In the United States Court of Appeals for the Third Circuit

No. 03–4433

FORUM FOR ACADEMIC AND INSTITUTIONAL RIGHTS, a New Jersey membership corporation; SOCIETY OF AMERICAN LAW TEACHERS, a New York corporation; COALITION FOR EQUALITY, a Massachusetts association; RUTGERS GAY AND LESBIAN CAUCUS, a New Jersey association; PAM NICKISHER, a New Jersey resident; LESLIE FISCHER, a Pennsylvania resident; MICHAEL BLAUSCHILD, a New Jersey resident; ERWIN CHEMERINSKY, a California resident; and SYLVIA LAW, a New York resident,

Plaintiffs–Appellants,

v.

DONALD H. RUMSFELD, in his capacity as U.S. Secretary of Defense; ROD PAIGE, in his capacity as U.S. Secretary of Education; TOMMY THOMPSON, in his capacity as U.S. Secretary of Health and Human Services; NORMAN Y. MINETA, in his capacity as U.S. Secretary of Transportation; and TOM RIDGE, in his capacity as U.S. Secretary of Homeland Security,

Defendants–Appellees.

On Appeal from the United States District Court
for the District of New Jersey

BRIEF OF THE UCLAW VETERANS SOCIETY, WASHBURN UNIVERSITY VETERANS LAW ASSOCIATION, AND THE COLLEGE OF WILLIAM & MARY SCHOOL OF LAW MILITARY LAW SOCIETY AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

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INTRODUCTORY STATEMENT

This amicus brief is being filed to present this Court with a perspective on the questions presented that no other party or amicus is providing — that of law students who are serving in the military, in the military reserves, or who have previously served in the military.

The student groups that join in this brief are based on the east coast, the west coast, and the center of the Nation. These groups, while geographically diverse, are united in their view that allowing law schools to exclude military recruiters without facing the consequences provided for in the Solomon Amendment would cause serious harm to the Nation, to those individuals who are now serving or who in the future will be serving in the military, and to law students with an interest in military service. The trial court correctly concluded that the balance of harm decidedly favored the federal government, and the trial court's refusal to issue an injunction against the Solomon Amendment should be affirmed.

If this court reverses the district court's denial of a preliminary injunction and allows American law schools to disregard the Solomon Amendment, the effect on military recruitment will be severe,

immediate, and certain. Of the 181 American Bar Association accredited schools — the only schools from which the Judge Advocate General ("JAG") Corps can recruit, *see* U.S. Dep't of the Army, Regulation 27–1, Legal Services: Judge Advocate Legal Services, para. 13–2(g) (Sept. 30, 1996) — 166 are members of the American Association of Law Schools ("AALS").

Current AALS policy does not now mandate the exclusion of military recruiters because of the "Solomon Amendment," a federal statute that conditions receipt of federal funding on allowance of military recruiters on campus. *See* Department of Defense Authorization Act for Fiscal Year 1996, Pub. L. 104–106, §541, 110 Stat. 315 (1996) (codified at 10 U.S.C. §983); AALS Memorandum 97–46, *available at* http://www.aals.org/97-46.html (explaining that law schools are excused from locking the schoolhouse doors to military recruiters only "so long as the Solomon Amendment remains in effect in its current form").

If the Solomon Amendment is invalidated, all 166 member schools will be duty bound by their AALS membership to bar military recruiters from their campuses and to bar them from any access to school recruiting resources. *See* AALS Bylaws Sec. 6–3(b) (requiring schools to

ensure that all employers utilizing school facilities conform to the AALS diversity policy).

The resultant harsh effects on military recruitment and readiness from an invalidation of the Solomon Amendment would be severe. As soon as the gavel sounds, 166 AALS member law schools would shut their doors to military recruiters. The armed forces would immediately lose access to 92% (166/181) of their potential applicant pool, at a time when our nation is at war and under attack.

It is nearly certain that military recruiters would fail to meet recruiting goals for new Judge Advocates by a wide margin when faced with such a diminishment of the applicant pool. Military readiness and effectiveness would suffer; a shortage of military lawyers would affect commanders in the field faced with "real world" problems under the laws of armed conflict. The constitutional and statutory rights of servicepersons entitled to legal representation would also suffer. *See* U.S. Const. amend. VI; *see also* Preamble, Department of Defense, Manual for Courts Martial, United States (2002 ed.).

Law students too will suffer if the plaintiffs prevail. The exclusion of military recruiters from on–campus career services programs would

cause a significant decrease in the available opportunities for current law students. Although law students would still have the ability to investigate the military on their own, they would not have the benefit of assistance from their career services office in this important endeavor.

If the plaintiffs prevail, their actions may also damage the academic environment that exists in American law schools today. Veterans, reservists, and active duty students would be identified as associated with an institution branded by the AALS and their own law schools as discriminatory. Students with a military affiliation would be implicitly marked by their schools' action as linked to an employer whose conduct was so reprehensible as to be undeserving to set foot on campus. This ostracism toward the military and its current and former employees may inhibit some veterans from participating in the academic marketplace of ideas that is the hallmark of the American university campus.

INTEREST OF THE AMICI CURIAE

Amici are student organizations from the UCLA School of Law in Los Angeles, California; the Washburn University School of Law in Topeka, Kansas; and the College of William and Mary School of Law in Williamsburg, Virginia. Each organization is constituted in accordance with the regulations of its respective educational institution and consists of students who are currently enrolled in law school.

These three student organizations include active–duty servicemembers, law students who concurrently serve in the reserve components of the armed forces, veterans who have been honorably discharged from the U.S. armed forces, and non–veteran students interested in military or veterans' issues. The groups aim to raise awareness throughout the student body of veterans' issues, to provide academic support and mentoring for their members, and to advance and protect the interests of veteran students.

Amici are deeply interested in this case because its outcome could affect the composition of the military and its ability to accomplish its assigned mission to "provide for the common defence." *See* U.S. Const. pmbl. In addition, *amici* have an interest in the outcome of this case

because of its implications for the economic and educational opportunities afforded to law students with whom *amici* are similarly situated and its implications for the academic environment of American law schools where *amici* are currently enrolled.

The statements of *amici* in this brief are based on their experience as veterans of the United States armed forces who are now enrolled as law students, as well the recent experience of *amici* as participants in the on–campus interview processes at issue in the current litigation. The views presented by *amici* are theirs alone, and do not represent the official views of the Department of Defense or United States government.

Counsel for the opposing parties have consented to the filing of this amicus brief.

SUMMARY OF THE ARGUMENT

The district court properly exercised its equitable discretion in denying plaintiff's request for a preliminary injunction by concluding that the balance of hardships and public interest factors weigh in favor of the Government. *See Forum for Academic & Institutional Rights, Inc.* v. *Rumsfeld*, 291 F. Supp. 2d 269 (D.N.J. 2003) (order denying preliminary injunction). If law schools are permitted indiscriminately to restrict — or, in some cases, completely bar — military recruiting on their campuses, both this Nation's military and its law students will suffer.

If the plaintiffs prevail in their bid to bar the military from campuses, the military will suffer. Military readiness and effectiveness will suffer from the lack of access to law school campuses for the purpose of recruiting. Military servicemen and women seeking legal representation will also suffer from the military's inability to actively recruit the highest–caliber lawyers to serve as attorneys. To the extent that the plaintiffs in this action represent some of America's most prestigious law schools, these effects will be exacerbated because they will disproportionately impact America's top law schools and, by

extension, the best and brightest law students eligible for military service.

In restricting JAG recruiter access to law schools, the plaintiffs will also impose a burden on students who wish to seek JAG employment after graduation or who want to learn more about the social, economic, and educational opportunities exclusively available through military service.

Finally, law students who hold a military affiliation (such as veterans) will suffer the effects of having the institution they served in removed from the law school environment. If the plaintiffs are allowed to prohibit on–campus military recruitment, plaintiffs may chill the speech and activities of veterans currently enrolled and may also discourage veterans from applying for admission to law school because of the perceived lack of welcome for veterans in the legal academy.

ARGUMENT

The Balance Of Hardships Clearly Favors The Government, And Therefore The District Court's Denial Of A Preliminary Injunction Should Be Affirmed

This Court will not reverse a district court's denial of a preliminary injunction unless this Court concludes the district court "committed an obvious error in applying the law or a serious mistake in considering the proof." *Clean Ocean Action* v. *York*, 57 F.3d 328, 331 (3d Cir. 1995) (citations omitted). Even if this Court determines that the district court committed an obvious error, it may nevertheless uphold the trial court's holding because "the balance of harms and the public interest support the denial of the preliminary injunction." *Id*.

I. The Military Will Suffer Great Harm If Law Schools Are Allowed To Prohibit JAG Access To On–Campus Student Recruitment

Contrary to the rosy picture of military recruiting that the plaintiffs seek to paint in their opening brief on appeal, *see* Plaintiffs' Brief at 10–11, the reality today is that the armed forces currently find themselves working quite hard to recruit and retain military personnel. *See* Thomas E. Ricks and Vernon Loeb, *Unrivaled Military Feels Strains of*

Unending War, The Washington Post, Feb. 16, 2003, at A01 (discussing Congressional concern about military recruiting); *see also* Dave Moniz, *Guard Survey Hints at Exodus*, USA Today, Jan. 22, 2004, at 1A (reporting that large numbers of National Guard personnel planned to exit the service at the end of their current enlistment).

The five–year–old quotations plaintiffs cite for the proposition that all is well on the recruiting front fail to capture the radically increased operational tempo and deployment commitments of today's military. *See* Vernon Loeb, *Army Reserve Chief Fears Retention Crisis*, The Washington Post, Jan. 21, 2004, at A04 (detailing the personnel issues involved in the "first extended–duration war our nation has fought with an all–volunteer force").

Despite recent, promising recruitment accomplishments, many members of Congress have warned of the need to remain vigilant and aggressive in military recruiting practices. *See* 149 Cong. Rec. E2081, 2082 (Oct. 17, 2003) (statement of Rep. Skelton) ("Although military recruiting is now satisfactory, many military leaders have expressed their fear that retention and recruiting will decline as troops rotate back home."); 149 Cong. Rec. S12,579, 12,581 (Oct. 15, 2003) (statement

of Sen. Bingaman) (noting the adverse impact that "prolonged activation [of reservists] has on recruitment and retention"); *see also* Paul Krugman, *Who's Unpatriotic Now?*, N.Y. Times, Jul. 22, 2003, at A19 (noting "the war will have devastating effects on future recruiting by the reserves").

The exclusion of military recruiters from law school that plaintiffs seek will have an especially egregious effect on military recruitment in the future and should therefore be denied.

A. Military effectiveness may suffer if America is not able to recruit the best and brightest law school graduates

"It is obvious and unarguable that no governmental interest is more compelling than the security of the Nation." *Haig* v. *Agee*, 453 U.S. 280, 307 (1981) (internal quotations omitted). "[I]t is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise," *United States ex rel. Toth* v. *Quarles*, 350 U.S. 11, 17 (1955), and it is the duty of Congress and the President to raise and command the United States armed forces for this purpose. *See* U.S. Const. art. I, §8, cl. 12–14; U.S. Const. art. II, §2, cl. 1. In the name of military

effectiveness, the courts have upheld conscription policies that discriminate on the basis of sex, *see Rostker* v. *Goldberg*, 453 U.S. 57 (1981), military laws that curtail the freedom of speech, see *Parker* v. *Levy*, 417 U.S. 733 (1974), and uniform regulations that limit the free exercise of religion, *see Goldman* v. *Weinberger*, 475 U.S. 503 (1986).

Empirical research has shown that the effectiveness of any armed force is directly related to the quality of its soldiers and officers. *See* Stephen Biddle, *Victory Misunderstood: What the Gulf War Tells Us about the Future of Conflict*, Int'l Security, Autumn 1996, at 139–179 (concluding that skill — not technology — was the crucial determinant of success in the first Gulf War). Since the mid–1970s, when the Defense Department stopped conscripting soldiers and adopted the policy of an "all–volunteer force," the caliber of the average enlisted servicemember and officer has risen in terms of education, physical fitness, and general aptitude for service. *See* Office of the Secretary of Defense, *Selected Manpower Statistics*, *Fiscal Year 2002* (Washington, DC: Washington Headquarters Service); *see also* Charles C. Moskos, *Recruitment and Society after the Cold War, in* Marching Toward the 21st Century: Military Manpower and Recruiting 140 (Mark J.

Eitelberg and Stephen L. Mehay eds., 1994) (discussing the trends in military personnel indicators in the past decade).

Academic reviews of military performance since the end of the Cold War have pointed to the quality of American military personnel as critical to military effectiveness and, consequently, military success in these operations. *See generally* Charles Moskos and John Williams et al., eds., *The Postmodern Military: Armed Forces After the Cold War* (Oxford Univ. Press 2000) (documenting the correlation between increased personnel quality indicators and increased military effectiveness in the American military after its transition to an all–volunteer force in the wake of the Vietnam War).

To promote military effectiveness, the military must retain the ability to recruit the best possible people — both for its enlisted ranks and for its officer corps. The military has a particularly strong interest in recruiting the most talented lawyers for its force, because such individuals serve as officers who may potentially be called upon to lead enlisted servicemembers in combat.[1] *See* The Way Ahead —

[1] Each service commissions its new JAG officers as officers at the O–2 grade, either as First Lieutenants (in the Army, Air Force or Marines) or as Lieutenants Junior Grade (in the Navy). In each service, officers

Overview of the Army Strategic Planning Guidance, *available at* http://www.army.mil/thewayahead/quality3.html (2004) (stating "[w]e must prepare all our Soldiers for the stark realities of the battlefield"); *see also* Marine Corps Doctrinal Publication 1, Warfighting 59 (1997) (stating that "[a]ll Marines, regardless of occupational specialty, will be trained in basic combat skills."), *available at* https://www.doctrine.usmc.mil/signpubs/d1.pdf.

Moreover, JAG officers play a critical role in contemporary military operations. In the military operations of the last decade, JAG officers have advised commanders on targeting decisions, investigated alleged violations of international law, assisted with the planning and supervision of humanitarian operations, and even helped to write the provisional constitutions of countries in which the United States has helped to displace despotic regimes. *See* Esther Schrader, *War, On Advice of Counsel*, L.A. Times, Feb. 15, 2002, at A1 (describing the pivotal role played by military lawyers during the Kosovo and

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in the grade of O–2 lead an organization of 20–40 persons, such as a "platoon" in the Army and Marine Corps or "division" in the Navy. *See* U.S. Dep't of the Army, Regulation 27–1, Legal Services: Judge Advocate Legal Services, para. 13 (Sept. 30, 1996).

Afghanistan wars); *see also* Lt. Col. Marc L. Warren, *Operational Law — A Concept Matures*, 152 Mil. L. Rev. 33 (1996) (discussing the evolving role of military attorneys in an operational setting).

A shortage of military lawyers would affect military commanders' ability to train their soldiers on the law of war, as well as their ability to integrate legal experts into the targeting process. *See* Maj. Ariane L. DeSaussure, *The Role Of The Law Of Armed Conflict During The Persian Gulf War: An Overview*, 37 A.F. L. Rev. 41, 58–68 (1994) (describing the role of military lawyers in ensuring U.S. compliance with the law of war during the first Gulf War).

A lack of military lawyers could increase the likelihood of law of war violations by soldiers and unacceptable civilian collateral damage during military operations. This, in turn, could have strategic ramifications because of the way that any such incidents would be viewed by the world. *See, e.g.*, Daniel Williams, *NATO, Pentagon Struggle to Explain Errant Airstrike*, The Washington Post, Apr. 15, 1999, at A24 (discussing the events surrounding the accidental bombing of a civilian convoy in Kosovo); Jane Perlez, *Embassy Bombing May Badly Impede Kosovo Diplomacy*, N.Y. Times, May 11, 1999, at A1

(explaining the effect that NATO's mistaken bombing of the Chinese embassy would have on diplomatic efforts to end the war in Kosovo). The perception of American military operations around the world depends, in no small measure, on our military's adherence to the law of armed conflict.

As Congress has made abundantly clear, the military requires the "best and brightest" for each of its occupational specialties, including its cadre of lawyers, because these missions implicate life or death situations. *See* 149 Cong. Rec. H10,373 (Nov. 5, 2003) (statement of Rep. Myrick) (noting the need "to recruit and retain the best and the brightest * * * to ensure a strong, able, dedicated American military so that this Nation will be ever vigilant and ever prepared"). If the plaintiffs succeed, all AALS member schools will be required to exclude the military from their campuses. This will deny the military access to 92% of the accredited American law schools that are AALS members, making it next to impossible to recruit the best military lawyers for the job.

To the extent that the plaintiffs represent the top tier of American law schools, the damage to the military will be magnified. Plaintiffs

have declined to reveal the membership of either the Forum for Academic and Institutional Rights ("FAIR") or the Society of American Law Teachers ("SALT"). Yet FAIR's Board of Trustees and its declarations introduced thus far in this litigation represent at least ten of the most prestigious twenty–five law schools in the United States. *See* U.S. News & World Report, America's Best Graduate Schools, 2004 edition. Students and faculty from America's most prestigious law schools have also filed suits similar to this one. See *Burbank* v. *Rumsfeld*, Civil Action No. 03–5497 (E.D. Pa., filed Sept. 28, 2003); *Burt* v. *Rumsfeld*, Civil Action No. 3:03CV01777 (D. Conn., filed Oct. 16, 2003).

Cumulatively, the plaintiffs in these cases seek an injunction that would restrict severely or exclude outright the military from recruiting at their law schools. Such an order would critically impede the military's ability to recruit the most qualified JAG officers to serve in the United States armed forces and consequently degrade the military's ability to accomplish its missions.

B. Servicemembers will suffer if the military cannot recruit the best and brightest lawyers to provide legal services for the armed forces

The Sixth Amendment provides for the "Assistance of Counsel" in all criminal cases, and "[i]t has long been recognized that the right to counsel is the right to the effective assistance of counsel." *McMann* v. *Richardson*, 397 U.S. 759, 771 n.14 (1970). Military personnel also have the right to counsel under the Sixth Amendment and federal law. *See* Article 27, Uniform Code of Military Justice ("UCMJ") (codified at 10 U.S.C. §827); *see also* Article 38, UCMJ (codified at 10 U.S.C. §838).

Indeed, "Congress has provided members of the armed forces facing trial by general or special court–martial with counsel rights broader than those available to their civilian counterparts * * * [because of the] unique nature of military life, in which members are subject to worldwide assignment and involuntary deployment under circumstances when civilian counsel are not readily available." *United States* v. *Spriggs*, 52 M.J. 235, 237–38 (C.A.A.F. 2000).

In criminal cases, Staff Judge Advocates (the military's prosecutors), faced with severe personnel shortages, would be forced to triage military justice cases, perhaps dropping many non–violent prosecutions,

thereby harming unit discipline. Trial Defense Services offices, facing similar personnel shortages, would face overwhelming caseloads, resulting in less time being devoted to each case, pressure to plea–bargain, and a loss of rights by accused servicemembers.

The decline in the efficacy of the military justice system would lead to plummeting unit effectiveness, the very downward spiral the current military justice system was enacted to address. *See* Manual for Courts Martial, United States (2002 ed.); *see also* Walter T. Cox III, *The Army, the Courts, and the Constitution: The Evolution of Military Justice*, 118 Mil. L. Rev. 1 (1987) (discussing military justice problems during World War II, where 2 million courts martial were conducted in a force of 16 million soldiers, that led to the development of the Uniform Code of Military Justice and the current military justice system).

In addition to the deleterious effect voiding the Solomon Amendment would have on the military's criminal justice system, such an injunction would also severely restrict the military's ability to provide servicemembers with counsel in connection with civil matters of significance. Military personnel currently enjoy a broad right of access to legal assistance from JAG officers in civil matters, on matters from

bankruptcy to the preparation of wills before deployment. *See* U.S. Dep't of the Army, *Field Manual 27–100: Legal Support to Operations*, Chapter 3.8 (2000).

The goal of "improving the quality of the legal service" has been declared a legitimate governmental interest by the courts. *See Lathrop* v. *Donohue*, 367 U.S. 820, 839 (1961) (upholding compulsory enrollment in state bar association and the duty of bar members to pay dues); *see also Keller* v. *State Bar of Cal.*, 496 U.S. 1, 8, 13–15 (1990) (recognizing the legitimate state interest in "improving the quality of legal services").

Ensuring the military's continued access to America's top law schools will allow the military to further its own interest in continuing to receive high quality legal services and also would preserve the high quality of legal services provided for America's men and women in uniform. The value of legal assistance from JAG officers depends, in no small measure, on the caliber of the individual attorneys the military is able to recruit to serve in the JAG corps.

To the extent that the plaintiffs represent America's finest law schools and seek to impede the access of the JAG corps to their

students, the military services will suffer from a lack of access to the best and brightest legal minds graduating from America's top legal institutions. This, in turn, will hurt the military personnel who rely on JAG officers for legal representation and legal assistance and undermine the very right to counsel these military personnel protect with their service.

II. Law Students Will Suffer If The Military Is Excluded From On–Campus Recruiting

A. Law schools will fail to match prospective JAG recruits with opportunities tailored to their career aspirations

Should the plaintiffs prevail in this litigation, it will become much more difficult for law students to learn of the opportunities available as a JAG officer. The plaintiffs seek to enjoin the Department of Defense from using the Solomon Amendment as a tool to enforce its right of military access to law school recruitment (*see* Plaintiff's Brief at 2–3).

In their public statements, however, student and faculty groups allied with the plaintiffs have alluded to a far more Draconian remedy: the wholesale exclusion of military recruiters from the halls of their law schools. *See* Elisabeth S. Theodore, *Law Faculty Make Case Against*

Military, The Harv. Crimson Online, Oct. 8, 2002, *available at* http://www.thecrimson.com/article.aspx?ref=254485 (citing Professor Alan Dershowitz's rally speech in favor of excluding the military from on–campus recruiting), *and* Niki Wilson, *Students Back Anti–Military Suit*, The Stanford Daily Online, Oct. 14, 2003 (citing student campaign to defend law school's "refusal to host military recruiters").

Indeed, by asserting that they would "prefer to see the military do its recruiting without use of law school facilities," plaintiffs make clear their desire to not only restrict, but to completely remove the presence of military recruiters from law school campuses. *See* Carol Chomsky and Margaret Montoya, *SALT Position Statement: The Solomon Amendments*, 2001, *available at* http://www.saltlaw.org/positionsolomon.htm. A number of law schools have indicated that were it not for the Solomon Amendment, and the potential loss of federal funds, they would exclude military recruiters from their campuses in order to comply with their non–discrimination policies or the non–discrimination policy of the AALS. *See* Stmt. of University of Southern California Law School Dean Matthew Spitzer, Aug. 19, 2002, *available at* http://www.law.georgetown.edu/

solomon/USCdean.pdf (announcing his "regret" for permitting military recruiters on campus as a result of the Solomon Amendment).

Should this day come to pass, the military would suffer from the inability to gain direct access to law students interested in the opportunities of military service.[2] But the true burden of this policy

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[2] Plaintiffs and their *amici* aver that the armed forces make use of a scholarship program to entice law students into military service with the offer of money to pay for law school tuition. *See* Declaration of Rosenkranz, ¶12, Ex. 5; *see also* Brief of Servicemembers Legal Defense Network at 16. Plaintiffs and *amici* are mistaken as to the nature of the programs they cite in their brief.

Plaintiffs' affidavit refers to the Army's "Fully Funded Legal Education Program," and the Air Force's Funded Legal Education Program, common referred to in the military as "FLEP" programs. Declaration of Rosenkranz, Ex. 5. The FLEP programs accommodate active–duty officers selected to attend law school while on active duty. *See* U.S. Dep't of the Army, Army Regulation 27–1, Legal Services: Judge Advocate General Services, Chapter 14 (1996); *see also* U.S. Dep't of the Air Force, *Air Force Instruction 51–101*, Judge Advocate Accession Program Chapters 2–3 (2000). Such programs are only available to active–duty service personnel, and not to civilian law students or military–affiliated students (such as reservists) already enrolled in law school.

Furthermore, the plaintiffs are mistaken as to the existence of a military scholarship program for law school, other than the FLEP option described above. The military does offer some forms of loan repayment assistance for JAG officers, but none of the services currently have a program of the kind that plaintiffs and their *amici* describe.

would be borne by law students interested in military service — or those who might learn about its opportunities through on–campus interview processes at their own law schools. Students interested in JAG service would not be able to avail themselves of on–campus career services such as alumni contact information, student evaluations, and other information typically provided by campus recruiting offices. Moreover, students on their own would have to coordinate such extracurricular job searches with their academic schedules; they would not have the benefit of on–campus recruiting process to harmonize their class and recruiting schedules.

Ironically, the exclusion of military recruiters would contravene the stated intent of most top law schools' career services offices — to match students with the best job available.[3]

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[3] The mission statements of top law school career offices reflect a pervasive recognition that part of the law school's mission is to fully support the students' pursuit of well–targeted legal employment. The UCLA School of Law Office of Career Services (OCS) "acts as a liaison between students and employers." *See* UCLA School of Law, Career Services Office, *available at* http://www1.law.ucla.edu/~career/ (last visited Feb. 1, 2004). Harvard's career services office "assists Harvard Law School's students and graduates in planning career paths, preparing for the job market, and identifying or creating specific opportunities." *See* Harvard Law School, Office of Career Services Website, *available at* http://www.law.harvard.edu/ocs/ (last visited Feb.

B. Veteran law students will be inhibited from contributing to classroom diversity

In addition to harming prospective JAG recruits, the purposeful exclusion of the military from on–campus recruiting will also adversely affect law schools' veteran student populations. Veteran students constitute a unique and distinguished group within the law school community, and they bring with them a valuable set of personal experiences to enhance classroom diversity.

An academic environment that exposes students and faculty to "widely diverse people, cultures, ideas, and viewpoints" has been described as a critical part of American higher education because it prepares graduates to thrive in the diverse world outside the university. *See Grutter* v. *Bollinger*, 123 S. Ct. 2325, 2340 (2003). Veteran students add value to law school classroom discussions, particularly on matters

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1, 2004). Yale's Career Development Office "assists students and graduates in identifying career objectives and obtaining employment that meets those objectives." *See* Yale Law School, Career Development Office Website, *available at* http://www.law.yale.edu/outside/html/Career_Development/cdo-index.htm (last visited Feb. 1, 2004). Columbia's OCS "support[s] students and graduates of the law school in their career decision–making process." *See* Columbia University Law School, Office of Career Services Website, *available at* http://www.law.columbia.edu/careers (last visited Feb. 1, 2004).

relating to national security, foreign affairs, and other issues connected to America's armed forces.

Veterans are far less likely to contribute to the diversity of controversial classroom discussions if the governmental institution they proudly served is summarily removed from campus. The overly broad act of excluding all military on–campus recruitment may inadvertently render veteran students "guilty by association" and thereby undercut their ability to participate meaningfully in the classrooms and halls of American law schools. If the plaintiffs succeed in overturning the district court's denial of a preliminary injunction, and that results in the chilling of veteran participation in law school, then law schools will lose part of the vibrancy and diversity of the academic environment so critical to law school success. *See Grutter*, 123 S. Ct. at 2341.

CONCLUSION

For all of the reasons set forth above, the district court's order denying a preliminary injunction should be affirmed.

Respectfully submitted,

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CERTIFICATION OF BAR MEMBERSHIP

I hereby certify that I am a member of the Bar of the United States Court of Appeals for the Third Circuit.

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CERTIFICATE OF COMPLIANCE WITH TYPE–VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type–volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,931 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing document were served via first class United States mail on the persons, at the addresses, and on the date that appear below, and that an electronic copy of this document in PDF format was served on these persons via electronic mail on the date that appears below.

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