

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MAJ SHANNON L. MCLAUGHLIN, et al.)	
)	
Plaintiffs,)	
)	
v.)	No. 1:11-cv-11905-RGS
)	
LEON E. PANETTA, in his official capacity as)	
Secretary of Defense; et al.,)	
)	
Defendants.)	
)	

**PLAINTIFFS' REQUEST FOR THE COURT TO ENTER JUDGMENT ON THEIR
FIFTH AMENDMENT CLAIMS**

The Court asked the parties to address whether the Supreme Court's decision in United States v. Windsor, 133 S. Ct. 2675 (2013), finding the Defense of Marriage Act ("DOMA") unconstitutional pursuant to the Fifth Amendment is dispositive of Plaintiffs' claims that DOMA is unconstitutional pursuant to the Fifth Amendment. (Dkt. 44.) Windsor is plainly dispositive, and compels judgment in Plaintiffs' favor of their Fifth Amendment claims. The Supreme Court's ruling invalidating DOMA did so in all contexts, and specifically references the sort of claims raised by the Plaintiffs in this case. Windsor, 133 S. Ct. 2675, 2694 (2013) (noting DOMA impacts "veterans' benefits" and keeps same-sex spouses "from being buried together in veterans' cemeteries"). Moreover, the same logic that required DOMA to be invalidated applies with equal force to the definitional provisions for the term "spouse" and phrase "surviving spouse," as used in Titles 10, 32 and 38. Compare 1 U.S.C. § 7 (DOMA defines "spouse" as "a person of the opposite sex who is a husband or wife") with 38 U.S.C. § 101(31) (Veterans' Title defines "spouse" as "a person of the opposite sex who is a wife or husband").

Because Plaintiffs have been denied a host of rights they were entitled to as of the day they attempted, and were wrongfully denied their right, to register their spouses for benefits, Plaintiffs ask the Court to enter judgment in their favor *nunc pro tunc* as of the day each service member or veteran Plaintiff sought to register his or her spouse. (Compl. ¶¶ 32 (Shannon & Casey McLaughlin -- October 19, 2011); 37 (Victoria Hudson & Monika Poxon -- October 14, 2011); 41 (Stewart Bornhoft & Stephen McNabb -- October 11, 2011); 45 (Gary Ross & Dan Sweezy -- October 14, 2011); 49 (Steve Hill & Joshua Snyder -- September 26, 2011); 53 (Daniel & Jerrett Henderson -- September 21, 2011); 58 (Charlie & Karen Morgan -- October 25, 2011); 62 (Joan Darrah & Jacqueline Kennedy -- October 24, 2011).) The Court has the authority to enter judgment *nunc pro tunc* as an equitable remedy to give them the benefit of the rights they were entitled at the time those rights were denied. See, e.g., Ethyl Corp. v. Browner, 941 F.3d 941, 945-46 (D.C. Cir. 1995) (addressing availability of *nunc pro tunc* relief). It is particularly warranted for the benefit of Karen Morgan, whose wife, Charlie Morgan, died after this case was filed and who obviously cannot register her spouse now. See, e.g., Padgett v. Nicholson, 473 F.3d 1364 (Fed. Cir. 2007) (ordering a tort judgment for a service member to be entered *nunc pro tunc* as of the day before he died and the substitution of his spouse as a party so his wife could collect the judgment). Plaintiffs ask that the judgment explicitly require Defendants to take the steps necessary to correct the personnel or service records of the service member and veteran Plaintiffs to reflect that they were married as of the dates indicated above, and they and their spouses are entitled to all benefits they would have been entitled to receive as of the dates they attempted to register.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on July 17, 2012, the foregoing was filed with the Clerk of the Court using the Court's CM/ECF system, which will send electronic notice of such filing to all participants in the case.

/s/ Christopher D. Man
Christopher D. Man