

September 13, 2013

Major General John F. Nichols
Adjutant General of Texas
National Guard of the United States
Post Office Box 5218
Austin, Texas 78763-5218

**RE: Alicia Butler, wife of 1st Lt. Judith J. Chedville (ARNG)
Refusal of DEERS Enrollment & Issuance of ID**

Dear General Nichols:

Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) is a national legal organization committed to achieving full recognition of the civil rights of lesbian, gay, bisexual, and transgender (“LGBT”) people and those with HIV through impact litigation, education, and public policy work. We represent Alicia Butler, the wife of 1st Lt. Judith Chedville, a member of the Army National Guard, who has honorably served in Iraq and Kuwait and continues to serve this country.

On Tuesday, September 3, 2013, Ms. Butler, accompanied by Lt. Chedville, went to Camp Mabry in Austin, Texas, to register for benefits pursuant to the Department of Defense (“DoD”) Memorandum, “Extending Benefits to the Same-Sex Spouses of Military Members,” dated August 13, 2013. In accordance with ALARACT 212/2013, the couple presented their California marriage certificate to the desk clerk at Camp Mabry, along with Ms. Butler’s birth certificate and social security card. The desk clerk contacted her supervisor, who informed the couple that they would not be able to assist them and that the couple would need to travel to a federal facility in order to register for benefits. This stigmatizing and burdensome refusal to register Ms. Butler conflicts with DoD’s policy to treat all military spouses equally. It also forces the couple to expend significant time and cost to travel at least three hours round-trip to the nearest federal facility, while seeking care for their five-month-old daughter during the unnecessary journey.

The Texas Military Forces apparently takes the position that registering the same-sex spouse of a service member in the *federal* Defense Enrollment Eligibility Reporting System (“DEERS”) and issuing a spousal ID, in fulfillment of the federal government’s legal obligation to provide *federal* spousal and family benefits to same-sex spouses, somehow would violate provisions of the Texas Constitution and Statutes that purport to deny State recognition to the out-of-state marriages of same-sex couples. This position is particularly dubious given that the “Federal Government provides virtually all of the funding, the material, and the leadership for the state Guard units,” *Perpich v. Dep’t of Def.*, 496 U.S. 334, 351 (1990), including, specifically, DEERS and federal benefit administration for commissioned officers located in Texas. Our client did not ask you to identify and provide any state-specific benefits in

recognition of her marriage, only to comply with the military's policies – a condition of the extensive federal funding you receive.

When voluntarily implementing federally-funded benefits programs on behalf of the U.S. Army National Guard, Texas may not violate the federal civil rights of eligible spouses of military personnel. The discriminatory treatment of lesbian and gay spouses of service members, including those in the Army National Guard in Texas, is illegal. *See United States v. Windsor*, 570 U.S. ---, 133 S.Ct. 2675 (2013). It also is detrimental to good order, discipline, and morale and fails to accord all soldiers dignity and respect – guiding principles of the military. Your agency has inflicted harm on this military family, whose soldier has risked her life in service to this nation. The punitive action of the Texas Military Forces cannot be justified by anything other than animus and violates the legal rights of this couple and others like them.

According to your governing philosophy for the Texas Military Forces, the top priority guiding leadership policies is to “act in the best interests of our troops and families,” and, to that end, ensure “[e]very Soldier and Airman... feel like the valued service member he or she is.”¹ The Texas Military Forces’ decision to slam the door on same-sex spouses of its service members is contrary to this guiding philosophy and fails its troops and their families. Therefore, we respectfully request that your agency reconsider its position and that you instruct your staff to abide by the directive and policies of the DoD by enrolling eligible same-sex spouses of service members so they may receive the federal benefits to which they are entitled.

Please submit your response to this letter within ten days from receipt.

Very truly yours,

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.



Paul D. Castillo
Staff Attorney

cc: General Frank J. Grass
Chief, National Guard Bureau

Stephen Peters
Executive Director, American Military Partner Association

¹ John F. Nichols, Adjutant General, *About Texas Military Forces*, <http://www.txmf.us/About.php> (last visited September 13, 2013).