

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MAJ SHANNON L. MCLAUGHLIN;)	
CASEY MCLAUGHLIN;)	
LTC VICTORIA A. HUDSON;)	
MONIKA POXON;)	
COL STEWART BORNHOFT (RET);)	
STEPHEN MCNABB;)	Civil Action No. _____
LT GARY C. ROSS;)	
DAN SWEZY;)	
CPT STEVE M. HILL;)	
JOSHUA SNYDER;)	
A1C DANIEL HENDERSON;)	
JERRET HENDERSON;)	
CW2 CHARLIE MORGAN;)	
KAREN MORGAN;)	
CAPT JOAN DARRAH (RET);)	
JACQUELINE KENNEDY,)	
Plaintiffs,)	
)	
v.)	COMPLAINT
)	
LEON E. PANETTA, in his official capacity as)	
Secretary of Defense;)	
ERIC H. HOLDER, JR., in his official capacity as)	
Attorney General;)	
ERIC K. SHINSEKI, in his official capacity as)	
Secretary of Veterans Affairs;)	
UNITED STATES OF AMERICA,)	
Defendants.)	

COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF

Preliminary Statement

1. This is an action by current and former active duty members of the United States armed forces seeking equal benefits for equal work. Specifically, the Plaintiffs seek 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. These

benefits include medical and dental benefits, basic housing allowances, travel and transportation allowances, family separation benefits, military ID cards, visitation rights in military hospitals, survivor benefits, and the right to be buried together in military cemeteries.

2. Providing spousal benefits is important to the well-being of all military families, and the military's ability to attract and retain the best and brightest members of the armed services. During this time of war, the need to provide spousal benefits is particularly acute because the men and women in uniform who put their lives on the line every day in service to their country must remain focused on the task at hand. All service members should be confident that, if they should die serving their country, their country will assure that their families are provided for in their absence. The military makes that promise to its service members who are married to spouses of the opposite sex, and it recognizes that it is critical to our national security that this promise be kept. For the very same reasons, the military's inability to make that promise to its service members who are married to a spouse of the same sex is a threat to national security.

3. Plaintiffs seek declaratory and injunctive relief pursuant to 28 U.S.C. § 2201-2202, and Federal Rule of Civil Procedure 57. Specifically, Plaintiffs seek a determination that the so-called Defense of Marriage Act ("DOMA"), 1 U.S.C. § 7, is unconstitutional as applied to military spousal benefits. To the extent that the definitions of "spouse" in Title 10, Title 32 and Title 38 prevent the recognition of same-sex spouses, Plaintiffs also seek a determination that these provisions suffer from the same constitutional defects as Section 3 of DOMA.

4. There is no enumerated power in the Constitution that allows the federal government to define marriage in such a way as to deny Plaintiffs the benefits they seek, and the Tenth Amendment entrusts the regulation of marriage to the states. As applied to military benefits in this context, these statutes deny the Plaintiffs equal protection, place an unconstitutional

condition upon the fundamental constitutional right to marry in accordance with state law, and are legislative penalties imposed on persons in same-sex marriages that constitute impermissible bills of attainder in violation of Article I, § 9.

5. Plaintiffs also seek an award of attorneys fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. The government cannot maintain that its position in denying the Plaintiffs' claims for spousal benefits is "substantially justified" when the President and the Attorney General have acknowledged that DOMA Section 3 is unconstitutional. Like members of the Federal Judicial Branch, Executive Branch officials take an oath to uphold the Constitution. While the courts may have the last word as to whether a legislative enactment is constitutional, the political branches have the first word. And where, as here, the President and the Attorney General acknowledge a law is unconstitutional, they should not enforce it. In this case, the Executive Branch has enforced DOMA and specifically denied each Plaintiff spousal benefits on the basis of that statute.

6. In spite of the fact that the Commander in Chief and the Attorney General have concluded that DOMA is unconstitutional, the Department of Defense has stated that DOMA, "and the existing definition of 'dependent' in some laws, prohibit the extension of many military benefits -- such as medical care, travel and housing allowances, and other benefits -- to same sex couples." Memorandum for Secretaries of the Military Departments, Repeal of Don't Ask, Don't Tell and Future Impact on Policy at 4 (Jan. 28, 2011) ("Stanley Memorandum").

7. On July 8, 2010, this Court held that Section 3 of DOMA is unconstitutional in Commonwealth of Massachusetts v. United States Department of Health and Human Services, 698 F. Supp. 2d 234 (D. Mass. 2010) (Tauro, J.) ("Massachusetts") and Gill v. Office of Personnel Management, 699 F. Supp. 2d 374 (D. Mass. 2010) (Tauro, J.).

8. In the consolidated appeal of Massachusetts and Gill before the First Circuit, the government conceded that "Section 3 of DOMA violates the Constitution's equal protection

12. DOMA precludes the military from providing same-sex married couples with the same spousal benefits that are afforded to opposite-sex married couples. Section 3 of DOMA provides: "In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." 1 U.S.C. § 7.

13. Even in the absence of DOMA, questions would persist as to whether spousal benefits are available to same-sex couples under Title 10, concerning active-duty benefits; Title 32, concerning National Guard benefits; and Title 38, concerning veterans' benefits. Because same-sex marriages were not legal prior to the enactment of DOMA and DADT has only been recently repealed, there has been no opportunity to determine whether those titles would exclude same-sex spouses independently from DOMA.

14. The definition of "spouse" in Title 38 prevents recognition of same-sex spouses: "[t]he term 'spouse' means a person of the opposite sex who is a wife or husband." 38 U.S.C. § 101(31). Similarly, Title 38 provides, "The term 'surviving spouse' means ... a person of the opposite sex who was the spouse of a veteran at the time of the veteran's death...." 38 U.S.C. § 101(3).

15. The definitions of "spouse" in Title 10 and Title 32 are not as clear in their application to same-sex marriages, as they both provide that "'spouse' means husband or wife, as the case may be." 10 U.S.C. § 101(f)(5); 32 U.S.C. § 101(18).

16. Each service member or retiree Plaintiff sought recognition for his or her spouse, which would have enabled his or her family to receive the same benefits that are provided to opposite-

sex married couples, but that recognition was denied. Therefore, the Plaintiffs file this suit because, while the repeal of DADT was an important first step in the military's march for equality, it is time to take the next step and provide equal benefits for equal work.

17. The Plaintiffs do not anticipate that the United States will contest this suit because the government agrees that Section 3 of DOMA is unconstitutional. As noted in Paragraph 7, the government has conceded that DOMA is unconstitutional before the First Circuit in the appeal of the Massachusetts and Gill cases.

18. In addition, in a February 23, 2011 letter to Congress, Attorney General Holder wrote:

After careful consideration, including a review of my recommendation, the President has concluded that given a number of factors, including a documented history of discrimination, classifications based on sexual orientation should be subject to a more heightened standard of scrutiny. The President has also

repeated mantra since DADT's repeal was announced is that "[s]exual orientation is a personal and private matter," and sexual orientation is deemed so irrelevant that the military will not even collect data concerning the sexual orientation of its service members. Stanley Memorandum at 4.

21. The military has emphasized repeatedly that providing these benefits is necessary to compete with the private sector to maintain quality enlistment and retention, and that the assurance that a service member's family will be provided for in the event the service member dies serving their country is important for maintaining morale and faithful service.

22. Moreover, the military recognizes the link between the payment of benefits and national security, explaining that service members who are distracted by thoughts that their loved ones are not being cared for may render the service members less effective combatants: "Success in modern warfare demands the full utilization of every ounce of both the physical and mental strength and stamina of its participants. No soldier can be and remain at his best with the constant realization that his family and loved ones are in dire need of financial assistance." Sen. Rpt. 93-235 (June 20, 1973), reprinted in 1973 U.S.C.C.A.N. 1579, 1585. Because the military believes that the provision of these benefits serves the interest of national security, it is doubtful the military would support the penalty that DOMA inflicts upon its service members.

23. The military also has steadfastly opposed treating similarly-situated service members differently when it comes to compensation and benefits. For example, the military opposed legislation to pay a special death benefit to survivors of 14 service members and 1 federal civilian accidentally killed by friendly fire in Iraq in 1994, explaining "[w]e are concerned that enactment of this bill would create inequities in the treatment of survivors of service members dying on active duty." H.R. Rep. No. 106-270, at 7 (1999). Because DOMA effectively creates

inequities in the treatment of survivors based on whether they are in a same-sex or opposite-sex marriage with a military spouse, the Plaintiffs expect that the Department of Defense will find the disparate treatment equally troubling and a serious threat to recruitment and retention.

24. In addition, the military appreciates that unequal treatment threatens unit cohesion. The Army specifically has given guidance that "[l]eaders are expected to dispassionately enforce standards and correct behaviors that undermine unit cohesion." Army DADT Contingency Planning Vignettes No. 9 (Feb. 25, 2011); S. REP. No. 1647 at 3339-40 (1960) ("The effectiveness of [personnel] performance is directly related to the fairness and wisdom inherent in the policies under which personnel are employed"). For example, the military has emphasized that it will not build separate living or bathroom facilities for gay and straight service members because "separate facilities would create divisions within units and inappropriately isolate a portion of the force." Air Force, Repeal of Don't Ask, Don't Tell: Air Force Frequently Asked Questions at 3. The military has emphasized that even "[p]ublicly joking about this issue [sexual orientation] is inappropriate behavior, as it undermines unit cohesion; and harassment or abuse based on sexual orientation is unacceptable." Id. This stance is consistent with Department of Defense policy, which is "to treat all members with dignity and respect." Stanley Memorandum at Cover Letter. If joking about sexual orientation is unacceptable and if separate facilities are a threat to unit cohesion, then telling gay and lesbian service members they will be provided with fewer benefits than their heterosexual counterparts would be even more divisive. This unfair practice would undoubtedly compromise cohesion among unit members, sending a clear message that some members of the unit are not equal.

25. The military does not appear to support such discrimination based on sexual orientation, which it deems a "personal and private matter." To the contrary, its DADT repeal guidance is

emphatic that there will be "ZERO tolerance for harassment, violence, or discrimination of any kind." Navy, Repeal of Don't Ask, Don't Tell at 2 (emphasis added); see also Marine Corps, slide presentation "Repeal of Don't Ask, Don't Tell (DADT)" at 5 (The Department of Defense and the Marine Corps maintain: "Zero tolerance for harassment, violence or discrimination"). Given the military's "zero tolerance" for discrimination based on sexual orientation, it is unconscionable that DOMA forces the military to engage in the very discrimination that it prohibits its service members from engaging in through its "zero tolerance" policy.

26. In other contexts, the military has acknowledged the need to provide for same-sex spouses of its service members. For instance, the military has recognized the significance of spouses in the lives of gay and lesbian service members by emphasizing that emergency leave is available if the same-sex spouse becomes ill because the "sexual orientation of the Soldier's partner has no bearing on the decision [to support a soldier's family]." Army DADT Contingency Planning Vignettes No. 5 (Feb. 25, 2011). The Department of Defense also is continuing to "study" whether there are benefits that are not constrained by DOMA that can be provided to same-sex spouses. Stanley Memorandum at 5.

Jurisdiction and Venue

27. This action arises under the Constitution of the United States. Because the action involves a federal question, jurisdiction is proper pursuant to 5 U.S.C. §§ 8912 and 8991, and 28 U.S.C. §§ 1331 and 1346(a)(2).

Plaintiffs

Plaintiffs Shannon and Casey McLaughlin

29. Plaintiff Major Shannon L. McLaughlin, ARNG, is a citizen of the United States. She resides in Boston, Massachusetts. She is legally married, pursuant to the laws of the Commonwealth of Massachusetts, to her wife, Plaintiff Casey McLaughlin.

30. Major McLaughlin is a member of the United States Army, currently serving in the Massachusetts National Guard in Milford, Massachusetts. She began her military service in 1998. Major McLaughlin has deployed overseas in support of Operation Enduring Freedom. She and her wife Casey first met in 1998. They were married on December 15, 2009 in Foxborough, Massachusetts.

31. Plaintiffs are the parents of ten-month-old twins named Grace and Grant. While Grace and Grant are eligible for the benefits attendant to Major McLaughlin's service, her wife Casey -- a former high school teacher and now a stay-at-home mother -- is not.

32. On October 19, 2011, at approximately 3:15 p.m., Major McLaughlin went to the Administration Office of the Massachusetts National Guard, located at Joint Force Headquarters in Milford, Massachusetts to obtain benefits for Casey. She was told that same-sex legal spouses are excluded from the Defense Enrollment Eligibility Reporting System ("DEERS") and that they are therefore not entitled to the benefits that Plaintiff sought.

33. Because the only way for Plaintiffs to obtain the benefits sought is by first registering with DEERS, their inability to register with the system constitutes an effective denial of the benefits sought. Similarly-situated heterosexual couples are permitted to enroll their legal spouses in the DEERS system.

Plaintiffs Victoria A. Hudson and Monika Poxon

34. Plaintiff Lieutenant Colonel Victoria A. Hudson, USAR, is a citizen of the United States. She resides in Hayward, California. She is legally married, pursuant to the laws of the State of California, to her wife, Plaintiff Monika Poxon.

35. Lieutenant Colonel Hudson is a member of the United States Army Reserve. She began her military service in 1979. She and her wife Monika met in 2000 and have been together since 2001. They were married on November 1, 2008 in Alameda County, California.

36. Even though Monika gave birth to the couple's daughter, the Army recognizes Lieutenant Colonel Hudson as a single parent and requires her to regularly submit and maintain a "Family Care Plan." If she were to fail to maintain this plan with annual certification, Lieutenant Colonel Hudson could be subject to discharge and separation from the Army.

37. On Friday, October 14, 2011 at approximately 9:30 a.m., Lieutenant Colonel Hudson visited the Parks Reserve Forces Training Area ID Office to register Monika in DEERS. Lieutenant Colonel Hudson was greeted by Angelina Gattis, a civilian worker, who notified the couple that same-sex spouses cannot be registered in DEERS. Consequently they cannot receive the benefits they have sought.

Plaintiffs Stewart Bornhoft and Stephen McNabb

38. Plaintiff Colonel Stewart Bornhoft, USA (Ret.), is a citizen of the United States. He resides in Bonita, California. He is legally married, pursuant to the laws of the State of California, to his husband, Plaintiff Stephen McNabb.

39. Colonel Bornhoft began his military service when he entered the United States Military Academy in 1965. He served two voluntary tours in Vietnam, commanding both a combat engineer company and an infantry headquarters company, and then at Fort Bragg, North

Carolina, he commanded a construction engineer company. He later commanded two districts in the US Army Corps of Engineers, the Charleston District in South Carolina and the Omaha District, which is one of the largest in the country. He and his husband Stephen met in 1996 and have been together ever since. They were married on September 21, 2008 in San Diego, California.

40. In July of 2009, Colonel Bornhoft's appendix perforated and he was rushed to the Naval Medical Center of San Diego for emergency surgery. During this ordeal, Colonel Bornhoft was afraid that his husband would be denied access to his hospital room.

41. On October 11, 2011, at approximately 1:45 p.m., Colonel Bornhoft went to the Marine Corps Recruit Depot ID Card Processing Center in San Diego, California to obtain benefits for Stephen. Even though Stephen is already enrolled in the DEERS system because of his own military service, Colonel Bornhoft was told that same-sex legal spouses are not entitled to the benefits that he sought.

Plaintiffs Gary C. Ross and Dan Swezy

42. Plaintiff Lieutenant Gary C. Ross, USN, is a citizen of the United States. He resides in Tucson, Arizona. He is legally married, pursuant to the laws of Vermont, to his husband Plaintiff Dan Swezy.

43. Lieutenant Ross is in the United States Navy, currently serving with the Joint Interoperability Test Command at Fort Huachuca, Arizona. His military service began in 1995. He served as a Surface Warfare Officer, as one of the Decommissioning Officers of the USS Valley Forge, as a Reactor Division Officer on the USS John C. Stennis, as the Pacific Fleet Commander at Recruit Training Command in Great Lakes, Illinois, and as the Alternate Chairman for the Coalition Warrior Interoperability Demonstration's Assessment Working

husband met in 2010. They were married in the Congressional Cemetery in Washington, D.C. at the grave of Leonard Matlovich on May 3, 2011. Matlovich, a deceased Vietnam veteran, successfully sued the Air Force for retirement benefits after he was discharged for acknowledging his sexual orientation.

48. Just days after the couple's wedding, Captain Hill returned to duty in Tikrit, Iraq. Because the Army does not recognize Joshua as Captain Hill's spouse, if Captain Hill were to be killed while on deployment, the Army would be unwilling to return his body to Joshua, and Joshua would not receive a surviving spouse death benefit.

49. On September 26, 2011, at approximately 3:00 p.m., Captain Hill spoke with Major Richard Sugarman, Command Judge Advocate, Al Asad Air Base, Iraq about obtaining benefits for his husband, Plaintiff Joshua Snyder. During that conversation, Captain Hill was told that he could not enroll Joshua in the DEERS system and that enrolling same-sex legal spouses in that system is impossible. Plaintiff also was told that Joshua cannot receive benefits that opposite-sex legal spouses receive because the Army is following the law.

Plaintiffs Daniel and Jerret Henderson

50. Plaintiff Airman First Class Daniel Henderson, USAF, is a citizen of the United States. He resides in Cheyenne, Wyoming. He is legally married, pursuant to the laws of the State of Iowa, to his husband, Plaintiff Jerret Henderson.

51. Airman First Class Henderson is currently serving in the United States Air Force in Cheyenne, Wyoming. His military service began in 2010, and he has been stationed in Lackland, Texas and in Cheyenne, Wyoming. He and his husband met in 2009 and were married in Sidney, Iowa, on May 19, 2011.

52. Plaintiffs cannot afford medical insurance for Jerret. In March of 2010, Jerret fell down a flight of stairs while at work and suffered severe injuries. He has trouble walking and needs surgery, but the couple cannot afford this necessary treatment.

53. On September 21, 2011, at approximately 10:30 a.m., Airman First Class Henderson went to the Military Personnel Flight Office in Cheyenne, Wyoming to obtain benefits for Jerret. At that time, he was told that same-sex spouses are not eligible for DEERS registration. On September 26, 2011, he received a phone call indicating that he was denied the housing allowance that he sought because same-sex couples are not entitled to the allowance.

Plaintiffs Charlie and Karen Morgan

54. Plaintiff Chief Warrant Officer Charlie Morgan, ARNG, is a citizen of the United States. She resides in Rye, New Hampshire. She and her wife, Plaintiff Karen Morgan, are married pursuant to the laws of the State of New Hampshire.

55. Chief Warrant Officer Morgan is currently serving in the New Hampshire National Guard and is stationed at Joint Force Headquarters in Concord, New Hampshire. Chief Warrant Officer Morgan is a full-time member of the Army National Guard in the Active Guard Reserve. Chief Warrant Officer Morgan's military service began in 1982. Since that time, she has served in Kuwait, Qatar and Iraq. She and her wife, Plaintiff Karen Morgan, met in 1997 and have been together since August of that year. They were married in New Hampshire on October 24, 2011.

56. In 2008, Chief Warrant Officer Morgan was diagnosed with breast cancer, and has undergone chemotherapy, radiation treatment and a double mastectomy. On September 1, 2011, Chief Warrant Officer Morgan was diagnosed with recurring cancer. Plaintiffs are especially concerned with obtaining all the death benefits and burial rights that opposite-sex couples receive.

57. In late July of 2011, Chief Warrant Officer Morgan received an application to participate in the mandatory Yellow Ribbon Reintegration Event. During that time, Chief Warrant Officer Morgan and Karen were in a legally-recognized civil union. Families are strongly encouraged to attend this event, and the application requested information about Chief Warrant Officer Morgan's spouse. Because Karen is not a DEERS dependent, she is not permitted to attend this event. After contacting United States Senator Jeanne Shaheen about this problem, Charlie received a letter, addressed to Senator Shaheen, from Major General William N. Reddel, III of the New Hampshire National Guard. That letter, dated September 26, 2011 stated that "[p]articipation at a Yellow Ribbon Event is a military benefit limited to Service members and their families as recognized by the Defense Enrollment Eligibility Reporting System (DEERS). Specifically, the Defense of Marriage Act (DOMA) prohibits the extension of many benefits to same sex couples I am sorry that we could not provide a better solution to this issue."

60. On September 11, 2001, Captain Darrah was stationed at the Navy Annex, located just above the Pentagon. That morning she attended a briefing at the Pentagon that ended just seven minutes before the building was hit by American Airlines flight #77. The space she had been in was destroyed, and seven of her co-workers were killed. Had Captain Darrah been killed or injured, Jacqueline would not have been notified -- Captain Darrah dared not include Jacqueline's name in any of her emergency paperwork due to her fear of DADT and its repercussions. The experience caused Plaintiffs to fully comprehend the sacrifice that living under the DADT regime demanded. It caused them to reevaluate their lives together, and they decided to retire one year earlier than they had planned.

61. On December 17, 2010, Captain Darrah and Jacqueline were married at the Einstein Memorial in Washington, D.C. This date coincided with their twentieth anniversary as a couple.

62. On Monday, October 24, 2011, at approximately 9:41 a.m., Captain Darrah spoke with Mr. Lowrie at customer service at the Personnel Support Detachment Office in Washington, D.C. Captain Darrah asked Mr. Lowrie whether she could update her DEERS profile to include Jacqueline. Mr. Lowrie told Captain Darrah that same-sex spouses are not recognized by DEERS.

The Defendants

63. Defendant Leon E. Panetta is the duly appointed, confirmed, and acting Secretary of Defense of the United States. In that official capacity, Defendant is the federal official responsible for the administration of the United States Army, Navy, Marine Corps, and Air Force. Defendant is named in his official capacity only.

64. Defendant Eric H. Holder, Jr. is the duly appointed, confirmed, and acting Attorney General of the United States. In that official capacity, Defendant is the federal official

responsible for all enforcing federal statutes in accordance with the Constitution. Defendant is named in his official capacity only.

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

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

Facts

Military Benefits

67. The current military family benefits regimes of Title 10, Title 32 and Title 38, particularly as modified by DOMA, fail to address the modern military. These laws were crafted at a time when gays and lesbians were precluded from openly serving in the military, and when same-sex marriages were not legal in the United States. While Congress may have assumed that Title 10, Title 32 and Title 38 effectively covered all military spouses in the past, that is not the current reality. The military is a reflection of our society as a whole. Now that same-sex marriages are legal, and gays and lesbians can serve openly in the military, service members -- such as the Plaintiffs -- with same-sex spouses do serve in the ranks. To maintain the uniformity of benefits that Congress believed it was creating in Title 10, Title 32 and Title 38, the definition of "spouse" must include these same-sex spouses as well.

68. Plaintiffs seek all the support services and benefits available to their peers who have opposite-sex spouses, including retirement benefits, an additional housing allowance, family separation benefits, extended coverage for TRICARE, a military ID card for the service

member's spouses and, in the event the service member dies serving their country, the spousal death benefit.

DOMA

69. DOMA provides, in relevant part, "[i]n determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." 1 U.S.C. § 7.

70. In passing DOMA, 1 U.S.C. § 7, Congress took the unprecedented step of preemptively subordinating an entire classification of marriages and, indeed, an entire class of people. Plaintiffs are among those affected.

71. At the time of DOMA's passage in 1996, same-sex marriage did not exist in any state and the Act existed in a vacuum.

72. Today, however, DOMA operates to effectively subordinate Plaintiffs' legally recognized same-sex marriages. As a result, Plaintiffs have been denied the privileges normally available to all service members by virtue of their immutable status as gays and lesbians.

73. As a direct result of DOMA's application to federal military benefits, Plaintiffs have been denied the status and protections enjoyed by their peers in opposite-sex marriages.

74. In passing DOMA, Congress set forth four rationales. First, Congress cited a government interest in defending and nurturing the institution of traditional, heterosexual marriage. H.R.

interest in preserving scarce government resources. Id. at 18. None of these stated objectives is furthered by the Act; moreover, these objectives do not justify the Act's unconstitutional exclusion of same-sex marriages from federal recognition for the purposes of military benefits. Rather than a "defense of marriage," DOMA would require the Plaintiffs to divorce and marry someone else of the opposite sex to obtain spousal benefits.

75. This Court already has held DOMA unconstitutional in Massachusetts and Gill.

76. If not for the restrictive definition of "spouse" in DOMA, and the definitions in Title 10, Title 32 and Title 38, to the extent those definitions would prohibit recognition of same-sex spouses, Plaintiffs, as legally-married members of the military, would receive the same benefits as their peers with opposite-sex spouses. Yet, because the military must obey these statutes it is forced to single out the Plaintiffs, to deny the validity of their legally-recognized marriages, and to deny them the benefits they should receive.

Legalization of Same-Sex Marriage

77. Same-sex marriages are legal in Connecticut, Iowa, Massachusetts, New Hampshire, New York, Vermont and Washington, D.C., and some same-sex couples were legally married in California.

78. Massachusetts was the first state in the country to legalize same-sex marriage. On November 18, 2003, the Massachusetts Supreme Judicial Court invalidated a state constitutional provision that prohibited same-sex marriage in Goodridge v. Department of Public Health, 798 N.E.2d 941 (Mass. 2003). Same-sex marriages in Massachusetts began on May 17, 2004.

79. On May 15, 2008, the California Supreme Court overturned a state ban on same-sex marriage. Same-sex marriages in California began on June 16, 2008. California stopped performing same-sex marriages on November 5, 2008 as a result of the passing of Proposition 8.

80. On April 3, 2009 the Iowa Supreme Court invalidated a state law that prohibited same-sex marriage in Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009). Same-sex marriages in Iowa began on April 27, 2009.

81. On April 7, 2009, the Vermont state legislature passed a bill recognizing same-sex marriage. Same-sex marriages in Vermont began on September 1, 2009.

82. On June 3, 2009, the New Hampshire state legislature approved a bill legalizing same-sex marriage in that state. Same-sex marriages in New Hampshire began on January 1, 2010.

83. On December 18, 2009, the District of Columbia's Mayor Adrian Fenty signed a bill passed by the Council of the District of Columbia recognizing same-sex marriage. Same-sex marriages in the District of Columbia began on March 9, 2010.

Repeal of DADT

84. On December 22, 2010, President Obama signed the Don't Ask, Don't Tell Repeal Act of 2010. Pursuant to that Act, the repeal of 10 U.S.C. § 654 became effective on September 20, 2011. Since that time, Plaintiffs have openly acknowledged their legal, same-sex marriages and have applied for federal military benefits for their spouses. The extension of these benefits was effectively denied to each Plaintiff when they were denied the opportunity to add their legally recognized same-sex spouses to DEERS or were otherwise denied the opportunity to apply for benefits.

Causes of Action

TITLE 10

**COUNT I: TITLE 10, INDEPENDENTLY AND AS MODIFIED BY DOMA,
VIOLATES PLAINTIFFS' EQUAL PROTECTION RIGHTS**

85. Plaintiffs Shannon L. McLaughlin, Casey McLaughlin, Victoria A. Hudson, Monika Poxon, Gary C. Ross, Dan Swezy, Steve M. Hill, Joshua Snyder, Daniel Henderson, Jerret Henderson, Charlie Morgan and Karen Morgan reallege and incorporate by reference all allegations contained within paragraphs 1-84 as if set forth fully herein.

86. Title 10 of the United States Code governs, inter alia, benefits for members of the armed services.

87. DOMA requires the federal government to treat couples in same-sex marriages differently than couples in opposite-sex marriages. DOMA's application to federal military benefits in Title 10 mandates unequal treatment, rendering same-sex marriages non-existent for the purposes of military benefits. Consequently, Plaintiffs were denied military benefits that have been extended to their peers in opposite-sex relationships in violation of the right of equal protection secured by the Fifth Amendment of the Constitution of the United States.

88. To the extent that the definition of "spouse" in 10 U.S.C. § 101(f)(5) can be construed, independent of Section 3 of DOMA, to prevent recognition of same-sex spouses, it suffers from the same constitutional defects as Section 3 of DOMA.

**COUNT II: TITLE 10, INDEPENDENTLY AND AS MODIFIED BY DOMA,
VIOLATES THE TENTH AMENDMENT AND CONSTITUTIONAL PRINCIPLES
OF FEDERALISM**

89. Plaintiffs Shannon L. McLaughlin, Casey McLaughlin, Victoria A. Hudson, Monika Poxon, Gary C. Ross, Dan Swezy, Steve M. Hill, Joshua Snyder, Daniel Henderson, Jerret

Henderson, Charlie Morgan and Karen Morgan reallege and incorporate by reference all allegations contained within paragraphs 1-84 as if set forth fully herein.

90. The Tenth Amendment to the United States Constitution expressly reserves to the states all powers except those limited powers granted to the federal government.

91. The Tenth Amendment preserves for the states the authority to regulate and define marriage for their citizens.

92. Congress lacks the authority under Article I of the United States Constitution to regulate the field of domestic relations, including marriage.

93. DOMA represents an unprecedented, unjustified and unconstitutional expansion of federal regulation into the field of domestic relations, including marriage.

94. Section 3 of DOMA violates the Tenth Amendment, exceeds Congress' Article I powers, and runs afoul of the Constitution's principles of federalism by undermining the states' sovereign authority to define marriage and regulate the marital relationships and status of their citizens, as applied to Title 10.

95. As a direct result of DOMA's unconstitutional expansion of federal regulation into the field of domestic relations, Plaintiffs have been denied federal military benefits that have been extended to their peers in opposite-sex marriages.

96. To the extent that the definition of "spouse" in 10 U.S.C. § 101(f)(5) can be construed, independent of Section 3 of DOMA, to prevent recognition of same-sex spouses, it suffers from the same constitutional defects as Section 3 of DOMA.

COUNT III: TITLE 10, INDEPENDENTLY AND AS MODIFIED BY DOMA,
PLACES AN UNCONSTITUTIONAL CONDITION ON THE FUNDAMENTAL RIGHT TO
MARRY IN ACCORDANCE WITH STATE LAW

97.

102. The Bill of Attainder clause prohibits as unconstitutional any law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial.

103. As a direct result of DOMA's application to federal military benefits in Title 10, the federal government imposes a disability upon a clearly identifiable class of persons involved in legally-recognized same-sex marriages, including Plaintiffs, for no purpose other than to punish them. Plaintiffs were denied federal military benefits that they would otherwise be entitled to if not for their membership in this clearly identifiable class. Thus, through DOMA, Plaintiffs have been subjected to an unconstitutional Bill of Attainder.

104. To the extent that the definition of "spouse" in 10 U.S.C. § 101(f)(5) can be construed, independent of Section 3 of DOMA, to prevent recognition of same-sex spouses, it suffers from the same constitutional defects as Section 3 of DOMA.

TITLE 32

COUNT V: TITLE 32, INDEPENDENTLY AND AS MODIFIED BY DOMA, VIOLATES PLAINTIFFS' EQUAL PROTECTION RIGHTS

105. Plaintiffs Shannon L. McLaughlin, Casey McLaughlin, Charlie Morgan and Karen Morgan reallege and incorporate by reference all allegations contained within paragraphs 1-84 as if set forth fully herein.

106. Title 32 of the United States Code governs, inter alia, benefits for members of the National Guard.

107. DOMA requires the federal government to treat married couples in same-sex marriages differently than married couples in opposite-sex marriages. DOMA's application to federal military benefits in Title 32 mandates unequal treatment, making certain marriages non-existent

for the purposes of military benefits. Consequently, Plaintiffs were denied military benefits that have been extended to their peers in opposite-sex relationships in violation of the right of equal protection secured by the Fifth Amendment of the Constitution of the United States.

108. To the extent that the definition of "spouse" in 32 U.S.C. § 101(18), can be construed, independent of Section 3 of DOMA to prevent recognition of same-sex spouses, it suffers from the same constitutional defects as Section 3 of DOMA.

COUNT VI: TITLE 32, INDEPENDENTLY AND AS MODIFIED BY DOMA,
VIOLATES THE TENTH AMENDMENT AND CONSTITUTIONAL PRINCIPLES OF
FEDERALISM

109. Plaintiffs Shannon L. McLaughlin, Casey McLaughlin, Charlie Morgan and Karen Morgan reallege and incorporate by reference all allegations contained within paragraphs 1-84 as if set forth fully herein.

110. The Tenth Amendment to the United States Constitution expressly reserves to the states all powers except those limited powers granted to the federal government.

111. The Tenth Amendment preserves for the states the authority to regulate and define marriage for their citizens.

112. Congress lacks the authority under Article I of the United States Constitution to regulate the field of domestic relations, including marriage.

113. DOMA represents an unprecedented, unjustified and unconstitutional expansion of federal regulation into the field of domestic relations, including marriage.

114. Section 3 of DOMA violates the Tenth Amendment, exceeds Congress' Article I powers, and runs afoul of the Constitution's principles of federalism by undermining the states' sovereign authority to define marriage and regulate the marital relationships and status of their citizens, as applied to Title 32.

115. As a direct result of DOMA's unconstitutional expansion of federal regulation into the field of domestic relations, Plaintiffs have been denied federal military benefits that have been extended to their peers in opposite-sex marriages.

116. To the extent that the definition of "spouse" in 32 U.S.C. § 101(18), can be construed, independent of Section 3 of DOMA to prevent recognition of same-sex spouses, it suffers from the same constitutional defects as Section 3 of DOMA.

COUNT VII: TITLE 32, INDEPENDENTLY AND AS MODIFIED BY DOMA,
PLACES AN UNCONSTITUTIONAL CONDITION ON THE FUNDAMENTAL RIGHT TO
MARRY IN ACCORDANCE WITH STATE LAW

117. Plaintiffs Shannon L. McLaughlin, Casey McLaughlin, Charlie Morgan and Karen Morgan reallege and incorporate by reference all allegations contained within paragraphs 1-84 as if set forth fully herein.

118. Section 3 of DOMA forces Plaintiffs to renounce their fundamental constitutional right to marry in accordance with state law to obtain federal military spousal benefits under Title 32. To obtain federal military spousal benefits, the Plaintiffs would have to divorce their same-sex spouses and then marry someone of the opposite sex. This imposes an unconstitutional condition on the exercise of the fundamental constitutional right to marry the person of one's choice in accordance with state law.

119. To the extent that the definition of "spouse" in 32 U.S.C. § 101(18) can be construed, independent of Section 3 of DOMA, to prevent recognition of same-sex spouses, it suffers from the same constitutional defects as Section 3 of DOMA.

TITLE 38

COUNT IX: TITLE 38, INDEPENDENTLY AND AS MODIFIED BY DOMA,
VIOLATES PLAINTIFFS' EQUAL PROTECTION RIGHTS

125. Plaintiffs Stewart Bornhoft, Stephen McNabb, Joan Darrah and Jacqueline Kennedy reallege and incorporate by reference all allegations contained within paragraphs 1-84 as if set forth fully herein.

126. Title 38 of the United States Code governs, inter alia, benefits for armed services veterans.

127. DOMA requires the federal government to treat married couples in same-sex marriages differently than married couples in opposite-sex marriages. DOMA's application to federal military benefits under Title 38 mandates unequal treatment, making certain marriages non-existent for the purposes of military benefits. Consequently, Plaintiffs were denied military benefits that have been extended to their peers in opposite-sex relationships in violation of the right of equal protection secured by the Fifth Amendment of the Constitution of the United States.

128. To the extent that the definitions of "spouse" in 38 U.S.C. §§ 101(3) and 101(31) can be construed, independent of Section 3 of DOMA, to prevent recognition of same-sex spouses, it suffers from the same constitutional defects as Section 3 of DOMA.

COUNT X: TITLE 38, INDEPENDENTLY AND AS MODIFIED BY DOMA,
VIOLATES THE TENTH AMENDMENT AND CONSTITUTIONAL PRINCIPLES OF
FEDERALISM

129. Plaintiffs Stewart Bornhoft, Stephen McNabb, Joan Darrah and Jacqueline Kennedy reallege and incorporate by reference all allegations contained within paragraphs 1-84 as if set forth fully herein.

130. The Tenth Amendment to the United States Constitution expressly reserves to the states all powers except those limited powers granted to the federal government.

131. The Tenth Amendment preserves for the states the authority to regulate and define marriage for their citizens.

132. Congress lacks the authority under Article I of the United States Constitution to regulate the field of domestic relations, including marriage.

133. DOMA represents an unprecedented, unjustified and unconstitutional expansion of federal regulation into the field of domestic relations, including marriage.

134. Section 3 of DOMA violates the Tenth Amendment, exceeds Congress' Article I powers, and runs afoul of the Constitution's principles of federalism by undermining the states' sovereign authority to define marriage and regulate the marital relationships and status of their citizens, as applied to Title 38.

135. As a direct result of DOMA's unconstitutional expansion of federal regulation into the field of domestic relations, Plaintiffs have been denied federal military benefits that have been extended to their peers in opposite-sex marriages.

136. To the extent that the definitions of "spouse" in 38 U.S.C. §§ 101(3) and 101(31) can be construed, independent of Section 3 of DOMA, to prevent recognition of same-sex spouses, they suffer from the same constitutional defects as Section 3 of DOMA.

COUNT XI: TITLE 38, INDEPENDENTLY AND AS MODIFIED BY DOMA, PLACES AN UNCONSTITUTIONAL CONDITION ON THE FUNDAMENTAL RIGHT TO MARRY IN ACCORDANCE WITH STATE LAW

137. Plaintiffs Stewart Bornhoft, Stephen McNabb, Joan Darrah and Jacqueline Kennedy reallege and incorporate by reference all allegations contained within paragraphs 1-84 as if set forth fully herein.

138. Section 3 of DOMA forces Plaintiffs to renounce their fundamental constitutional right to marry in accordance with state law to obtain federal military spousal benefits. To obtain federal military spousal benefits, the Plaintiffs would have to divorce their same-sex spouses and then marry someone of the opposite sex. This imposes an unconstitutional condition on the exercise of the fundamental constitutional right to marry the person of one's choice in accordance with state law.

139. To the extent that the definitions of "spouse" in 38 U.S.C. §§ 101(3) and 101(31) can be construed, independent of Section 3 of DOMA, to prevent recognition of same-sex spouses, they suffer from the same constitutional defects as Section 3 of DOMA.

COUNT XII: TITLE 38, INDEPENDENTLY AND AS MODIFIED BY DOMA, IS AN
IMPERMISSIBLE BILL OF ATTAINDER

140. Plaintiffs Stewart Bornhoft, Stephen McNabb, Joan Darrah, and Jacqueline Kennedy reallege and incorporate by reference all allegations contained within paragraphs 1-84 as if set forth fully herein.

141. Article I, Section 9 of the United States Constitution states that "No Bill of Attainder or ex post facto Law shall be passed."

142. The Bill of Attainder clause prohibits as unconstitutional any law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial.

143. As a direct result of DOMA's application to federal military benefits in Title 38, the federal government imposes a disability upon a clearly identifiable class of persons involved in legally-recognized same-sex marriages, including Plaintiffs, for no purpose other than to punish them. Plaintiffs were denied federal military benefits that they would otherwise be entitled to if

not for their membership in this clearly identifiable class. Thus, through DOMA, Plaintiffs have been subjected to an unconstitutional Bill of Attainder.

144. To the extent that the definitions of "spouse" in 38 U.S.C. §§ 101(3) and 101(31) can be construed, independent of Section 3 of DOMA, to prevent recognition of same-sex spouses, they suffer from the same constitutional defects as Section 3 of DOMA.

WHEREFORE, Plaintiffs pray for a judgment and order:

(a) Declaring that Title 10, independently and as modified by DOMA, 1 U.S.C. § 7, cannot be constitutionally applied to deny benefits to same-sex married couples, including Plaintiffs

uphold the Constitution, taking the same oath as the members of this Court. The President has stated his view that Section 3 of DOMA, as applied to same-sex couples who are legally married under state law, violates the equal protection component of the Fifth Amendment, and this Court has agreed. Yet, the President also has informed the Department of Justice that Section 3 of DOMA will continue to be enforced by the Executive Branch, despite its unconstitutionality. This conflicted position of the Executive Branch enforcing a law it knows to be unconstitutional is not substantially justified. See 5 U.S.C. § 504(a)(2).

MAJ Shannon L. McLaughlin
Casey McLaughlin
LTC Victoria A. Hudson
Monika Poxon
COL Stewart Bornhoft (Ret)
Stephen McNabb
LT Gary C. Ross
Dan Swezy
CPT Steve M. Hill
Joshua Snyder
A1C Daniel Henderson
Jerret Henderson
CW2 Charlie Morgan
Karen Morgan
CAPT Joan Darrah (Ret)
Jacqueline Kennedy

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/s/ Ian McClatchey

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CIVIL COVER SHEET

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p>	<p style="text-align: center;">DEFENDANTS</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p style="text-align: center;">NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <p>Citizen of This State PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated PTF DEF</p>
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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Maj Shannon L McLaughlin, et al., Plaintiffs v. Leon E. Panetta, in his official capacity as Secretary of Defense, et al., Defendants

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830*, 891, 893, 894, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442-446, 710, 720, 730, 740, 790, 820*, 840*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 368, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 610, 620, 625, 630, 640, 650, 660, 690, 791, 810, 861-865, 875, 890, 892, 900, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

Nancy Gill & Marcelle Letourneau et al. v. Office of Personnel Management et al., Case 1:09-cv-10309-JLT

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Ian McClatchey (BBO#: 676664)

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