
No. 06-2313

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

THOMAS COOK, MEGAN DRESCH, LAURA GALABURDA,
JACK GLOVER, DAVID HALL, MONICA HILL, JENNY LYNN KOPFSTEIN,
JENNIFER MCGINN, JUSTIN PEACOCK, JAMES PIETRANGELO II,
DEREK SPARKS, and STACY VAZQUEZ,

Plaintiffs-Appellants,

v.

DONALD H. RUMSFELD, SECRETARY OF DEFENSE;
TOM RIDGE, SECRETARY OF HOMELAND SECURITY;
UNITED STATES OF AMERICA,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Massachusetts
Case No. 04-CV-12546-GAO
The Honorable Judge O'Toole

**AMICUS CURIAE BRIEF OF AMERICAN SOCIOLOGICAL
ASSOCIATION AND SOCIAL SCIENCE PROFESSORS
FOR APPELLANTS AND SUPPORTING REVERSAL**

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Amici curiae are the American Sociological Association, the leading national association for sociologists, along with the following distinguished social scientists and military experts: Dr. Aaron Belkin, Dr. Melissa Embser-Herbert, Dr. Elizabeth Kier, Dr. Robert MacCoun, and Dr. David Segal (hereinafter “*amici*”). All parties have consented to this filing. *Amici* submit this brief to offer the Court their extensive expertise on the following narrow but significant issue raised by the arguments below: Whether allowing gay and lesbian personnel to serve openly in the military will undermine unit cohesion and therefore adversely impact military performance. Based on their substantial expertise, *amici* have concluded that the government is simply incorrect in its assertion that allowing gays and lesbians to serve openly in the military would undermine unit cohesion and therefore adversely impact military performance. Such an assertion is unsupported by the weight of social scientific evidence.

INTEREST OF AMICI

The American Sociological Association (ASA) is the major professional association for sociologists in the United States. The organization has more than 14,000 members, including most sociologists holding doctoral degrees from accredited universities. ASA is a non-profit membership association dedicated to advancing sociology as a scientific discipline and profession serving the public good.

Amici also include individual leading scholars with expertise relating to the United States's policy of excluding gay men and lesbians from serving openly in the military.

Dr. Aaron Belkin is Associate Professor of Political Science at the University of California at Santa Barbara, where he is also Director of the Center for the Study of Sexual Minorities in the Military. Dr. Belkin has conducted extensive research on unit cohesion and sexuality, including empirical research regarding the experiences of foreign militaries that have lifted their gay bans, and has published his results in several leading academic journals, including *Armed Forces & Society* and *International Security*. In addition, Dr. Belkin has made presentations on gays in the military at the Army War College, National Defense University, Naval Postgraduate School, and U.S. Military Academy at West Point.

Dr. Melissa Embser-Herbert, J.D., is Professor and Chair of the Department of Sociology at Hamline University. Dr. Embser-Herbert, who attained the rank of Captain in the U.S. Army Reserve, has written and lectured extensively on sexuality and military service. She is currently preparing a comprehensive overview of the law concerning the military service of openly gay, lesbian, or bisexual persons, which will be published in 2007 as part of the *Contemporary Military and Strategic Issues* series.

Dr. Elizabeth Kier is Associate Professor of Political Science at the University of Washington, where she specializes in international relations with an emphasis on international security and civil-military relations. Recipient of the Edgar S. Furniss Award in 1998 for exceptional contribution to the study of national and international security, Dr. Kier is the author of the definitive study on unit cohesion and sexuality. She was formerly a Senior Fellow at the Belfer Center for Science and International Affairs at Harvard University, a Fellow at the Center for International Security and Arms Control at Stanford University, and a Social Science Research Council–MacArthur Fellow in Peace and International Security. Dr. Kier’s work on open integration of gay men and lesbians has been published in the premier refereed journals in the field.

Dr. Robert MacCoun is Professor of Public Policy, Professor of Law, and Affiliated Professor of Psychology at the University of California at Berkeley. From 1986 to 1993, he was Behavioral Scientist at The RAND Corporation. Dr. MacCoun is a recognized expert on small group performance and on the effects of public policies on citizens’ behaviors. In 1993, he was a key member of the large interdisciplinary research team assembled at RAND to advise Defense Secretary Les Aspin on the potential empirical consequences of ending the ban on gay and lesbian service in the U.S. military. Dr. MacCoun was the principal author of the chapter on unit cohesion, and also helped draft the chapters on police and fire

departments and the conclusions and policy recommendations of the report. He has over 100 publications, including articles in *Science*, *Psychological Review*, *Psychological Bulletin*, *American Psychologist*, *Annual Review of Psychology*, *Law and Human Behavior*, *Journal of Policy Analysis and Management*, and *Stanford Law Review*.

Dr. David Segal is a Distinguished Scholar-Teacher, Professor of Sociology, and Affiliate Professor of Government, Politics, and Public Affairs at the University of Maryland, where he is also Director of the Center for Research on Military Organization. A recipient of the United States Department of the Army Medal for Outstanding Civilian Service in 1989 and 2000, Dr. Segal is also the former President of the Inter-University Seminar on Armed Forces and Society, former President of the Research Council of the International Sociological Association, and former Chair of the Section on War, Peace, and Social Conflict of the American Sociological Association. His public service includes serving as Special Assistant for Peace Operations to the U.S. Army Chief of Staff from 1994 to 1996, and two terms on the Board of Visitors of the U.S. Army War College. Dr. Segal has written extensively on U.S. and Western military sociology, and has testified before Congress on the relationship between homosexuality and cohesion.

ARGUMENT

When Congress enacted “Don’t Ask, Don’t Tell” (“DADT”) in 1993, the military argued that allowing gay men and lesbians to serve openly in the military would undermine unit cohesion and therefore impair military performance. As it had done in opposing racial integration in the 1940s and gender integration in the 1970s and 1980s, the military rested its argument on anecdotal observations by military commanders and on flawed interpretations of dated studies that discussed unit cohesion in World War II.

The enactment of DADT spurred significant social science research on unit cohesion and its relationship to military performance. This research shows that the military’s arguments about the impact of allowing gay men and lesbians to serve openly in the military, the nature of unit cohesion, and its relationship to group performance lack any scientifically-validated, empirical support. The research suggests, instead, that allowing gay men and lesbians to serve openly in the military would not adversely affect military performance. This conclusion is corroborated by analogous experience in foreign militaries that have recently begun to allow gay and lesbian servicemembers to serve openly.

I. JUDICIAL CONSIDERATION OF SOCIAL SCIENCE EVIDENCE IS APPROPRIATE IN THIS CASE.

The parties disagree as to the standard of review applicable to Appellants' challenge to DADT. Appellees argue that rational basis review applies; Appellants argue for a heightened standard of review. Regardless of what standard is applied, however, judicial consideration of *amici*'s social science evidence is permissible and appropriate.

Assuming *arguendo* that rational basis review applies, Appellants would bear the burden of showing that there existed no "reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). To meet that burden, Appellants must demonstrate that "the asserted grounds for the legislative classification lack any reasonable support in fact." *See N.Y. State Club Ass'n v. City of New York*, 487 U.S. 1, 17 (1988).

Social science research regarding unit cohesion is relevant in assessing whether Congress's unit cohesion rationale for DADT has a rational basis. *See Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981) ("[P]arties challenging legislation under the Equal Protection Clause may introduce evidence supporting their claim that it is irrational ..."). Accordingly, the scientific evidence presented by *amici* is appropriately considered by this Court under a rational basis review. *Cf. United States v. Carolene Prods. Co.*, 304 U.S. 144,

153–54 (1938) (“[W]e recognize that the constitutionality of a statute, valid on its face, may be assailed by proof of facts tending to show that the statement as applied to a particular article is without support in reason.”).

The scientific evidence presented by *amici* is all the more relevant if a heightened standard of review applies, as argued by Appellants. For instance, where the specter of animus hangs over a legislative classification, as it does here, courts have engaged in a more searching review of the government’s purported rationale. *See, e.g., Lawrence v. Texas*, 539 U.S. 558, 578 (2003); *Romer v. Evans*, 517 U.S. 620, 634–35 (1996). In the case of DADT, there are floor statements and testimony in the legislative record that suggest a certain antipathy toward gay men and lesbians serving openly in the military. For instance, one member of Congress expressed his animus in particularly repellent terms:

[Y]ou gentlemen all know that the best of your troops can never respect and thereby follow orders totally from someone who likes taking it up the bum, no matter how secret he keeps it. Once it leaks out, they think this person is abnormal, perverted, and a deviant from the norm.¹

In determining whether Congress’s motivation for enacting DADT was in fact unit cohesion or something else, the Court would look to determine whether the proffered rationale of unit cohesion enjoys scientific support. *Cf. Baker v. City of*

¹ *Assessment of the Plan to Lift the Ban on Homosexuals in the Military: Hearings Before the House Comm. on Armed Services*, 103d Cong. 378 (1993) (statement of Representative Dorman).

Concord, 916 F.2d 744, 749 (1st Cir. 1990) (“We think that the case law, weighed without a thumb on the scales, aptly illustrates that courts, in conducting a constitutional review, will not rubber-stamp state officials’ rationales to justify challenged statutes.”). *Amici*’s scientific expertise should assist in this review.

II. SOCIAL SCIENCE RESEARCH SHOWS THAT ALLOWING GAY AND LESBIAN PERSONNEL TO SERVE OPENLY WOULD NOT IMPAIR MILITARY PERFORMANCE.

A. DADT’s “Unit Cohesion Rationale” Has Lacked Scientific Support Since Its Inception.

In the legislation establishing DADT, Congress found that “[o]ne of the most critical elements in combat capability is unit cohesion,”² and that open integration of gay and lesbian servicemembers would “create an unacceptable risk” to such unit cohesion, thus harming military effectiveness.³ The District Court identified the anecdotal testimony of high-ranking military officials, such as Colin Powell⁴ and Norman Schwarzkopf,⁵ as providing the foundation for this conclusion.⁶

² 10 U.S.C. § 654(a)(7).

³ 10 U.S.C. § 654(a)(15).

⁴ *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. on Armed Services*, 103d Cong. 708 (1993) (statement of Gen. Colin Powell) (“[T]o win wars, we create cohesive teams of warriors who will bond so tightly that they are prepared to go into battle and give their lives if

(footnote continued...)

Congress also cited three World War II-era studies that generally address unit cohesion.⁷ These studies, however, did not examine whether allowing gay men and lesbians to serve openly in the military would adversely affect unit cohesion. Accordingly, these studies did not — and could not — support DADT. In addition to being decades out of date, these studies suffer from significant flaws: They were not sufficiently sophisticated to provide scientific support for DADT;⁸

necessary for the accomplishment of the mission and for the cohesion of the group and for their individual buddies. We cannot allow anything to happen which would disrupt that feeling of cohesion within the force.”).

⁵ See *Cook v. Rumsfeld*, 429 F. Supp. 2d 385, 402 n.25 (D. Mass. 2006) (quoting Gen. H. Norman Schwarzkopf) [JA221].

⁶ See *id.* at 399–400 [JA216–217].

⁷ See S.L.A. MARSHALL, *MEN AGAINST FIRE: THE PROBLEM OF BATTLE COMMAND IN FUTURE WAR* (1947); SAMUEL STOUFFER ET AL., *THE AMERICAN SOLDIER* (1949); Edward Shils & Morris Janowitz, *Cohesion and Disintegration in the Wehrmacht in World War II*, 12 PUB. OPINION Q. 280 (1948).

⁸ See DON’T ASK, DON’T TELL: DEBATING THE GAY BAN IN THE MILITARY 91 (Aaron Belkin & Geoffrey Bateman, eds. 2003) [hereinafter “DEBATING THE GAY BAN”] (quoting Dr. David Segal) (describing the studies cited in note 7 as “hav[ing] absolutely no value as scientific research”); David Segal & Meyer Kestnbaum, *Professional Closure in the Military Labor Market: A Critique of Pure Cohesion*, in *THE FUTURE OF THE ARMY PROFESSION* 439, 445–48 (Don M. Snider & Gayle L. Watkins, eds. 2002) (describing the studies cited in note 7 as “crude by contemporary standards” and explaining the faults of each).

they overlooked important characteristics of their data-sets;⁹ and they were methodologically flawed in other important respects.¹⁰

As far back as 1957, the military has acknowledged that the unit cohesion rationale has no scientific basis. In a U.S. Navy study known as the “Crittenden Report,” it was noted that the policy of excluding homosexuals “is not based on scientific or empirical data, but rather on the considered judgment of military professionals [and] such judgment is primarily anecdotal.”¹¹ Tellingly, the military previously relied on these same cohesion arguments to defend racial and gender segregation in the military.¹²

⁹ See OMER BARTOV, *HITLER’S ARMY: SOLDIERS, NAZIS, AND WAR IN THE THIRD REICH* (1991) (arguing that primary group cohesion could not have explained Shils’s and Janowitz’s results because high casualties in the military units studied were so severe as to prevent the formation of cohesive bonds).

¹⁰ For example, the Shils and Janowitz study suffered from reporting errors stemming from the status of the survey participants, all of whom were captured Nazi soldiers who would likely suppress answers pertaining to ideology when asked by their captors, “Why did you keep fighting?” See *DEBATING THE GAY BAN*, *supra* note 8, at 91 (quoting Dr. David Segal); Segal & Kestnbaum, *supra* note 8, at 445–46.

¹¹ Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing with Homosexuality (Crittenden Report), March 15, 1957, *reprinted in* GAO, *DOD’s Policy on Homosexuality: Report to Congressional Requester on Defense Force Management* 68 (June 1992).

¹² Elizabeth Kier, *Homosexuals in the U.S. Military: Open Integration and Combat Effectiveness*, 23 *INT’L SECURITY* 5, 22–23 (Fall 1998).

In the course of considering the DADT policy, the President and Congress commissioned social science reports and solicited the testimony of social science professors on the effects of excluding openly gay and lesbian servicemembers.¹³

However, the results of these studies did not support the notion that excluding openly gay and lesbian personnel would enhance military performance.¹⁴

Similarly, although some testimony hinted vaguely at the importance of a certain

¹³ See DEBATING THE GAY BAN, *supra* note 8, at 77–78 (quoting Dr. Robert MacCoun) (discussing political ramifications of President Clinton’s decision to commission scientific reports and thus frame DADT as an empirical question). A Pentagon task force also produced a relatively short memorandum supporting its policy position. *Id.* (quoting Dr. Robert MacCoun). The contents of this Pentagon memo have not been made public.

¹⁴ In response to a request from then-Secretary of Defense Les Aspin, the RAND Corporation prepared a lengthy report on the policy question of whether and how the military should allow gay men and lesbians to serve. In a chapter prepared by Dr. Robert MacCoun entitled “What Is Known About Unit Cohesion and Military Performance,” the report discussed the emerging division between task cohesion and social cohesion, *infra* section II.B, and concluded that “there is ample reason to believe that heterosexual and homosexual military personnel can work together effectively,” and that “it is not necessary to like someone to work with them, so long as members share a commitment to the group’s objectives.” NATIONAL DEFENSE RESEARCH INSTITUTE, SEXUAL ORIENTATION AND U.S. MILITARY PERSONNEL POLICY: OPTIONS AND ASSESSMENT 329–30 (RAND Corp. 1993) [hereinafter “RAND Report”]. In enacting DADT, Congress ignored the RAND Report’s recommendations.

type of cohesion, this testimony failed to explain how allowing gay and lesbian personnel to serve openly would affect such cohesion.¹⁵

B. Social Science Research Does Not Support the View that Allowing Gay Men and Lesbians To Serve Openly Would Hurt Military Performance.

Sociological research spurred by DADT has revealed a better picture of the connection between unit cohesion and military effectiveness. Since the enactment of DADT, the scientific community has developed a more sophisticated understanding of the nexus between cohesion and group performance. The conclusion among experts in this field has been that the unit cohesion rationale behind DADT has no basis in scientific fact.¹⁶

¹⁵ See, e.g., *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. on Armed Services*, 103d Cong. 248 (1993) (statement of Dr. William Darryl Henderson) (defining a concept of cohesion in which all soldiers train and fight to achieve a common objective).

¹⁶ Even Dr. Charles Moskos, the sociologist and self-proclaimed architect of DADT, has expressed doubts regarding the unit cohesion rationale. See Brief of Social Scientists and Military Experts as *Amici Curiae*, *United States v. Marcum*, 60 M.J. 198 (C.A.A.F. 2004) (No. 02-0944) (arguing, in a brief joined by Dr. Moskos, that decriminalization of consensual sodomy would not damage unit cohesion as suggested by military leaders, and criticizing unit cohesion theory generally), available at 2003 WL 24308707; see also Nathaniel Frank, *What's Love Got to Do With It?: The Real Story of Military Sociology and "Don't Ask, Don't Tell,"* LINGUAFRANCA 71, 76 (Oct. 2000) (describing an interview with Dr. Moskos in which he questions the validity of the unit cohesion rationale).

1. There is no evidence that allowing gay and lesbian servicemembers to serve openly would adversely affect social cohesion.

At the outset, the premise that allowing gay and lesbian servicemembers to serve openly would necessarily have an adverse effect on the cohesion of military units lacks support in contemporary scientific evidence. As noted, the DADT policy in 1993 was premised largely on the anecdotal statements of military officers that allowing gay and lesbian soldiers to serve openly would adversely affect unit cohesion by undermining the social cohesiveness of the group. There is no contemporary scientific evidence to suggest that allowing gay and lesbian soldiers to serve openly would have that effect. Rather, current polling data indicate that U.S. servicemembers are personally comfortable with gays and lesbians. For instance, according to a recent poll that included both officers and enlisted personnel, 73% of servicemembers report being personally comfortable in the presence of gay men and lesbians.¹⁷ Consequently, to the extent that cohesion

¹⁷ The survey, designed by the Michael D. Palm Center at the University of California, Santa Barbara, was administered by Zogby, Inc. and analyzed by Dr. Gary Gates of the Williams Project at the University of California, Los Angeles. Polling participants, consisting of 352 enlisted personnel who served in Iraq or Afghanistan, were asked the following question: "Personally, how comfortable are you in the presence of gays and lesbians." Of the 20% of respondents who reported having some level of discomfort in the presence of gay men and lesbians, 15% were only "somewhat uncomfortable" and 5% were "very uncomfortable." 8% of respondents did not report being comfortable or uncomfortable.

is relevant to group performance, there is little if any basis to conclude that allowing gay and lesbian personnel to serve openly would adversely affect unit cohesion.

2. Task cohesion, not social cohesion, determines military effectiveness.

As discussed above, contemporary evidence does not support the view that open participation of gay men and lesbians would necessarily create social conflict in military units. However, even if allowing gay and lesbian personnel to serve openly would have some deleterious effect on social affinity within the unit, it does not follow that such inclusion would adversely affect military performance. In the years since DADT's enactment, it has become standard in the social science literature to subdivide the concept of unit cohesion into two subcomponents: social cohesion and task cohesion.¹⁸ Social cohesion, or "affective bonding," refers to interpersonal attraction among the members of a group.¹⁹ Task cohesion, or "instrumental bonding," reflects a shared commitment to a collectively held goal.²⁰

¹⁸ See, e.g., Robert J. MacCoun, Elizabeth Kier & Aaron Belkin, *Does Social Cohesion Determine Motivation in Combat? An Old Question with an Old Answer*, 32 ARMED FORCES & SOC'Y 646 (2006).

¹⁹ Kier, *supra* note 12, at 17.

²⁰ *Id.*

Thus, “[s]ocial cohesion ... refers to whether group members like each other, while task cohesion refers to whether they share the same goals.”²¹

The need to separate these concepts grew out of scientific attempts to discern a link between cohesion and group performance.²² Initial efforts found only a modest, if any, positive correlation between primary group cohesion and performance.²³ Moreover, these studies were inconclusive on the issue of whether success caused cohesion or vice versa.²⁴ Such weak empirical results led researchers to refine their studies. By drawing a conceptual distinction between social cohesion and task cohesion, social scientists have clarified the ways in which cohesion affects performance and the ways in which it does not.

Research employing this distinction establishes that task cohesion is positively related to group performance, while social cohesion is either unrelated

²¹ MacCoun, Kier & Belkin, *supra* note 18, at 647.

²² DEBATING THE GAY BAN, *supra* note 8, at 78–79 (quoting Dr. Robert MacCoun) (describing the inconclusive nature of studies that failed to account for the distinction between task cohesion and social cohesion).

²³ See Kier, *supra* note 12, at 12 & n.30 (reporting results of social science meta-analysis, whereby decades’ worth of cohesion studies are integrated and examined); see also DEBATING THE GAY BAN, *supra* note 8, at 78 (quoting Dr. Robert MacCoun).

²⁴ See Kier, *supra* note 12, at 13. It is not difficult to see how success could lead to social cohesion. As one study noted: “It is relatively simple for people to be friendly and happy when the situation is rewarding.” Albert Myers, *Team Competition, Success, and the Adjustment of Group Members*, 65 J. OF ABNORMAL & SOC. PSYCHOL. 330 (Nov. 1962).

or negatively related to group performance.²⁵ That is, a group's success or failure is determined by the strength of its members' commitment to a shared goal, not by the extent to which its members like each other. These results have been confirmed in dozens of studies using a wide range of methodologies.²⁶

Accordingly, task cohesion, and not social cohesion, is the relevant variable in a scientific discussion of the determinants of group performance.²⁷

²⁵ See MacCoun, Kier & Belkin, *supra* note 18, at 648; Kier, *supra* note 12, at 18; DEBATING THE GAY BAN, *supra* note 8, at 78–79 (quoting Dr. Robert MacCoun); *but see* Leonard Wong et al., *Why They Fight: Combat Motivation in the Iraq War* (U.S. Army War College, 2003) (arguing that social cohesion, rather than task cohesion, spurred American forces to victory in the most recent armed conflict with Saddam Hussein). Professors MacCoun, Kier, and Belkin have explained why the conclusions of the Wong study are invalidated by serious flaws in its methodology. See generally MacCoun, Kier & Belkin, *supra* note 18.

²⁶ DEBATING THE GAY BAN, *supra* note 8, at 70 (“Experts who favor lifting the gay ban argue that hundreds of studies show that a group’s performance does not depend on whether group members like each other.”).

²⁷ Indeed, some studies suggest that social cohesion may actually harm group performance, to the extent that friendship among group members causes them to prioritize interpersonal relationships over group objectives, or to unite in support of a shared goal that is counter-productive to the group’s stated mission. The most commonly cited example of such dysfunctional social cohesion is the practice of “fragging.” See Kier, *supra* note 12, at 15–16 (describing the phenomenon of fragging, whereby a mutinous but cohesive sub-group intimidates a fellow soldier or commander with the threat of a nighttime grenade attack); Charles C. Moskos, Jr., *Surviving the War in Vietnam*, in STRANGERS AT HOME: VIETNAM VETERANS SINCE THE WAR 71, 80 (Charles R. Filey & Seymour Leventman eds., 1980) (“It is an irony of sorts that the primary group processes that appeared to sustain combat soldiers in World War II are close cousins to the social processes that underlaid the vast majority of fraggings in Vietnam.”).

3. There is no evidence that allowing gay men and lesbians to serve openly would adversely affect task cohesion.

The weight of social science research conducted over the last 60 years does not support the view that allowing gay and lesbian personnel to serve openly would negatively affect task cohesion. This research, conducted in a variety of contexts, has indicated that task cohesion is independent of social cohesion.²⁸ Thus, regardless of whether open integration impacts social affinity within the unit, there is no reason to believe that gay and straight servicemembers are unable to share a common goal of accomplishing a specified military objective.²⁹ Consequently, insofar as the exclusion of openly gay and lesbian personnel does not affect task

²⁸ See Kier, *supra* note 12, at 19 (“[T]he type of cohesion that may be related to performance (task cohesion) is also the type of cohesion that the introduction of individuals with different values and attitudes would not disrupt.”); RAND Report, *supra* note 14, at 312 (“[S]imilarity of social attitudes and beliefs is not associated with task cohesion, although it is sometimes associated with social cohesion. Task cohesion involves similarity, but of a different sort; it is found when individuals share a commitment to the group’s purpose and objectives. There seems little reason to expect acknowledged homosexuality to influence this commitment, at least not directly.”). See also *id.* at 290–93 (describing the social versus task distinction and citing a range of sources from a variety of contexts).

²⁹ See RAND Report, *supra* note 14, at 312 (citing RAND interviews and Senate testimony indicating that “homosexuals who serve in the military are committed to the military’s core values”). This conclusion is bolstered by the fact that the U.S. military has successfully integrated members of different races without suffering a decrease in effectiveness. Interestingly, the unit cohesion rationale was also offered as a reason for the military’s policy of racial segregation. Kier, *supra* note 12, at 22–23.

cohesion, there is no scientific support for the view that allowing gay or lesbian personnel to serve openly would adversely affect military performance.

C. Research Shows That Allowing Gay and Lesbian Personnel to Serve Openly in Analogous Situations Did Not Adversely Impact Performance.

No other institution faces exactly the same situation as that of the United States military. Nevertheless, the experiences of other Western countries in integrating openly gay and lesbian personnel into their armed forces provide useful data points for verifying the social scientific conclusions described above. The U.S. military itself has shown great interest in the practices of other countries in contexts other than the DADT debate. For example, the U.S. military has examined the policies of other nations to learn what works with regard to such issues as counterterrorism, privatization, and medical policy.³⁰ Moreover, the U.S. military has occasionally looked to the experiences of other nations to inform its own policies with regard to gay and lesbian personnel.³¹

Real-world experience among foreign militaries confirms the sociological finding that allowing gay and lesbian servicemembers to serve openly will not

³⁰ See generally Geoffrey Bateman, *Is the U.S. Military Unique?: "Don't Ask, Don't Tell" and the (Ir)relevance of Foreign Military Experiences* (Oct. 2006) (report commissioned by the Center for the Study of Sexual Minorities in the Military, University of California, Santa Barbara).

³¹ See Paul A. Gade, David Segal & Edgar M. Johnson, *The Experience of Foreign Militaries*, in *OUT IN FORCE* 106 (Gregory M. Herek et al. eds., 1996).

adversely affect military effectiveness. Those countries that have recently changed their policies to allow gay and lesbian soldiers to serve openly have demonstrated that open integration of gay men and lesbians does not have the deleterious consequences for military performance predicted by supporters of DADT.

A number of foreign countries have repealed their restrictions on service by openly gay or lesbian personnel.³² In each of these cases, allowing gay men and lesbians to serve openly did not adversely impact military effectiveness. Indeed, the evidence indicates that repealing a ban on gay or lesbian soldiers had no effect at all on military performance for these countries.³³ This experience reinforces the view that allowing gay and lesbian personnel to serve openly does not affect group performance.

The British experience is particularly instructive. Britain and the United States share a cultural heritage, and it was perhaps for this reason that the existence of the British military's ban on openly gay and lesbian soldiers was frequently invoked during the discussion of DADT in this country.³⁴ British officials once proclaimed that homosexuality was "incompatible with service in the Armed

³² Countries that have recently repealed such bans include England, Canada, Israel, and Australia.

³³ Aaron Belkin, *Don't Ask, Don't Tell: Is the Gay Ban Based on Military Necessity?*, 33 *PARAMETERS* 108, 110–11, 118 (Summer 2003).

³⁴ *See id.* at 117.

Forces,”³⁵ a stance that survived until 2000.³⁶ In that year, Britain lifted its ban on openly gay and lesbian soldiers in response to a decision by the European Court of Human Rights.³⁷ Since that time, open integration of gay men and lesbians has been hailed by the Ministry of Defense as a “solid achievement” and an “unqualified success,” and has engendered a “marked lack of reaction” among servicemembers.³⁸ British authorities observed no deleterious consequences with regard to recruiting or resignations, and perceived no effect on morale, unit cohesion, or operational effectiveness.³⁹

Similar results were observed in Canada, Israel, Australia, and other countries that have lifted their respective bans of openly gay or lesbian soldiers.⁴⁰

³⁵ British Ministry of Defense, “Armed Forces Policy and Guidelines on Homosexuality” 1 (1994); *see also* THE POSTMODERN MILITARY: ARMED FORCES AFTER THE COLD WAR 44 (Charles Moskos, John Allen Williams & David R. Segal, eds. 1999) [hereinafter “POSTMODERN MILITARY”] (citing British policy but noting that “[t]he problem with these arguments is that they rely on anecdotal evidence or personal conviction rather than hard data”).

³⁶ *See generally* Aaron Belkin & R.L. Evans, *The Effects of Including Gay and Lesbian Soldiers in the British Armed Forces: Appraising the Evidence* (Nov. 2000) (report commissioned by the Center for the Study of Sexual Minorities in the Military, University of California, Santa Barbara).

³⁷ *Lustig-Prean & Beckett v. The United Kingdom*, ECHR Nos. 31417/96 and 32377/96.

³⁸ Belkin & Evans, *supra* note 36, at 2.

³⁹ *Id.*

⁴⁰ *See generally* Belkin, *supra* note 33.

For instance, a study of Canada's open integration of gay and lesbian soldiers found that "Canada's decision to lift its gay ban had no impact on military performance, readiness, cohesion, or morale."⁴¹ Another recent study concluded that the presence of acknowledged gay servicemembers did not compromise unit cohesion or operational effectiveness in multinational military units that were partially comprised of American soldiers.⁴² Multiple points of reference collected from the shared experience of nations corroborate the scientific conclusion described above: allowing gay and lesbian personnel to serve openly does not harm military performance.

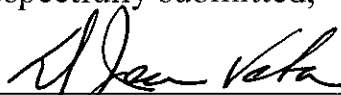
⁴¹ Aaron Belkin & Jason McNichol, *Homosexual Personnel Policy in the Canadian Forces: Did Lifting the Gay Ban Undermine Military Performance?*, 56 INT'L J. 73, 74 (Winter 2000-2001). See also POSTMODERN MILITARY, *supra* note 35, at 169 (quoting Canadian social scientist Franklin C. Pinch, to same effect).

⁴² See Geoffrey Bateman & Sameera Dalvi, *Multinational Military Units and Homosexual Personnel* (Feb. 2004) (report commissioned by the Center for the Study of Sexual Minorities in the Military, University of California, Santa Barbara).

CONCLUSION

The government's assertion that allowing gay men and lesbians to serve openly in the military would undermine unit cohesion and therefore negatively impact military performance is unsupported by the weight of social science research. Indeed, such research contradicts that conclusion. For the foregoing reasons, as well as those set forth in Appellants' brief, *amici* respectfully urge that the judgment of the District Court be reversed.

Respectfully submitted,



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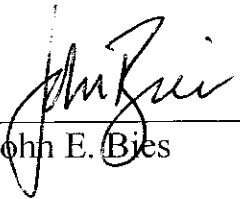
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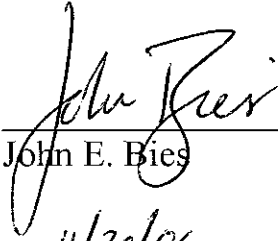
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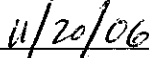
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