutler Pickering Hale & Dorr LLP
 350 South Grand Avenue, Suite 2100
 Los Angeles, CA 90071
 Telephone: (213) 443-5300

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

Tracey Cooper-Harris and Maggie Cooper-Harris,

CASE NUMBER

PLAINTIFF(S)

v.

United States of America; Eric H. Holder, Jr., in his
 official capacity as Attorney General; Eric K. Shinseki,
 in his official capacity as Secretary of Veterans Affairs,

DEFENDANT(S).

CV 12 0887 CBM (ASLx)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 60 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Randall R. Lee, whose address is 350 South Grand Avenue, Suite 2100, Los Angeles, CA 90071. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: FEB - 1 2012

By:

MARILYN DAVIS

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Tracey Cooper-Harris; Maggie Cooper-Harris	DEFENDANTS United States of America; Eric H. Holder, Jr., in his official capacity as Attorney General; Eric K. Shinseki, in his official capacity as Secretary of Veterans Affairs
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Randall R. Lee (SBN 152672), Wilmer Cutler Pickering Hale & Dorr LLP 350 South Grand Avenue, Suite 2100, Los Angeles, CA 90071 Telephone: (213) 443-5300	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:35%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:35%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ N/A

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Violation of Equal Protection under the Fifth Amendment to the United States Constitution

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input checked="" type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airlines Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV 12 0887

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETVIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☒ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Randall R. Lee

M/D/B

Date

2-1-12

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Consuelo B. Marshall and the assigned discovery Magistrate Judge is Andrew J. Wistrich.

The case number on all documents filed with the Court should read as follows:

CV12- 887 CBM (AJWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.