



City of Austin
Law Department

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January 10, 2013

The Honorable Greg Abbott
Office of the Attorney General of Texas
Post Office Box 12458
Austin, Texas 78711-2548

Attention: Jason Boatright,
Chairman, Opinion Committee

Re: Opinion Request RQ-1097-GA

Dear Attorney General Abbott:

Thank you for the opportunity to brief the position of the City of Austin on the referenced opinion request that was submitted by Senator Dan Patrick in his letter dated November 2, 2012. In that letter Sen. Patrick seeks an opinion from the Attorney General on whether Article 1, Section 32 of the Texas Constitution "preclude[s] political subdivisions of Texas from providing so-called domestic partnership benefits to their employees?"

Austin does make some parts of its employee group benefits program available to individuals who meet the specific definition of a "domestic partner" as established by our City Council in 2006. We are confident based upon our research and analysis that this design feature of the City's benefits program is not in conflict with the Texas Constitution, including specifically Article 1, Section 32 that is referenced in Sen. Patrick's letter.¹

This letter brief is divided into three parts. The first part discusses the background and history of Article I, Section 32 of the Texas Constitution (the "Marriage Amendment" or the "Amendment"), including the language in Part (b) of that Section prohibiting a political subdivision of the State from creating or recognizing "any legal status identical or similar to marriage." The

¹ We are aware that other Texas cities and political subdivisions have also designed some parts of their employee benefits programs to include individuals who are not related by consanguinity or marriage to the covered employee of that political subdivision. This letter focuses on of the benefit design in effect for the City of Austin, and does not address the specific employee benefits decisions made by other political subdivisions.

second part of this letter describes those features of the employee benefits program for the City of Austin that apply to domestic partners as defined in our personnel policies. The third part includes a discussion and analysis of the Marriage Amendment as applied to Austin's employee benefits program. That analysis demonstrates that the Marriage Amendment was never intended to preclude political subdivisions such as Austin from providing group benefits to domestic partners of its employees as a benefit design choice, and that Austin's domestic partner benefit design is not a "legal status identical or similar to marriage."

Part 1 – The Texas Marriage Amendment

A. Background of the Amendment

Texas voters approved the Marriage Amendment as Proposition 2 in the November 8, 2005, statewide election.² The wording of the ballot proposition asked voters whether to approve "The constitutional amendment providing that marriage in this state consists only of the union of one man and one woman and prohibiting this state or a political subdivision of this state from creating or recognizing any legal status identical or similar to marriage." [See, H.J.R. No. 6, Section 3 (79th Tex. Legislature – 2005(R))]

As approved by the voters, Proposition 2 created a new Section 32 under Article I of the Texas Constitution, titled "Marriage." The new Section has two parts:

Sec. 32. MARRIAGE.

(a) Marriage in this state shall consist only of the union of one man and one woman.

(b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage.

(Added Nov. 8, 2005.)

At the time Proposition 2 was submitted to the voters in 2005, Texas law already prohibited the issuance of a marriage license for the marriage of persons of the same sex. Section 2.001(b), Tex. Family Code (1997). In addition, the Texas Legislature had in 2003 passed the Defense of Marriage Act (the "Texas DOMA"), now codified as Section 6.204, Tex. Family Code. The Texas DOMA provides that a same-sex marriage or "civil union" is contrary to the public policy of this State and is void. A "civil union" under the statute is defined as any relationship other than

² At that time, the Amendment made Texas the 19th State to adopt a constitutional amendment banning or restricting same-sex marriages. See, "Texas Voters Approve Ban on Gay Marriage," *Washington Post* (Nov. 9, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/08/AR2005110800859.html>

marriage that is intended as an alternative to marriage or that applies primarily to cohabitating persons, and that grants to the parties of the relationship legal protections, benefits, or responsibilities granted to the spouses of a marriage. Section 6.204(c), Tex. Family Code. The Texas DOMA further prohibits the State or a political subdivision from giving effect to a public act, record, or judicial proceeding that creates, recognizes, or validates a same-sex marriage or a civil union. *Id.* According to the Texas Legislative Council, “[t]he Texas DOMA was adopted in Texas as a response to court cases and legislative actions in a number of states on the issue of same-sex marriages and civil unions.” [Tex. Legislative Council, “Analysis of Proposed Constitutional Amendments,” p. 18 (September 2005)]

The Marriage Amendment originated in the Texas House of Representatives during its 2005 Regular session, designated as H.J.R. No. 6 (“HJR 6”). The author and House sponsor of HJR 6 was Rep. Warren Chisum, and the Senate sponsor was Sen. Todd Staples. Following is a summary of the key Legislative actions on HJR 6:

- **November 8, 2004** – HJR 6 filed in the Tex. House of Representatives
- **February 8, 2005** – HJR 6 referred to House Committee on State Affairs
- **April 15, 2005** – HJR 6 reported favorably out of House Committee on State Affairs
- **April 25, 2005** – HJR 6 amended by Rep. Chisum to add Part (b)
- **April 25, 2005** – HJR 6 (as amended) adopted by the House
- **April 27, 2005** – HJR 6 referred to Senate Committee on State Affairs
- **May 20, 2005** – HJR 6 reported favorably out of Senate Committee on State Affairs
- **May 21, 2005** – HJR 6 adopted by the Senate
- **May 25, 2005** – HJR 6 filed with Secretary of State

While there are no reported judicial or administrative decisions interpreting the Marriage Amendment, the legislative debates on HJR 6 in both the House and Senate provide direct and compelling evidence of its meaning and scope.

B. Legislative History in the House of Representatives

In RQ-1097-GA, Sen. Patrick focuses on Part (b) of Sec. 32, which provides that neither the state nor a political subdivision may “create or recognize any legal status identical or similar to marriage.” His letter indicates that he believes Part (b) means a political subdivision such as the City of Austin cannot design its employee benefits program to include benefits for individuals designated as the domestic partner of a City employee.³

³ Sen. Patrick was, of course, not a member of the Texas Legislature in 2005, and thus he did not participate in the deliberations or cast a vote on HJR 6.

We have reviewed the audio recording of the April 25, 2005, House floor debate on Rep. Chisum's amendment that added Part (b) to HJR 6. This recording includes a lengthy exchange between Rep. Chisum and Rep. Sylvester Turner that directly addresses the question of whether the Marriage Amendment was intended to preclude local governments from providing domestic partner benefits.⁴ Following are pertinent excerpts from that exchange:

Rep. Turner: "OK. Now when you say 'any legal status identical or similar to marriage,' for example, where there are companies that are providing benefits, whether they be health benefits or death benefits, to people who are partners, so to speak, would this amendment negate the companies' rights to offer those sorts of benefits?"

Rep. Chisum: "This- this amendment to the Constitution would not negate or set aside any contract that a- that an employer wanted to make with his - with his employees."

Rep. Turner: "Well, let me suppose you're dealing with a city? A city- "

Rep. Chisum: "It does not, it does not change what a city may do. It - it just says that they won't recognize anything that creates the same legal status identical to or similar to marriage. It does not stop them providing health benefits to same-sex partners. It does not - it is not intended to do that." [Transcript, pages 3-4 (emphasis added)]

....

Rep. Turner: "Then give me some idea of what you're talking about. Give me an example of something that would be identical or similar to marriage but you are not intending to be on the same level as a marriage."

Rep. Chisum: "When you, when you- when the City of Houston, and I don't know whether they do this or not, but if they offer health benefits to homosexual couples, that is not similar to marriage. It doesn't have anything to do with them being married and it- it is not similar to marriage. It is not the same legal status as marriage and what we're talking about is giving the same legal status of marriage. So, if you work for the City of Houston and you receive those benefits, it does not make you married. That's all we're saying." [Transcript pages 5-6 (emphasis added)]

⁴ A transcript of the entire exchange between Rep. Chisum and Rep. Turner from the April 25, 2005, House floor debate is attached to this letter as Exhibit A.

We believe these specific statements by Rep. Chisum – made on the floor of the House and at the very time the House voted on HJR 6 – are dispositive of the question raised in RQ-1097-GA. However, we also encourage the Attorney General to review the entire recorded floor debate on the resolution. It is clear from listening to this debate that the meaning and intent of Part (b) in HJR 6 was to prevent political subdivisions from attempting to create, via local legislation, a legal status similar to marriage for the residents of their communities. For example, in another part of their colloquy Rep. Turner and Rep. Chisum had this exchange:

Rep. Turner: “Well, give me- give me- give me some example of what they would do, for example, in Pampa that would fall into this legal- ‘any legal status’ category that would be violative of- of this amendment.”

Rep. Chisum: “Well I, what has happened in other states, I can do that - they are not going to do this in Pampa - but what has happened in San Francisco, the mayor of San Francisco created a civil union and he- he married three thousand people under his created civil union. And the Supreme Court of California, last month, struck that down. And what I’m saying is I don’t want that to happen in the State of Texas. I want to send a clear message that a political subdivision cannot create something that’s like marriage and say ‘we’re gonna do this’ because that is exactly what happened in California. That’s exactly what we are trying to prevent right here.” [Transcript, page 6 (emphasis added)]

In summary, the House legislative history on HJR 6 establishes that the purpose of Part (b) was to prevent local governments from passing “local marriage ordinances” like San Francisco had done, and not to limit the authority of cities such as Austin to design their employee benefit programs in the manner they believe appropriate for their workforce.

C. Legislative History in the Senate

The Senate floor debate on HJR 6 on May 21, 2005, is generally consistent with the House debates and likewise instructive on the meaning and intent of the Marriage Amendment. During that debate Sen. Staples, the Senate sponsor of HJR 6, engaged in an extended exchange with Sen. Eliot Sharpleigh over the effect of HJR 6 on existing Texas law. Their exchange included these questions and answers:

Sen. Sharpleigh: “O.K. Thank you. Senator, can you explain briefly what this piece of legislation does?”

Sen. Staples: “Yes, Senator, I’d be glad to. This amendment places into our state’s constitution a law that was already passed last session, Senate Bill 7, the Defense of Marriage Act. I believe it is necessary to place this general law that this Legislature already adopted and is law today into our state’s Constitution, because to

challenges to general law that have occurred and is occurring, actually, across the state, across the country in various states. I will also say that I believe that this language does exactly what it has stated that it will do. I don't believe that there're unintended consequences. I believe that an amendment to this bill, the intent and the net impact would be to kill the legislation. I'm very confident that it does not have any unintended consequences. It has been scrubbed very thoroughly and it simply places into the Constitution what is in law today." [*Senate Journal, 79th Legislature – Regular Session, 75th Day*, pages A-3 – A-4 (emphasis added)]

....

Sen. Sharpleigh: "You're telling us that under the language in the second part of this HJR, may not recognize any legal status identical to or similar to marriage."

Sen. Staples: "That is in current law today." [*Senate Journal, 79th Legislature – Regular Session, 75th Day*, page A-7 (emphasis added)]

From this exchange – which immediately preceded the Senate's vote on HJR 6 – it is clear that the intent of the Senate in adopting the resolution was simply to incorporate the then-current Texas DOMA law into the Constitution. There is no indication anywhere in the recorded floor debates on HJR 6 that the Senate either intended to change Texas law, or believed it was changing Texas law. Since the existing state law in 2005 did not prohibit political subdivisions from designing their benefits programs to include domestic partner features (see discussion in Part 3, *infra*), we believe this legislative history makes it abundantly clear that the Marriage Amendment did not have either that intent or that effect.

Part 2 – The City of Austin's Domestic Partner Benefits Design

The City of Austin is a home rule city, meaning that the City has the authority to govern its affairs in accord with the wishes of its citizens (as expressed through the City's Charter and their elected City Council), subject only to restrictions imposed by controlling state and federal law. Consistent with this authority the City provides a group benefits program to its employees as part of their terms and conditions of employment.

The City's employee group benefits program is part of a total compensation program designed purposely to enable the City to attract and retain a high quality workforce in the local labor market. The benefits design is based on extensive, recurring analysis of market conditions and benchmarking against other comparable employers. The group benefits design and associated costs are reviewed each year by the City Council as part of its budget approval process.

Based upon a policy decision made by the Austin City Council in 2006,⁵ Austin currently makes some parts of its employee group benefits program available to individuals who meet the specific definition of a “domestic partner.” The definition approved by the City Council provides that a domestic partner is:

“The individual who lives in the same household and shares the common resources of life in a close, personal, intimate relationship with a City employee if under Texas law the individual would not be prevented from marrying the employee on account of age, consanguinity or prior undissolved marriage to another. A domestic partner may be of the same, or opposite, gender as the employee.”

The City makes parts of its benefits program available to individuals who meet the definition of a domestic partner with respect to a City employee who is eligible for employee group benefits. Presently, the following benefits can be extended to a qualifying domestic partner under the City’s benefits program (subject to the limits and qualifications set out in the group plan design):

- Eligibility for group medical, dental, and vision care benefits
- Eligibility for group life insurance coverage
- Eligibility for continuation of group medical benefits similar to the federal law known as COBRA when the covered City employee leaves their City employment
- Eligibility to participate in the City’s group legal services benefit program
- Inclusion of a “domestic partner” on the list of individuals for whose personal care a City employee may take a qualifying leave under the City’s Family and Medical Leave policy.

As part of administering its employee benefits program, the City requires the employee and their designated domestic partner to submit to the City’s Human Resources Department a statement confirming that the two individuals meet the definition of domestic partner set out above. This document is kept in the City’s employee benefits records, and does not designate the two individuals as “domestic partners” for any purposes other than simply meeting the definition in the benefits program.

The City’s domestic partner group benefits design is applicable only to City employees for purposes of administering its group benefits program. That designation is not intended to and does not give such domestic partners any other right or status under any City ordinance, or state

⁵ The Austin City Council resolution adopted in September 2006 (No. 20060911-007) establishing the domestic partner feature for its employee benefits program is attached as Exhibit B to this letter.

or federal law. It is simply a benefits design criterion chosen by the City as an exercise of its role as an employer.

Part 3 – Analysis and Discussion⁶

Based on the foregoing discussion, we urge the Attorney General to conclude that (a) the Marriage Amendment does not preclude local governments in general from adopting employee group benefits designs that include benefits for domestic partners, and (b) the specific domestic partner benefit design approved by the Austin City Council is an appropriate exercise of the City's home rule authority and is not in conflict with the Marriage Amendment. In support of these conclusions we urge the following points in particular:

A. The Marriage Amendment did not change existing Texas law, which permitted cities such as Austin to make design decisions concerning their employee group benefits.

The statements by Sen. Staples during the Senate floor debate on the Marriage Amendment make clear that the Marriage Amendment was not intended to and did not enlarge Texas law beyond the existing law in 2005. Rather, as Sen. Staples expressly stated several times, the Amendment was intended simply to elevate the earlier 2003 Texas DOMA law into the Texas Constitution.

Prior to 2005 Texas law certainly permitted home rule cities to make benefit design choices that provided benefits for at least some types of domestic partners. Indeed, the House legislative history of the Marriage Amendment confirms that domestic partner benefits were lawful at the time the Amendment was passed in 2005. The statements highlighted in Part 2, above, by Rep. Chisum and Rep. Turner indicate plainly that they and the other House members certainly considered such benefits to be lawful at the time – as indicated by their statements that the Amendment would not preclude such benefits.

⁶ We are aware that the U.S. Supreme Court has recently accepted for review two cases that could potentially affect both the Marriage Amendment and the Texas DOMA. In *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), *cert. granted* 81 USLW 3075 (Dec. 7, 2012), the Ninth Circuit held that a 2008 voter-enacted amendment to the California state constitution that is similar to the Marriage Amendment violates the Equal Protection Clause of the Fourteenth Amendment. In *Windsor v. U.S.*, 699 F. 3d 169 (2nd Cir. 2012), *cert. granted* 81 USLW 3116 (Dec. 7, 2012), the Second Circuit held that the federal Defense of Marriage Act (1 U.S.C.A. §7) violates the Equal Protection Clause of the Fifth Amendment. The outcomes in those two cases could, of course, significantly affect the Marriage Amendment or the Texas DOMA. However, the issues in those cases are beyond the scope of the question raised in RQ-1097-GA, and the City takes no position on those issues in this letter brief.

In addition, Austin had previously adopted domestic partner coverage as far back as 1993 using exactly the same definition of “domestic partner” as used in the current personnel policies. The Texas Court of Appeals reviewed that earlier domestic partner benefit program in *Bailey v. City of Austin*, 972 S.W. 2d 180 (Tex. App. Austin 1998). In that case, individuals who were domestic partners under the City’s 1993 policy sued for loss of their benefits when the citizens of Austin amended the City’s Charter in 1994 to eliminate domestic partner coverage. While the specific question before the Court was not whether the City had the legal authority to offer domestic partner benefits in the first place, the Court of Appeals certainly recognized by implication that the City had that authority when it made the initial decision to such benefits.⁷ We have found no reported court decisions other than *Bailey v. City of Austin* in which a court has considered whether home rule cities in Texas may lawfully include domestic partners in their benefits design decisions.

In addition, we have reviewed the 2003 Texas DOMA statute and its legislative history, and find nothing to suggest that the Legislature intended that statute to restrict the authority of home rule cities to create domestic partner benefits. Moreover, the Texas DOMA does not include the language from Part (b) of Section 32 prohibiting local governments from creating or recognizing “any legal status identical or similar to marriage.” Thus, we conclude that the Texas DOMA does not restrict the authority of home rule cities such as Austin to provide domestic partner benefits for their employees.

In light of this analysis we believe the compelling conclusion is that cities such as Austin did have the authority in 2005 to implement domestic partner benefit programs. Since the statements by Sen. Staples in the legislative history of the Marriage Amendment indicate so plainly that the Amendment was not intended to change then-current law, we believe strongly that the Marriage Amendment does not preclude local governments such as Austin from including domestic partner benefits in their employee benefits programs.

B. Providing specific group health benefits to an individual defined as a domestic partner does not create a “legal status identical or similar to marriage” under the Marriage Amendment.

The City’s domestic partner benefits designation is an employee benefits design decision and does not create any “legal status” under the Marriage Amendment, nor is the domestic partner designation “identical or similar to marriage.” On its face this benefits designation does no more than define who may be eligible to participate in certain group health-related programs offered by the City to its employees. Neither the design nor the administration of the City’s group

⁷ The Court also held specifically that the domestic partners had no contractual right to the benefits under the City’s personnel policies – thus confirming that such designations for employee benefits purposes do not create any legal right or status.

benefits program does anything more. Several points of analysis support this common sense view of the City's domestic partner benefit program.

First, the group benefits policy statement in the City's personnel policies provides that "The benefits and services offered by the City may be changed or terminated at any time upon approval of the City Council...." This important qualification establishes that a domestic partner (just like a City employee) has no ongoing "right" of access to these group benefits except through authorization by the City Council, which can be changed or eliminated at any time. It would be both inconsistent and illogical to say that a domestic partner designation creates a "legal status" but that such legal status can be unilaterally modified or eliminated by the local government at its discretion.

Second, the City's benefits designation does not create any vested personal rights or property rights for domestic partners or others. In *Bailey v. City of Austin, supra*, the court found that Austin's prior domestic partner group benefits designation – which is identical to its current designation – "does not create a protected interest in those benefits; therefore, appellants do not have a claim recognized and secured by law." 972 S.W. 2d at 191. It would be illogical to interpret the term "legal status" in Part (b) of the Marriage Amendment to apply to a benefits designation that does not create – in the words of the Court of Appeals – "a claim recognized and secured by law."

Third, the domestic partner designation does not on its face create a "legal status identical or similar to marriage" because it does not entitle those individuals to receive any of the panoply of rights, benefits, or privileges that attach by operation of law to married persons. For example, in a 2004 letter to the U.S. Senate Majority Leader,⁸ the U.S. General Accounting Office identified 1,138 federal statutory provisions classified in the United States Code in which marital status is a factor in determining or receiving benefits, rights, and/or privileges. This list includes areas such as Social Security and related programs, veteran's benefits, immigration and naturalization status benefits, criminal and family violence laws, loans and loan guarantee programs, transactions involving federal land and other federal property, and income and other tax laws. Allowing City employees to designate individuals as their domestic partners is not intended to, and does not in fact, give such domestic partners any right, benefit, or privilege whatsoever under any of these 1,100+ federal laws.

Similarly, the State of Texas recognizes dozens of areas (and perhaps more) where the status of marriage creates a legal right, privilege, or benefit. Such areas include ownership of real property, marital and community property laws, parental rights with respect to minor children, the right to receive many types of state provided aid or relief, and laws of descent and distribution. As with the federal laws and programs described above, designating individuals as the domestic

⁸ The January 23, 2004, letter from the General Accounting Office to U.S. Senator Bill Frist is attached as Exhibit C to this letter.

partners of City of Austin employees does not give such domestic partners any right, benefit, or privilege whatsoever under any of these Texas laws.

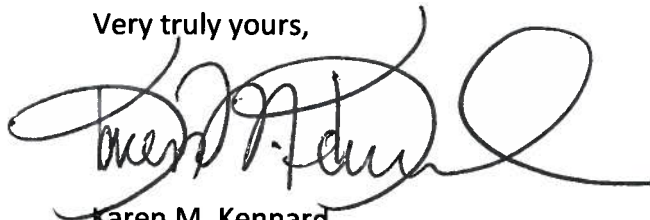
In summary, there is an overwhelming list of legal rights, benefits, and privileges that arise from the marriage relationship, but do not arise when a City of Austin employee designates another individual as their domestic partner for benefits purposes. In light of this very significant difference, we believe the correct interpretation of the Marriage Amendment is that recognizing such a designation for employee benefits purposes does not create a "legal status identical or similar to marriage" under the Marriage Amendment.

Conclusion

The background information and analysis in this letter lead to the compelling conclusion that Article 1, Section 32 of the Texas Constitution does not preclude home rule local governments in Texas from establishing employee benefits programs that include benefits for domestic partners. We urge the Attorney General to conclude that (1) such benefits design decisions are within the authority of a Texas home rule city, (2) the Legislature did not intend through the Marriage Amendment to abrogate the authority of local governments to make such decisions, and (3) providing such benefits does not create a "legal status identical or similar to marriage" within the meaning of the Marriage Amendment.

We sincerely appreciate the Attorney General's consideration of the information in this letter as part of your analysis of RQ-1047-GA. If you require further information about any of this information or analysis, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Karen M. Kennard", with a large, stylized flourish extending to the right.

Karen M. Kennard
City Attorney, City of Austin

BLC:lc
Enclosures (as stated)

Exhibit A

TEXAS HOUSE OF REPRESENTATIVES

79th Legislature

FLOOR DEBATE ON HJR 6

4-25-05

Tape 110 - Side A

[22:20]

Representative Sylvester Turner: Mr. Speaker?

Speaker of the House: Mr. Turner, for what purpose?

Mr. Turner: Would the gentleman yield?

Mr. Speaker: Will Mr. Chisum yield to Mr. Turner?

Representative Warren Chisum: I yield, Mr. Speaker.

Mr. Speaker: Gentleman yields.

Mr. Turner: Thank you. Representative Chisum, just to get some clarification on the amendment, to kind of understand exactly what the amendment does, it says that this state or political subdivision of this state -

[gavel sounds]

Mr. Speaker: Mr. [unintelligible] moves that the gentleman's time has expired. Point of order is well-taken, it is sustained.

[gavel sounds]

Mr. Turner: Mr. Speaker?

Mr. Speaker: Mr. Turner, for what purpose?

Mr. Turner: Due to the seriousness of the amendment, I would ask that the gentleman's time be extended.

Mr. Speaker: Member has referred to the motion, is there objection? Chair hears none, so ordered.

Mr. Turner: Thank you.

Mr. Speaker: Go ahead, Mr. Chisum.

Mr. Turner: Representative Chisum, the amendment states that this state or political subdivision of this state may not create or recognize any legal status identical or similar to marriage. Now just for clarification purposes so that we are all sp- talking the same lingo, how are you defining marriage? What's your definition-

Mr. Chisum: Define? My definition of marriage is in the first- is in the existing bill as it was brought to the floor. Marriage in this state shall consist only of a union be- of one man and one woman.

Mr. Turner: Ok. And so, if someone holds themselves out to be marriage- to be married- for example, if, if you have a man and a woman and they are living together and holding themselves out as being husband and wife, this amendment is not intended to jeopardize that?

Mr. Chisum: That is absolutely correct.

[24:15]

Mr. Turner: Ok. Now when you say 'any legal status identical or similar to marriage,' for example, where there are companies that are providing benefits, whether they be health benefits or death benefits, to people who are partners, so to speak, would this amendment negate the companies' rights to offer those sorts of benefits?

Mr. Chisum: This- this amendment to the constitution would not negate or set aside any contract that a- that an employer wanted to make with his- with his employees.

Mr. Turner: Well, let me suppose you're dealing with a city? A city-

Mr. Chisum: It does not, it does not change what a city may do. It- it just says that they won't recognize anything that creates the same legal status identical to or similar to marriage. It does not stop them providing health benefits to same-sex partners. It does not- it is not intended to do that.

[25:16]

Mr. Turner: Now, I understand what you're saying it is not intended to do. But the language is very, very ambiguous and very broad.

Mr. Chisum: The language is not ambiguous and it is not broad. It is very specific, it's the language that we need in the constitution and I don't believe it's ambiguous or broad.

Mr. Turner: But when you, when you, when you put in language by 'any legal status,' if I'm the lawyer and if I want to argue, for example, that benefits- health care benefits- that are being offered by a city, or being offered by a school district, or being offered by companies, violate, for example, this provision, if it becomes a part

of the constitution, I think I could put forth a pretty good argument that the- that the broadness and the ambiguity of the language could certainly call into question those particular benefits.

Mr. Chisum: I- I don't believe that's true. I believe that we're talking about a status that's identical or similar to marriage, not a status that's identical or legal to health care benefits.

Mr. Turner: Then give me-

Mr. Chisum: Not a status that's legal or any- anything that a company or political subdivision might choose to do. It does not affect that.

Mr. Turner: Then give me some idea of what you're talking about. Give me an example of something that would be identical or similar to marriage but you are not intending to be on the same level as a marriage.

Mr. Chisum: When you, when you- when the City of Houston, and I don't know whether they do this or not, but if they offer health benefits to homosexual couples, that is not similar to marriage. It doesn't have anything to do with them being married and it- it is not similar to marriage. It is not the same legal status as marriage and what we're

talking about is giving the same legal status of marriage. So, if you work for the City of Houston and you receive those benefits, it does not make you married. That's all we're saying.

Mr. Turner: Well, give me- give me- give me some example of what they would do, for example, in Pampa that would fall into this eagle- 'any legal status' category that would be violative of- of this amendment.

Mr. Chisum: Well I, what has happened in other states, I can do that- they are not going to do this in Pampa- but what has happened in San Francisco, the mayor of San Francisco created a civil union and he- he married three thousand people under his created civil union. And the Supreme Court of California, last month, struck that down. And what I'm saying is I don't want that to happen in the state of Texas. I want to send a clear message that a political subdivision cannot create something that's like marriage and say 'we're gonna do this' because that is exactly what happened in California. That's exactly what we are trying to prevent right here.

[28:35]

Mr. Turner: But- but what happened in California, in the end, I agree with you: the California Supreme Court struck

what they had done in San Francisco down and said that that was not permissible, that that did violate their constitution. Now, even with this amendment, Representative Chisum, even with your amendment, the same thing could take place in the state of Texas but the Texas Supreme Court, under the status quo, would strike it- would strike those type of marriages down.

Mr. Chisum: I don't believe, I don't believe that's correct. I mean- I mean what we're saying is in the constitution that they can't do it gives a clear identification to the court that they can't do it.

Mr. Turner: Are you saying there is something that exists-existed- in the California constitution that does not exist in the Texas constitution? And, therefore, we need to amend the Texas constitution to be on the same par with the California constitution?

Mr. Chisum: No, I'm saying that we need to do this so we are very clear in this state what the intent of the people is by putting that into the constitution.

Mr. Turner: But you will agree in the end the California Supreme Court said that what took place in San Francisco was unconstitutional, correct?

Mr. Chisum: I am- I would agree with that.

Mr. Turner: And what I'm asking is what is the Texas constitution lacking that this amendment will provide that- that they had in California but did not have here in the state of Texas?

Mr. Chisum: I'm not familiar with California's constitution but I am just saying that we don't want our court system, we don't want our political subdivisions around this state, making that same mistake and, and writing up a contract called 'marriage' and going out and giving that legal status.

Mr. Turner: But what I'm, but Representative Chisum, I think you will agree with me that the Texas constitution does not permit more than what the California constitution permits.

Mr. Chisum: Well, what I think what I'd agree with you is just exactly what I said. I do- I have no knowledge of the California constitution. Zero. I just know about our constitution. I know that this needs to be in it.

Mr. Turner: Well, I think this- I think this is more of a statement because, even with this amendment, even with this amendment, it doesn't prevent certain localities from doing

certain things if they want to do it. We may not agree. You and I may not agree with them doing it but, ultimately, even with this amendment, ultimately, it will go to the courts and the courts would strike it down. Even with or without this amendment, with or without it, those marriages would not be recognized in the state of Texas even with this amendment or without this amendment. If it's intended to be just a statement, a political statement, so be it. But I want the body to clearly understand here that we are not doing any more with this amendment than what exists right now in the state of Texas, that the courts in the state of Texas have the power to do what this amendment and what HJR6 is attempting to do. We are making a political statement just for the point of making a statement. That's all we are doing.

Mr. Chisum: I don't agree, Mr. Turner. I think what we are doing here is we are saying that marriage deserves protection in our constitution-

Representative James Dunnam: Mr. Speaker?

Mr. Chisum: and that's exactly what this is doing, it says that this marriage deserves-

Mr. Speaker (speaking over): Mr. Dunnam, for what purpose?

Mr. Chisum (speaking over): our protection in this constitution.

Mr. Dunnam: Gentleman yield for questions?

Mr. Speaker: Will Mr. Chisum yield to Mr. Dunnam?

Mr. Chisum: I yield, Mr. Speaker.

Mr. Speaker: Gentleman yields.

[32:44]

-End of Transcript-

Exhibit B

RESOLUTION NO. 20060911-007

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

WHEREAS, the Director of Human Resources has recommended the following amendments of the Personnel Policies; and

WHEREAS, the City Manager approves and recommends adoption of this amendment; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City of Austin Personnel Policies be, and the same is hereby amended to conform to the recent Charter amendment and to enable the City to extend health insurance benefits to domestic partners of employees and their dependents.

PART 1. That Chapter A, Section III.B.2, *Health Related Benefits*, be revised as follows:

The City is committed to providing cost-effective benefits which assist employees in being physically and mentally healthy. The benefits and services offered by the City may be changed or terminated at any time upon approval of the City Council and do not constitute a guarantee of continued employment with the City.

Benefits are accompanied by eligibility requirements which must first be met by the employee and dependents (if applicable) before being able to be covered. The provisions of and eligibility for the various benefits are governed by each Plan instrument which may be a Plan document or certificate of coverage or both.

With respect to medical and dental coverage, life insurance, the employee assistance and wellness programs, the definition of eligible dependent may vary from plan to plan.

PART 2. That Chapter B, Section III.B.2., *Health Related Benefits*, be revised as follows:

The City is committed to providing cost-effective benefits which assist employees in being physically and mentally healthy. The benefits and services offered by the City may be changed or terminated at any time upon approval of the City Council and do not constitute a guarantee of continued employment with the City.

Benefits are accompanied by eligibility requirements which must first be met by the employee and dependents (if applicable) before being able to be covered. The provisions of and eligibility for the various benefits are governed by each Plan instrument which may be a Plan document or certificate of coverage or both.

With respect to medical and dental coverage, life insurance, the employee assistance and wellness programs, the definition of eligible dependent may vary from plan to plan.

PART 3. That the definition of Domestic Partner in both Chapters A and B be revised as follows:

Domestic Partner

The individual who lives in the same household and shares the common resources of life in a close, personal, intimate relationship with a City employee if under Texas law the individual would not be prevented from marrying the employee on account of age, consanguinity or prior undissolved marriage to another. A domestic partner may be of the same, or opposite, gender as the employee.

BE IT FURTHER RESOLVED:

That the City of Austin Personnel Policies be, and the same is hereby amended to increase vacation accrual rates for non-Civil Service employees whose vacation accrual rates are not established by a Meet and Confer or Collective Bargaining Agreement.

PART 4. That Chapter A, Section III.B.1.a.(2), *Vacation Leave*, be revised as follows:

(2) Vacation Leave

Full time regular and probationary employees, with the exception of executives, shall accrue vacation leave for each pay at the rates set out in Appendix A. Part-time employees in regular budgeted positions accrue vacation leave on a pro-rated basis. Vacation is accrued 24 of the 26 pay periods in the calendar year.

Accrual rates and maximum balances are set out in Appendix A.

(The remainder of Section III.B.1.a.(2) remains unchanged.

PART 5. That Chapter A, Appendix A: *Pay Period Leave Accrual Rates*, be revised as follows:

Chapter A: Non-civil service employees

Appendix A:

Pay Period Leave Accrual Rates

Employee Group	Hours per Work Week	Years of Service	Sick Leave Hours	Vacation Hours
Executive	40	N/A	4.00	7.67
	Maximum Balance		Unlimited	400
	Maximum Paid at Separation*		720	240
Regular Non-Civil Service	40	<=5	4.00	4.34
		>5	4.00	5.34
		>10	4.00	6.00
		>15	4.00	6.67
		>20	4.00	7.67
	>= 30 and < 40	<=5	3.00	3.25
		>5	3.00	4.00
		>10	3.00	4.50
		>15	3.00	5.00
		>20	3.00	5.75
	>= 20 and < 30	<=5	2.00	2.17
		>5	2.00	2.67
		>10	2.00	3.00
		>15	2.00	3.34
		>20	2.00	3.84
	< 20	<=5	1.00	1.09
		>5	1.00	1.34
		>10	1.00	1.50
		>15	1.00	1.67
		>20	1.00	1.92
	Maximum Balance		Unlimited	400
	Maximum Paid at Separation*		720	240
Regular EMS	56	<=5	6.00	6.50
		>5	6.00	8.00
		>10	6.00	9.00
		>15	6.00	10.00
		>20	6.00	11.50
	Maximum Balance		Unlimited	515

	Maximum Paid at Separation*		1080	309
	48	<=5	5.15	5.58
		>5	5.15	6.87
		>10	5.15	7.73
		>15	5.15	8.59
		>20	5.15	9.88
	Maximum Balance		Unlimited	515
	Maximum Paid at Separation*		1080	309
	42	<=5	4.50	4.88
		>5	4.50	6.00
		>10	4.50	6.75
		>15	4.50	7.50
		>20	4.50	8.63
	Maximum Balance		Unlimited	445
	Maximum Paid at Separation*		756	270
PSEM Peace Officers	8-hour Day	<=5		5.00
		>5		5.34
		>10		6.00
		>15		6.67
		>20		7.67
	10-hour Day	<=5		6.25
		>5		6.67
		>10		7.50
		>15		8.34
		>20		9.59
	28-day Rotation	<=5		6.75
		>5		7.20
		>10		8.10
		>15		9.00
		>20		10.35
	Maximum Balance		Unlimited	400
	Maximum Paid at Separation*		720	240

Note: Vacation leave & sick leave are accrued 24 pay periods in the calendar year.

*Sick leave is paid to an employee on separation, if the employee was hired before 10/01/86 and has been continuously employed by the City of Austin since that date.

BE IT FURTHER RESOLVED:

That the City of Austin Personnel Policies be, and the same is hereby amended to provide for longevity pay for peace officers employed by the Public Safety and Emergency Management Department.

PART 6. That Chapter A, Section III be amended by adding a new subsection 14, as follows:

14. Longevity Pay for Certain Peace Officers

Peace officers employed by the Public Safety and Emergency Management Department (PSEM) shall receive longevity pay of \$4.00 per month for each year of service as a peace officer for the City of Austin, not to exceed 25 years. In any year that a PSEM officer receives Service Incentive Pay pursuant to subsection 12 above, the longevity pay shall not be paid.

PART 7. That the revisions described in Parts 1, 2, and 3, become effective October 1, 2006.

PART 8. That the revisions described in Parts 4, 5, and 6, become effective September 17, 2006.

ADOPTED: September 11, 2006

ATTEST:

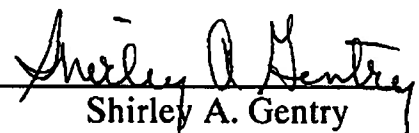

Shirley A. Gentry
City Clerk

Exhibit C



GAO

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

January 23, 2004

The Honorable Bill Frist
Majority Leader
United States Senate

Subject: *Defense of Marriage Act: Update to Prior Report*

Dear Senator Frist:

The Defense of Marriage Act (DOMA) provides definitions of “marriage” and “spouse” that are to be used in construing the meaning of a federal law and, thus, affect the interpretation of a wide variety of federal laws in which marital status is a factor.¹ In 1997, we issued a report identifying 1,049 federal statutory provisions classified to the United States Code in which benefits, rights, and privileges are contingent on marital status or in which marital status is a factor.² In preparing the 1997 report, we limited our search to laws enacted prior to September 21, 1996, the date DOMA was signed into law. Recently, you asked us to update our 1997 compilation.

We have identified 120 statutory provisions involving marital status that were enacted between September 21, 1996, and December 31, 2003. During the same period, 31 statutory provisions involving marital status were repealed or amended in such a way as to eliminate marital status as a factor. Consequently, as of December 31, 2003, our research identified a total of 1,138 federal statutory provisions classified to the United States Code in which marital status is a factor in determining or receiving benefits, rights, and privileges.

To prepare the updated list, we used the same research methods and legal databases that we employed in 1997. Accordingly, the same caveats concerning the completeness of our

¹ The Defense of Marriage Act defines “marriage” as “a legal union between one man and one woman as husband and wife”; it defines “spouse” as referring “only to a person of the opposite sex who is a husband or a wife.” The Act requires that these definitions apply “[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.” 1 U.S.C. § 7.

² U.S. General Accounting Office, *Defense of Marriage Act*, GAO/OGC-97-16 (Washington, D.C.: January 31, 1997).

collection of laws apply to this updated compilation, as explained more fully in our prior report. For example, because of the inherent limitations of any global electronic search and

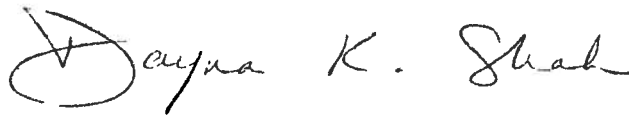
the many ways in which the laws of the United States Code may deal with marital status, we cannot guarantee that we have captured every individual law in the United States Code in which marital status figures. However, we believe that the probability is high that the updated list identifies federal programs in the United States Code in which marital status is a factor.

We have organized our research using the same 13 subject categories as the 1997 report. As agreed with your staff, in addition to providing you with a primary table of new statutory provisions involving marital status, we have prepared a second table identifying those provisions in our prior report that subsequently have been repealed or amended in a manner that eliminates marital status as a factor. Finally, in a third table, we have listed those provisions identified in our 1997 report that have since been relocated to a different section of the United States Code. We have also attached a brief summary of the 13 research categories; a full description of each category is set forth in the 1997 report.

We plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies of this letter to interested congressional committees. The letter will also be available on GAO's home page at <http://www.gao.gov>.

If you have any questions, please contact me at (202) 512-8208 or by E-mail at shahd@gao.gov. Behn Miller Kelly and Richard Burkard made key contributions to this project.

Sincerely yours,

A handwritten signature in black ink that reads "Dayna K. Shah". The signature is written in a cursive style with a large, stylized initial 'D'.

Dayna K. Shah
Associate General Counsel

APPENDIX 1

Table of Statutory Provisions Involving Marital Status Added to the United States Code Between September 21, 1996, and December 31, 2003, by Category

CATEGORY 1—SOCIAL SECURITY AND RELATED PROGRAMS, HOUSING, AND FOOD STAMPS

Title 42 – The Public Health and Welfare	
Chapter 6A—Public Health Service	
Subchapter II	
Part D—Primary Health Care	
Subpart I—Health Centers	
§ 254d	National Health Service Corps
Subchapter IV—Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services	
Part B—Child and Family Services	
Subpart 2—Promoting Safe and Stable Families	
§ 629a	Definitions
Subchapter XI—General Provisions, Peer Review, and Administrative Simplification	
Part A—General Provisions	
§ 1320a-7	Exclusion of certain individuals and entities from participation in Medicare and state health care programs
§ 1320b-17	Recovery of SSI overpayments from other benefits
Part C—Medicare + Choice Program	
§ 1395w-22	Benefits and beneficiary protections
§ 1395w-23	Payments to Medicare + Choice organizations
§ 1395w-27	Contracts with Medicare + Choice organizations
Part D—Miscellaneous Provisions	
§ 1395x	Definitions
§ 1395ff	Determinations; appeals
Chapter 35—Programs for Older Americans	
Subchapter III—Grants for States and Community Programs on Aging	
Part C—Nutrition Services	
Subpart III—General Provisions	
§ 3030g-21	General provisions—nutrition
§ 3030s	Definitions
Chapter 46—Justice System Improvement	
Subchapter XII—F—Public Safety Officers' Death Benefits	
Part A—Death Benefits	
§ 3796d	Purposes
§ 3796d-1	Basic eligibility
Subchapter XII—H—Grants to Combat Violent Crimes against Women	
§ 3796gg-1	State grants
Chapter 84—Department of Energy	
Part A—Establishment of Compensation Program and Compensation Fund	
Subchapter XVI—Energy Employees Occupational Illness Compensation Program	
§ 7384s	Compensation and benefits to be provided
§ 7384u	Separate treatment of certain uranium employees
Part C—Treatment, Coordination, and Forfeiture of Compensation and Benefits	
§ 7385c	Exclusivity of remedy against the United States and against contractors and subcontractors
Chapter 110—Family Violence Prevention and Services	
§ 10410	Grants for state domestic violence coalitions
§ 10421	Definitions

Chapter 129—National and Community Service <i>Subchapter I—National and Community Service State Grant Program</i> <i>Division F—Administrative Provisions</i>	
§ 12639	Evaluation
Chapter 130—National Affordable Housing <i>Subchapter I—General Provisions and Policies</i>	
§ 12704	Definitions
§ 12713	Eligibility under first-time home-buyer programs
Chapter 136—Violent Crime Control and Law Enforcement <i>Subchapter III—Violence against Women</i> <i>Part C—Civil Rights for Women</i>	
§ 13981	Civil rights
§ 13992	Training provided by grants
Chapter 143—Intercountry Adoptions <i>Subchapter V—General Provisions</i>	
§ 14952	Special rules for certain cases

CATEGORY 2—VETERANS' BENEFITS

Title 38—Veterans' Benefits	
Part II—General Benefits	
Chapter 17—Hospital, Nursing Home, Domiciliary, and Medical Care <i>Subchapter II—Hospital, Nursing Home, Or Domiciliary Care and Medical Treatment</i>	
§ 1710B	Extended care services
<i>Subchapter VIII—Health Care of Persons other than Veterans</i>	
§ 1781	Medical care for survivors and dependents of certain veterans
Chapter 18—Benefits for Children of Vietnam Veterans <i>Subchapter III—General Provisions</i>	
§ 1821	Definitions
Chapter 19—Insurance <i>Subchapter III—Servicemembers' Group Life Insurance</i>	
§ 1967	Person insured; amount
§ 1969	Deductions; payment; investment; expenses
Chapter 23—Burial Benefits	
§ 2306	Headstones, markers, and burial receptacles
Part III—Readjustment and Related Benefits	
Chapter 30—All-Volunteer Force Educational Assistance Program <i>Subchapter II—Basic Educational Assistance</i>	
§ 3020	Transfer of entitlement to basic educational assistance: members of the Armed Forces with critical military skills
Chapter 42—Employment and Reemployment Rights of Members of the Uniformed Services	
§ 4215	Priority of service for veterans in Department of Labor job training programs
Part IV—General Administrative Provisions	
Chapter 53—Special Provisions Relating to Benefits	
§ 5302	Waiver of recovery of claims by the United States
§ 5313B	Prohibition on providing certain benefits with respect to persons who are fugitive felons
Part V—Boards, Administrations, and Services	
Chapter 77—Veterans Benefits Administration <i>Subchapter II—Veterans Outreach Services Program</i>	
§ 7721	Purpose; definitions

CATEGORY 3—TAXATION

Title 26—Internal Revenue Code	
Subtitle A—Income Taxes	
Chapter 1—Normal Taxes and Surtaxes	
<i>Subchapter A—Determination of Tax Liability</i>	
<i>Part IV—Credits Against Tax</i>	
<i>Subpart A—Nonrefundable Personal Credits</i>	
§ 24	Child tax credit
§ 25A	Hope and lifetime learning credits
§ 25B	Tax imposed on individuals
<i>Subchapter B—Computation of Taxable Income</i>	
<i>Part III—Items Specifically Excluded from Gross Income</i>	
§ 101	Certain death benefits
<i>Part VII—Additional Itemized Deductions for Individuals</i>	
§ 138	Medicare + Choice MSA
§ 221	Interest on education loans
<i>Subchapter D—Deferred Compensation, Etc.</i>	
<i>Part I—Pension, Profit-Sharing, Stock Bonus Plans, Etc.</i>	
<i>Subpart A—General Rule</i>	
§ 408A	Roth IRAs
<i>Subchapter F—Exempt Organizations</i>	
<i>Part VIII—Higher Education Savings Entities</i>	
§ 529	Qualified tuition programs
§ 530	Coverdell education savings accounts
<i>Subchapter K—Partners and Partnerships</i>	
<i>Part IV—Special Rules for Electing Large Partnerships</i>	
§ 774	Other modifications
§ 775	Electing large partnership defined
<i>Subchapter O—Gain or Loss on Disposition of Property</i>	
<i>Part II—Basis Rules of General Application</i>	
§ 1022	Treatment of property acquired by decedent dying after December 31, 2009
<i>Subchapter W—District of Columbia Enterprise Zone</i>	
§ 1400C	First-time home-buyer credit for District of Columbia
Subtitle B—Estate and Gift Taxes	
Chapter 11—Estate Tax	
<i>Subchapter A—Estates Of Citizens Or Residents</i>	
<i>Part IV—Taxable Estate</i>	
§ 2057	Family-owned business interests
<i>Subchapter C—Miscellaneous</i>	
§ 2210	Termination
Chapter 12—Gift Tax	
<i>Subchapter B—Transfers</i>	
§ 2511	Transfers in general
Chapter 13—Tax on Generation-Skipping Transfers	
<i>Subchapter D—GST Exemption</i>	
§ 2632	Special rules for allocation of GST exemption
Subtitle F—Procedure and Administration	
Chapter 61—Information and Returns	
<i>Subchapter A—Returns and Records</i>	
<i>Part II—Tax Returns or Statements</i>	
<i>Subpart B—Income Tax Returns</i>	
§ 6015	Relief from joint and several liability on joint return
<i>Part III—Information Returns</i>	
<i>Subpart B—Information Concerning Transactions with Other Persons</i>	
§ 6045	Returns of brokers

Chapter 62—Time and Place for Paying Tax	
<i>Subchapter A—Place and Due Date for Payment of Tax</i>	
§ 6159	Agreements for payment of tax liability in installments
Chapter 63—Assessment	
<i>Subchapter C—Tax Treatment of Partnership Items</i>	
§ 6230	Additional administrative provisions
Chapter 66—Limitations	
<i>Subchapter B—Limitations on Credit or Refund</i>	
§ 6511	Limitations on credit or refund

CATEGORY 4—FEDERAL CIVILIAN AND MILITARY SERVICE BENEFITS

Title 5—Government Organization and Employees	
Part III—Employees	
Subpart A—General Provisions	
Chapter 23—Merit system principles	
§ 2301	Merit system principles
§ 2302	Prohibited personnel practices
Subpart B—Employment and Retention	
Chapter 33—Examination, Selection, and Placement	
<i>Subchapter I—Examination, Certification and Appointment</i>	
§ 3301	Civil service; generally
Subpart D—Pay and Allowances	
Chapter 57—Travel, Transportation, And Subsistence	
<i>Subchapter II—Travel And Transportation Expenses; New Appointees, Student Trainees, And Transferred Employees</i>	
§ 5737	Relocation expenses of an employee who is performing an extended assignment
Chapter 59—Allowances	
<i>Subchapter III—Overseas Differentials And Allowances</i>	
§ 5922	General provisions
Subpart G—Insurance and Annuities	
Chapter 90—Long-term Care Insurance	
§ 9001	Definitions
§ 9002	Availability of insurance
§ 9003	Contracting authority
Title 6—Domestic Security	
Chapter 1—Homeland Security Organization	
§ 331	Treatment of charitable trusts for members of the armed services and other governmental organizations
Title 10—Armed Forces	
Subtitle A—General Military Law	
Part I—Organization and General Military Powers	
Chapter 2—Department of Defense	
§ 118a	Quadrennial quality of life review
Part II—Personnel	
Chapter 55—Medical and Dental Care	
§ 1108	Health care coverage through federal employees' health benefits program: demonstration project
Chapter 73—Annuities based on Retired or Retainer Pay	
<i>Subchapter II—Survivor Benefit Plan</i>	
§ 1448a	Election to discontinue participation: one-year opportunity after second anniversary of commencement of payment of retired pay
Chapter 88—Military Family Care Programs and Military Child Care	
<i>Subchapter II—Military Child Care</i>	

§ 1798	Child care services and youth program services for dependents: financial assistance for providers
Title 37—Pay and Allowances of The Uniformed Services	
Chapter 7—Allowances	
§ 403	Basic allowance for housing
§ 407	Travel and transportation allowances: dislocation allowance
§ 411f	Travel and transportation allowances: transportation for survivors of deceased member to attend the member's burial ceremonies
§ 427	Family separation allowance

CATEGORY 5—EMPLOYMENT BENEFITS AND RELATED STATUTORY PROVISIONS

Title 29—Labor	
Chapter 30—Workforce Investment Systems	
<i>Subchapter I—Workforce Investment Definitions</i>	
§ 2801	Definitions
Subchapter IV—National Programs	
§ 2918	National emergency grants
Title 30—Mineral Lands and Mining	
Chapter 25—Surface Mining Control and Reclamation	
<i>Subchapter VII—Administrative and Miscellaneous Provisions</i>	
§ 1304	Surface owner protection
Title 42—The Public Health and Welfare	
Chapter 46—Justice System Improvement	
<i>Subchapter XII—Public Safety Officers' Death Benefits</i>	
<i>Part B—Educational Assistance to Dependents of Civilian Federal Law Enforcement Officers Killed or Disabled in the Line of Duty</i>	
§ 3796d	Purposes
§ 3796d-1	Basic eligibility
Chapter 84—Department of Energy	
<i>Subchapter XVI—Energy Employees Occupational Illness Compensation Program</i>	
§ 7384s	Compensation and benefits to be provided
§ 7384u	Separate treatment of certain uranium employees
§ 7385c	Exclusivity of remedy against the United States and against contractors and subcontractors

CATEGORY 6—IMMIGRATION, NATURALIZATION, AND ALIENS

Title 8—Aliens and Nationality	
Chapter 12—Immigration and Nationality	
<i>Subchapter II—Immigration</i>	
<i>Part II—Admission Qualifications fFor Aliens; Travel Control of Citizens And Aliens</i>	
§ 1183a	Requirements for sponsor's affidavit of support
Part IV—Inspection, Apprehension, Examination, Exclusion, and Removal	
§ 1227	General classes of deportable aliens
§ 1229a	Removal proceedings
§ 1229b	Cancellation of removal; adjustment of status
§ 1229c	Voluntary departure
<i>Part IX—Miscellaneous</i>	
§ 1367	Penalties for disclosure of information
§ 1375	Mail-order bride business

Chapter 14—Restricting Welfare and Public Benefits for Aliens	
<i>Subchapter IV—General Provisions</i>	
§ 1641	Definitions
Chapter 15—Enhanced Border Security and Visa Entry Reform	
<i>Subchapter V—Foreign Students and Exchange Visitors</i>	
§ 1761	Foreign student monitoring program
Title 19—Customs Duties	
Chapter 24—Bipartisan Trade Promotion	
§ 3805note	United States—Chile Free Trade Agreement Implementation Act

CATEGORY 7—INDIANS

Title 25—Indians	
Chapter 18—Indian Health Care	
<i>Subchapter II—Health Services</i>	
§ 1621h	Mental health services
Chapter 24—Indian Land Consolidation	
§ 2206	Descent and distribution
§ 2216	Trust and restricted land transactions
Chapter 43—Native American Housing Assistance and Self-Determination	
§ 4103	Definitions
<i>Subchapter VIII—Housing Assistance for Native Hawaiians</i>	
§ 4221	Definitions

CATEGORY 8—TRADE, COMMERCE, AND INTELLECTUAL PROPERTY

Title 12—Banks and Banking	
Chapter 13—National Housing	
§ 1701q	Supportive housing for the elderly
<i>Subchapter II—Mortgage Insurance</i>	
§ 1707	Definitions
§ 1713	Rental housing insurance
§ 1715e	Cooperative housing insurance
Chapter 17—Bank Holding Companies	
§ 1841	Definitions
Chapter 31—National Consumer Cooperative Bank	
<i>Subchapter I—Establishment and Operation</i>	
§ 3015	Eligibility of cooperatives
Chapter 32—Foreign Bank Participation in Domestic Markets	
§ 3106a	Compliance with state and federal laws
Title 15—Commerce and Trade	
Chapter 14A—Aid to Small Business	
§ 632	Small business concern
Chapter 14B—Small Business Investment Program	
<i>Subchapter V—Loans to State and Local Development Companies</i>	
§ 696	Loans for plant acquisition, construction, conversion, and expansion
Chapter 41—Consumer Credit Protection	
<i>Subchapter IV—Equal Credit Opportunity</i>	
§ 1691	Scope of prohibition

CATEGORY 9—FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

Title 7—Agriculture	
Chapter 50—Agricultural Credit	
<i>Subchapter VI—Delta Regional Authority</i>	
§ 2009aa-1	Delta Regional Authority
<i>Subchapter VII—Northern Great Plains Regional Authority</i>	
§ 2009bb-1	Northern Great Plains Regional Authority
<i>Subchapter IX—Rural Strategic Investment Program</i>	
§ 2009dd-3	National Board on rural America

CATEGORY 10—CRIMES AND FAMILY VIOLENCE

Title 18—Crimes and Criminal Procedure	
Part I—Crimes	
Chapter 46—Forfeiture	
§ 983	General rules for civil forfeiture proceedings
Chapter 110A—Domestic Violence	
§ 2261A	Interstate stalking
Title 20	
Chapter 28—Higher Education Resources and Student Assistance	
<i>Subchapter VIII—Miscellaneous</i>	
§ 1152	Grants to combat violent crimes against women on campuses
Title 28—Judiciary and Judicial Procedure	
Part V—Procedure	
Chapter 115—Evidence; Documentary	
§ 1738C	Certain acts, records, and proceedings and the effect thereof
Title 42—The Public Health And Welfare	
Chapter 135—Violent Crime Control and Law Enforcement	
<i>Subchapter III—Violence against Women</i>	
<i>Subpart 3—Rural Domestic Violence and Child Abuse Enforcement</i>	
<i>Part C—Civil Rights for Women</i>	
§ 13981	Civil rights
<i>Part D—Equal Justice for Women in the Courts Act</i>	
<i>Subpart 1—Education and Training for Judges and Court Personnel in State Courts</i>	
§ 13992	Training provided by grants

CATEGORY 11—LOANS, GUARANTEES, AND PAYMENTS IN AGRICULTURE

<i>No new provisions in this category of statutes.</i>	
CATEGORY 12—FEDERAL NATURAL RESOURCES AND RELATED STATUTORY PROVISIONS	
<i>No new provisions in this category of statutes.</i>	

CATEGORY 13—MISCELLANEOUS STATUTORY PROVISIONS

Title 20—Education

Chapter 70—Strengthening and Improvement of Elementary and Secondary Schools

Subchapter II—Preparing, Training, and Recruiting High Quality Teachers and Principals

Part C—Innovation for Teacher Quality

Subpart 1—Transition to Teaching

§ 6674 Participation agreement and financial assistance

Subchapter VII—Bilingual Education, Language Enhancement, and Language Acquisition Programs

Part B—Native Hawaiian Education

§ 7512 Findings

Title 22—Foreign Relations and Intercourse

Chapter 75—Chemical Weapons Convention Implementation

Subchapter I—General Provisions

§ 6713 Civil liability of the United States

APPENDIX 2

Tables of Statutory Provisions Identified in 1997 Report as Involving Marital Status That Have Been Repealed or Amended to Remove Reference to Marital Status

Category 1—Social Security and Related Programs, Housing, and Food Stamps

Subject	1997 Statutory Citation	Status
Regulations pertaining to garnishments	42 U.S.C. §§661-662	Repealed by Pub. L. No. 104-193, § 362(b)(1), effective February 22, 1997, 110 Stat. 2246.

Category 3—Taxation

Subject	1997 Statutory Citation	Status
Collapsible corporations	26 U.S.C. § 341	Repealed by Pub. L. No. 108-27, § 302(e), May 28, 2003, 117 Stat. 763.
Rollover of gain on sale of principal residence	26 U.S.C. § 1034	Repealed by Pub. L. No. 105-34, § 312(b), Aug. 5, 1997, 111 Stat. 839.
Tax on excess distribution from qualified retirement plans	26 U.S.C. § 4980A	Repealed by Pub. L. No. 105-34, § 1073(a), Aug. 7, 1997, 111 Stat. 948.

Category 4—Federal Civilian and Military Service Benefits

Subject	1997 Statutory Citation	Status
Employment of retired members of the uniformed services; reduction in retired or retainer pay	5 U.S.C. § 5532	Repealed by Pub. L. No. 106-65, § 651(a)(1), Oct. 1, 1999, 113 Stat. 664.
Assistance to separated members to obtain certification and employment as teachers or employment as teachers' aides	10 U.S.C. § 1151	Repealed by Pub. L. No. 106-655, § 1707(a)(1), Oct. 5, 1999, 113 Stat. 823.
Military child care employees	10 U.S.C. § 1792	Amended by Pub. L. No. 105-261, § 1106, Oct. 17, 1998, 112 Stat. 2142; reference to marital status removed.
Job training partnership, application of federal law	29 U.S.C. § 1706	Repealed by Pub. L. No. 105-220, § 199(b) (2), effective July 1, 2000, 112 Stat. 1059.
Rights, benefits, privileges, and immunities; exercise of authority of Secretary of Commerce or designee (National Ocean Survey employees)	33 U.S.C. § 857a	Repealed by Pub. L. No. 107-372, § 271(2), Dec. 19, 2002, 116 Stat. 3094 and replaced with similar provisions that omit any reference to marital status. <u>See</u> 33 U.S.C. 3071 (National Oceanic and Atmospheric Administration Commissioned Officer Corps - Rights and benefits).

Category 5—Employment Benefits and Related Statutory Provisions

Subject	1997 Statutory Citation	Status
Youth training program for the disadvantaged	29 U.S.C. § 1644	Repealed by Pub. L. No. 105-220, § 199(b)(2), effective July 1, 2000, 112 Stat. 1059.
Job Corps—Allowances and support	29 U.S.C. § 1699	Repealed by Pub. L. No. 105-220, § 199(b)(2), effective July 1, 2000, 112 Stat. 1059.
Labor market information	29 U.S.C. § 1752	Repealed by Pub. L. No. 105-220, § 199(b)(2), effective July 1, 2000, 112 Stat. 1059.

Category 6—Immigration, Naturalization, and Aliens

Subject	1997 Statutory Citation	Status
Suspension of deportation of aliens	8 U.S.C. § 1251	Repealed by Pub. L. No. 104-208, § 308(b)(7), Sep. 30, 1996, 110 Stat. 3009-615.

Category 9—Financial Disclosure and Conflict of Interest

Subject	1997 Statutory Citation	Status
Alternative Agricultural Research and Commercialization Corporation—Board of Directors, Employees, and Facilities	7 U.S.C. § 5903	Repealed by Pub. L. No. 107-171, § 6201(a), May 13, 2002, 116 Stat. 418.

Category 10—Crimes and Family Violence

Subject	1997 Statutory Citation	Status
Interstate violation of a protection order	18 U.S.C. § 2262	Amended by Pub. L. 106-386, § 1107, Oct. 28, 2000, 114 Stat. 1464; reference to marital status removed.
Narcotic addict rehabilitation—definitions	42 U.S.C. § 3411	Repealed by Pub. L. No. 106-310, § 3405(b), Oct. 17, 2000, 114 Stat. 1221.
Model state leadership grants for domestic violence intervention	42 U.S.C. § 10415	Repealed by Pub. L. No. 108-36, § 410, June 25, 2003, 117 Stat. 827.

Category 11—Loans, Guarantees, and Payments in Agriculture

Subject	1997 Statutory Citation	Status
Paul Douglas Teaching Scholarships—exceptions to repayment provisions	20 U.S.C. § 1104g	Amended by Pub. L. No. 105-244, § 501, October 7, 1998, 112 Stat. 1581; reference to marital status removed.
Faculty Development Fellowship Program—exceptions to repayment provisions	20 U.S.C. § 1134r-5	Repealed by Pub. L. No. 105-244, § 701, October 7, 1998, 112 Stat. 1581.

Category 13—Miscellaneous Statutory Provisions

Subject	1997 Statutory Citation	Status
Vocational education state plans	20 U.S.C. § 2323	Amended by Pub. L. No. 105-332, § 1(b), October 31, 1998, 112 Stat. 3076; reference to marital status removed.
Vocational education definitions	20 U.S.C. § 2471	Amended by Pub. L. No. 105-332, § 1(b), October 31, 1998, 112 Stat. 3076; reference to marital status removed.
Agricultural Hall of Fame	36 U.S.C. § 977	Amended by Pub. L. No. 105-354, § 1, Aug. 12, 1998, 112 Stat. 3238; reference to marital status removed.
Audits of Federally Chartered Corporations	36 U.S.C. § 1101	Amended by Pub. L. No. 105-225, § 1, Aug. 12, 1998, 112 Stat. 1253; reference to marital status removed.
Gold Star Wives of America	36 U.S.C. § 1602	Amended by Pub. L. No. 105-225, § 1, Aug. 12, 1998, 112 Stat. 1253; replaced provision's reference to "gold wives" with "corporation". (The name of the organization continues to be the Gold Star Wives of America.)
Navy Wives Clubs of America	36 U.S.C. § 2802	Amended by Pub. L. No. 105-225, § 1, Aug. 12, 1998, 112 Stat. 1436; replaced provision's reference to "Navy Wives" with "corporation". (The name of the organization continues to be the Navy Wives Clubs of America.)
Aviation Hall of Fame	36 U.S.C. § 4307 and § 4309	Amended by Pub. L. No. 105-225, § 1, Aug. 12, 1998, 112 Stat. 1312. These provisions' references to "survivors" were deleted.
Membership of Martin Luther King, Jr., Federal Holiday Commission	36 U.S.C. § 169j-3	Repealed by Pub. L. No. 105-225, § 6, Aug. 12, 1998, 112 Stat. 1253.
Testing and other early intervention services for state prisoners	42 U.S.C. § 300ff-48	Repealed by Pub. L. No. 106-345, § 301(a), Oct. 20, 2000, 114 Stat. 1345.
Programs for older Americans—Demonstration projects	42 U.S.C. § 3035a	Provision was omitted by Pub. L. No. 106-501, Nov. 13, 2001, 114 Stat. 2257.

APPENDIX 3

Tables of Statutory Provisions Identified in 1997 Report as Involving Marital Status That Have Been Relocated in the United States Code

Category 1—Social Security and Related Programs, Housing, and Food Stamps

Subject	1997 Statutory Citation	Status
Alien's eligibility for benefits	42 U.S.C. § 615	Relocated to 42 U.S.C. § 608(f)

Category 2—Veterans' Benefits

Subject	1997 Statutory Citation	Status
Medical care for survivors and dependents of certain veterans	38 U.S.C. § 1713	Relocated to 38 U.S.C. § 1781

Category 4—Federal Civilian and Military Service Benefits

Subject	1997 Statutory Citation	Status
House of Representatives Child Care Center	40 U.S.C. § 184g	Relocated to 2 U.S.C. § 2062
National Oceanic and Atmospheric Administration commissary privileges	33 U.S.C. § 857-4	Relocated to 33 U.S.C. § 3074
Gratuities for survivors of deceased House employees; computation	40 U.S.C. § 166b-4	Relocated to 2 U.S.C. § 125
Senate employee child care benefits	40 U.S.C. § 214d	Relocated to 2 U.S.C. § 2063

Category 5—Employment Benefits and Related Statutory Provisions

Subject	1997 Statutory Citation	Status
Job training partnership—definitions	29 U.S.C. § 1503	Relocated to 29 U.S.C. § 2801

Category 6—Immigration, Naturalization, and Aliens

Subject	1997 Statutory Citation	Status
Deportable aliens	8 U.S.C. § 1251	Relocated to 8 U.S.C. § 1227

Category 7—Indians

Subject	1997 Statutory Citation	Status
Indian land consolidation—Descent and distribution	25 U.S.C. § 2205	Relocated to 25 U.S.C. § 2206

Category 9—Financial Disclosure and Conflict of Interest

Subject	1997 Statutory Citation	Status
Appalachian Regional Commission—personal financial interests	40 U.S.C. § 108	Relocated to 40 U.S.C. § 14309

Category 10—Crimes and Family Violence

Subject	1997 Statutory Citation	Status
Family violence prevention and Services—definitions	40 U.S.C. § 10408	Relocated to 40 U.S.C. § 10421

Category 13—Miscellaneous Statutory Provisions

Subject	1997 Statutory Citation	Status
Marine Corps League	36 U.S.C. § 57a	Relocated to chapter 2301 § 140102
Veterans of Foreign Wars of the United States	36 U.S.C. § 113	Relocated to chapter 2301 § 230102
Legion of Valor of the United States of America	36 U.S.C. § 633	Relocated to chapter 1303 § 130302
Veterans of World War I of the United States of America	36 U.S.C. § 763	Relocated to chapter 2303 § 230302
The Congressional Medal of Honor Society of the United States	36 U.S.C. § 793 and § 799	Relocated to chapter 405 § 40502 and § 40506
Blinded Veterans Association	36 U.S.C. § 859	Relocated to chapter 303 § 30307
National Woman's Relief Corps, Auxiliary to the Grand Army of the Republic	36 U.S.C. § 1005	Relocated to chapter 1537 § 153703
Gold Star Wives of America	36 U.S.C. § 1601	Relocated to chapter 805 § 80502
American Ex-Prisoners of War	36 U.S.C. § 2103	Relocated to chapter 209 § 20903
Catholic War Veterans of the United States of America, Inc.	36 U.S.C. § 2603	Relocated to chapter 401 § 40103
Navy Wives Clubs of America	36 U.S.C. § 2801 and § 2803	Relocated to chapter 1545, § 154502 and § 154503.
Army and Navy Union of the United States	36 U.S.C. § 3903	Relocated to chapter 229 § 22903
Non-Commissioned Officers Association of the United States	36 U.S.C. § 4003	Relocated to chapter 1547 § 4003
Retired Enlisted Association, Incorporated	36 U.S.C. § 5103	Relocated to chapter 1903 § 190303
National Fallen Firefighters Foundation	36 U.S.C. § 5201	Relocated to Chapter 1513 § 151302
Public Health Service grants for services of substance abusers	42 U.S.C. § 280d	Relocated to 42 U.S.C. § 290bb-25
Programs for older Americans—state plans	42 U.S.C. § 3035	Relocated to 42 U.S.C. § 3027

APPENDIX 4 CATEGORIES OF STATUTORY PROVISIONS

CATEGORY 1—SOCIAL SECURITY AND RELATED PROGRAMS, HOUSING, AND FOOD STAMPS

This category includes the major federal health and welfare programs, particularly those considered entitlements, such as Social Security retirement and disability benefits, food stamps, welfare, and Medicare and Medicaid. Most of these provisions are found in Title 42 of the United States Code, Public Health and Welfare; food stamp legislation is in Title 7, Agriculture.

CATEGORY 2—VETERANS' BENEFITS

Veterans' benefits, which are codified in Title 38 of the United States Code, include pensions, indemnity compensation for service-connected deaths, medical care, nursing home care, right to burial in veterans' cemeteries, educational assistance, and housing. Husbands or wives of veterans have many rights and privileges by virtue of the marital relationship.

CATEGORY 3—TAXATION

While the distinction between married and unmarried status is pervasive in federal tax law, terms such as "husband," "wife," or "married" are not defined. However, marital status figures in federal tax law in provisions as basic as those giving married taxpayers the option to file joint or separate income tax returns. It is also seen in the related provisions prescribing different tax consequences, depending on whether a taxpayer is married filing jointly, married filing separately, unmarried but the head of a household, or unmarried and not the head of a household.

CATEGORY 4—FEDERAL CIVILIAN AND MILITARY SERVICE BENEFITS

This category includes statutory provisions dealing with current and retired federal officers and employees, members of the Armed Forces, elected officials, and judges, in which marital status is a factor. Typically these provisions address the various health, leave, retirement, survivor, and insurance benefits provided by the United States to those in federal service and their families.

CATEGORY 5—EMPLOYMENT BENEFITS AND RELATED PROVISIONS

Marital status comes into play in many different ways in federal laws relating to employment in the private sector. Most provisions appear in Title 29 of the United States Code, Labor.

However, others are in Title 30, Mineral Lands and Mining; Title 33, Navigation and Navigable Waters; and Title 45, Railroads. This category includes laws that address the rights of employees under employer-sponsored employee benefit plans; that provide for continuation of employer-sponsored health benefits after events like the death or divorce of the employee; and that give employees the right to unpaid leave in order to care for a seriously ill spouse. In addition, Congress has extended special benefits in connection with certain occupations, like mining and public safety.

CATEGORY 6—IMMIGRATION, NATURALIZATION, AND ALIENS

This category includes federal statutory provisions governing the conditions under which noncitizens may enter and remain in the United States, be deported, or become citizens. Most are found in Title 8, Aliens and Nationality. The law gives special consideration to spouses of immigrant and nonimmigrant aliens in a wide variety of circumstances. Under immigration law, aliens may receive special status by virtue of their employment, and that treatment may extend to their spouses. Also, spouses of aliens granted asylum can be given the same status if they accompany or join their spouses.

CATEGORY 7—INDIANS

The indigenous peoples of the United States have long had a special legal relationship with the federal government through treaties and laws that are classified to Title 25, Indians. Various laws set out the rights to tribal property of “white” men marrying “Indian” women, or of “Indian” women marrying “white” men. The law also outlines the descent and distribution rights for Indians’ property. In addition, there are laws pertaining to health care eligibility for Indians and spouses and reimbursement of travel expenses of spouses and candidates seeking positions in the Indian Health Service.

CATEGORY 8—TRADE, COMMERCE, AND INTELLECTUAL PROPERTY

This category includes provisions concerning foreign or domestic business and commerce, in the following titles of the United States Code: Bankruptcy, Title 11; Banks and Banking, Title 12; Commerce and Trade, Title 15; Copyrights, Title 17; and Customs Duties, Title 19. This category also includes the National Housing Act (rights of mortgage borrowers); the Consumer Credit Protection Act (governs wage garnishment); and the Copyright Act (spousal copyright renewal and termination rights).

CATEGORY 9—FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

Federal law imposes obligations on members of Congress, employees or officers of the federal government, and members of the boards of directors of some government-related or government chartered entities, to prevent actual or apparent conflicts of interest. These individuals are required to disclose publicly certain gifts, interests, and transactions. Many of

these requirements, which are found in 16 different titles of the United States Code, apply also to the individual's spouse.

CATEGORY 10—CRIMES AND FAMILY VIOLENCE

This category includes laws that implicate marriage in connection with criminal justice or family violence. The nature of these provisions varies greatly. Some deal with spouses as victims of crimes, others with spouses as perpetrators. These laws are found primarily in Title 18, Crimes and Criminal Procedure, but some statutory provisions, dealing with crime prevention and family violence, are in Title 42, Public Health and Welfare.

CATEGORY 11—LOANS, GUARANTEES, AND PAYMENTS IN AGRICULTURE

Under many federal loan programs, a spouse's income, business interests, or assets are taken into account for purposes of determining a person's eligibility to participate in the program. In other instances, marital status is a factor in determining the amount of federal assistance to which a person is entitled or the repayment schedule. This category includes education loan programs, housing loan programs for veterans, and provisions governing agricultural price supports and loan programs that are affected by the spousal relationship.

CATEGORY 12—FEDERAL NATURAL RESOURCES AND RELATED PROVISIONS

Federal law gives special rights to spouses in connection with a variety of transactions involving federal lands and other federal property. These transactions include purchase and sale of land by the federal government and lease by the government of water and mineral rights.

CATEGORY 13—MISCELLANEOUS PROVISIONS

This category comprises federal statutory provisions that do not fit readily in any of the other 12 categories. Federal provisions that prohibit discrimination on the basis of marital status are included in this category. This category also includes various patriotic societies chartered in federal law, such as the Veterans of Foreign Wars or the Gold Star Wives of America.