

Mission Compromised:

How the Obama Administration
is Drafting the Military into
the Culture War



Endorsements

Lt. Col. Maginnis's paper provides an excellent background and points of discussion on a complex issue that has a direct bearing on the cohesion and readiness of today's military. At the end of the paper you need to ask yourself, "What is the military reason to change the policy? How does this proposed change improve unit effectiveness and cohesion?" General Conway has it right when he advised the Congress to "keep the current law."

– John J. Sheehan
General U.S. Marine Corps (Ret.)

Bob Maginnis is the most highly-respected expert on military-social issues today. He commands unparalleled respect at the highest levels of the Department of Defense. Colonel Maginnis speaks with great authority regarding the potential impacts of retaining known homosexuals on active duty. His thorough research and balanced analysis add much to these discussions.

– Colonel Richard H. Black (U.S. Army Ret.)
Former Chief, Criminal Law Division
Office of the Judge Advocate General
The Pentagon



After over 30 years in the Marine Corps, including service as the senior military attorney, I know the serious risks present if the current *Don't Ask Don't Tell* policy and law are repealed. I am compelled to speak out since those currently on active duty cannot voice their opinions.

Robert Maginnis uses facts, the law, and a dose of military perspective to debunk the myths put forward by those

seeking change from the current law. There is no right to serve, and the President's proposed changes to current law will seriously degrade unit cohesion and effectiveness, recruiting, and retention. With our armed forces engaged around the world, we should not use them to advance social or political agendas unrelated to military effectiveness. Our nation has many pressing needs that demand national and Congressional attention—changing the current law limiting homosexual service in the military is not one of them.

– James C. Walker
Brigadier General U.S. Marine Corps (Ret.)

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by
Robert L. Maginnis

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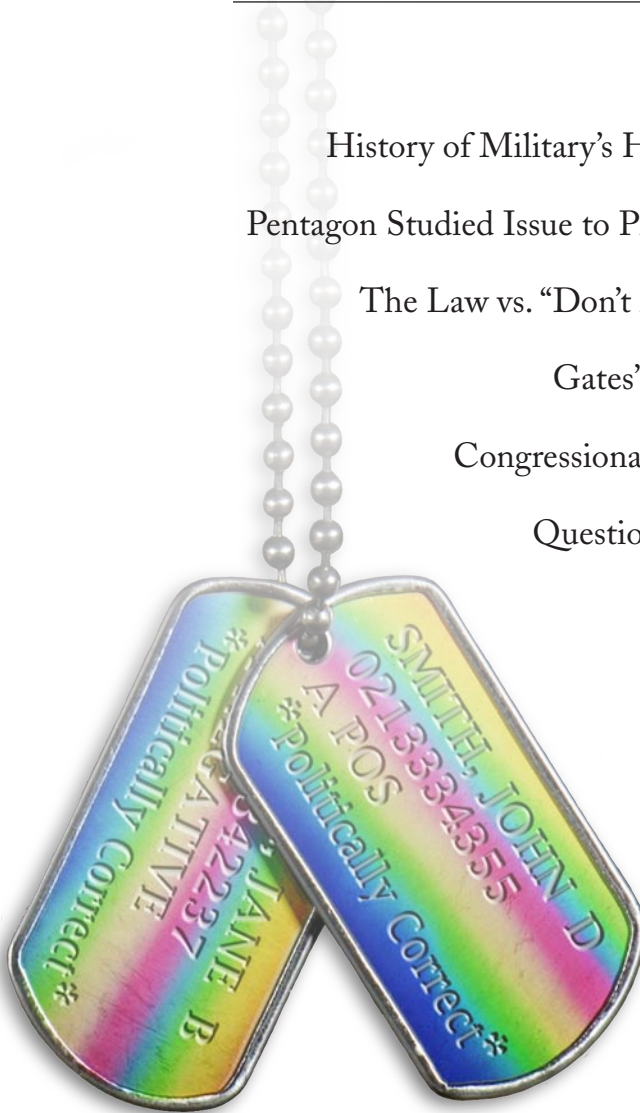
Bob Maginnis serves as the Senior Fellow for National Security at Family Research Council (FRC). He also served with FRC from 1993 to 2002, rising from analyst to the Vice President for Policy. Mr. Maginnis is a retired Army lieutenant colonel, a national security and foreign affairs analyst for radio and television, a columnist for Human Events and a senior strategist with the U.S. Army. He testified before the Pentagon's 1993 Military Working Group that worked on the homosexual issue, provided considerable background material at the group's request, and served as a personal advisor to the group's senior member, Army Lt. Gen. John Otjen. Simultaneously, he served on the Army Chief of Staff's study group considering the homosexual issue.

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the Military into the Culture War
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Foreword



Tony Perkins

I've had the honor of serving my country and my community in a variety of different capacities over the last 30 years—police officer, broadcaster, state legislator, and now President of the Family Research Council. But there are none of which I am prouder than my service as a United States Marine.

Our current all-volunteer military is the envy of the world, staffed by able young patriots. However, one thing America lost with the end of the draft was military service as a common, shared experience for a significant percentage of the American population. Most citizens now have no idea of the unique lifestyle of the military and the special challenges and demands it places upon those who choose to serve.

This may be part of the reason why there is widespread misunderstanding—or just apathy—about the impact of forcing the military to allow open homosexuality. Both the situations of forced intimacy in which people are placed and the demand for unit cohesion, morale, and discipline are unlike anything experienced on a college campus or in a civilian workplace. This is why it remains necessary for the military to impose restrictions on personal conduct which would be rare or non-existent in a civilian environment.

Most Americans do not realize that military personnel are governed by a different, and more stringent, system of justice, the Uniform Code of Military Justice (UCMJ). The purpose is to insure that the military environment is one that furthers its mission to fight and win wars. Under the UCMJ not only is sodomy illegal, but so are adultery and fraternization.

Homosexual activists—and their allies in the White House and on Capitol Hill—are choosing to ignore these realities, and instead use the military not as a tool for national defense, but as an instrument of social engineering.

It should also be noted that the UCMJ and military protocol make it extremely difficult, if not impossible, for active duty members of the military to publicly communicate their concerns about how these policy changes will impact their lives and their mission.

As a Marine, I am deeply committed to making sure that the men and women who continue the proud legacy of those who have served this nation are provided with both



Tony Perkins, USMC

the best equipment and the optimal environment for them to do their job of defending our nation. In this paper, Lt. Col. Robert Maginnis, a retired Army officer and Senior Fellow for National Security at FRC, offers a thorough explanation of the history of this issue and the 1993 law that currently governs it, while also providing solid arguments as to why that law should be maintained.

I hope you will read those arguments, share them with your friends and neighbors, and join me in defending our military against those politicians and special interest groups who would use these dedicated men and women to advance their radical political agenda.

Semper Fi —

Tony Perkins

President

Family Research Council

Executive Summary

President Obama has vowed to repeal the military's 16-year-old homosexual exclusion law. This paper provides the background regarding this contentious debate.

HISTORY OF MILITARY'S HOMOSEXUAL BAN

The American military has had policies against homosexual conduct ever since George Washington's Continental Army. However, in 1993 President Clinton directed Secretary of Defense Les Aspin to prepare for "ending discrimination on the basis of sexual orientation" in the military. In April 1993, Aspin convened a Military Working Group (MWG) to prepare findings on the likely impact of open homosexuality in the military.

Witnesses testified that introducing open homosexuals in units with soldiers opposed to homosexuality would seriously impair cohesion. Their presence would constitute "...a major and unacceptable invasion of what little privacy remains." Military readiness has three subcomponents: medical, recruiting, and retention. The report asserted, "The homosexual lifestyle has been clearly documented as being unhealthy." Open homosexuality would deter many eligible young Americans from enlisting or remaining in the military. Congress used the MWG'S report to write the 1993 law, 10 U.S.C. § 654, concluding:

"The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability."

There is nearly universal misunderstanding of the relationship between the *law* which excludes homosexuals from military service (quoted above) and the "Don't Ask Don't Tell" *policy*, which is usually described as permitting homosexuals to serve as long as they are not open about their sexual orientation. The DADT policy implemented by President Clinton is not the law, and is in tension with, or even contradicts, the law.

DEPARTMENT OF DEFENSE AND CONGRESSIONAL REVIEW

Secretary of Defense Robert Gates has launched a Pentagon review to examine the "issues associated with repeal of the law"—including issues of readiness, military effectiveness, unit cohesion and family cohesion—and to prepare "an implementation plan." He has pledged to solicit the views of a cross-section of the military community.

Some Congressional Democrats do not want to wait for the Pentagon's study (due December 1, 2010). Secretary Gates' timeline would open the possibility of a vote on repeal by a lame-duck Democratic Congress.

QUESTIONS AND ANSWERS

What might be the consequences of repealing the homosexual law?

- Damage to unit effectiveness.
- Health consequences with high cost.
- Difficulty in recruiting.
- Threat to long-term retention.
- Threats to freedom of those who morally object to homosexuality.
- Special protections for homosexuals.
- Taxpayer-funded benefits to homosexual partners of servicemembers.
- Possibility of costly new living arrangements to protect privacy.
- Changes to military law and regulations regarding sexual offenses.

Why shouldn't the U.S. military be homosexual-tolerant like that of other countries?

Only 25 of the world's nearly 200 militaries allow open homosexuals to serve. The world's ten largest militaries all ban homosexuals.

What percentage of all military discharges are discharges of homosexuals?

From 1994-2003, discharges due to homosexuality were only 0.37 percent of the total.

Doesn't the current policy of exclusion violate the civil rights of homosexuals?

No. As the 1993 law says, "There is no constitutional right to serve in the armed forces."

Isn't the integration of homosexuals similar to the integration of blacks?

No. The exclusion of homosexuals is based on conduct and the propensity to engage in that conduct, not based on one's superficial appearance (skin color).

Why do homosexuals want to serve in the military openly?

For a variety of reasons—but radical "gay rights" advocates/activists want to use the military to advance an agenda for the full acceptance of homosexuality in society at large.

Why shouldn't the military mirror society's increasing acceptance of homosexuality?

Military personnel policies should be based on the realities of the harsh battlefield and not on the values of an increasingly liberal society.

Isn't homosexuals serving with heterosexuals the same as women serving with men?

No. The military does not require men and women to shower or to sleep next to each other. We respect women's privacy from men, and ought to respect heterosexuals' privacy, too.

CONCLUSION

Proponents for preserving our military's effectiveness must insist the current review process is objective and Congress is properly informed on the issue. Congress must exercise its constitutional duty to protect the military from the president's radical plan.

Robert L. Maginnis

Introduction

President Obama used his 2010 State of the Union address to set in motion the fulfillment of his campaign promise to repeal the military's 16-year-old homosexual exclusion law. "I will work with Congress and our military to finally repeal the law that denies gay Americans the right to serve the country they love because of who they are," Obama said.¹



A week later Secretary of Defense Robert Gates testified, "We have received our orders from the commander in chief, and we are moving out accordingly."² Adm. Mike Mullen, the Chairman of the Joint Chiefs, echoed his support with a personal endorsement stating that "allowing gays and lesbians to serve openly would be the right thing to do."³

A fissure soon emerged within the Pentagon's top brass over the president's

pro-homosexual agenda. Gen. Norton Schwartz, Air Force Chief of Staff, warned that "this is not the time to perturb the force that is, at the moment, stretched by demands in Iraq and Afghanistan and elsewhere, without careful deliberation."⁴ Adm. Gary Roughead, Chief of Naval Operations, stressed, "I believe it is important to assess [our] force, the opinions of that force, and also the families."⁵ Gen. George Casey, Army Chief of Staff, told members of Congress, "I've got serious concerns about the impact of the repeal on a force that's fully involved in two wars and [that has] been at war for eight and a half years. We just don't know the impacts on readiness and military effectiveness. . . . I would say right now I don't believe it [repeal] would increase readiness."⁶ Marine Commandant Gen. James Conway was the most blunt of all, telling a Senate committee, "I think that the current policy works. . . . [M]y best military advice to this committee, to the secretary and to the president would be to keep the law such as it is."⁷

Secretary Gates ordered a review of how to implement the possible repeal of the policy, and that review is due by December 1, 2010.⁸ If Congress waits to receive the review before acting on legislation to repeal the homosexual exclusion policy, that means a vote might take place after the November elections. The ban could be lifted in a lame-duck session, even if Democrats lose control of the Congress in 2010.

This paper provides the background regarding this contentious debate, in order to help policy makers and citizens better understand the complexities of the issue and the answers to commonly asked questions.

HISTORY OF MILITARY'S HOMOSEXUAL BAN

On March 11, 1778, Gen. George Washington drummed out of service Lt. Gotthold F. Enslin, the first soldier to be dismissed from the U.S. military for homosexuality.⁹ After 1900, individuals were punished for committing homosexual acts, which were lumped under the rubric of sodomy. Prior to World War II, the legal construction of the Articles of War and Army regulations was broader in nature than today's. Homosexual misconduct was prosecuted under the categories of "conduct unbecoming an officer" or, for enlisted members, "conduct to the prejudice of good order and military discipline."¹⁰

The Articles of War of 1916 established an article proscribing the offense of sodomy. Later, in the Manual for Courts-Martial, Congress included consensual sodomy as Article 93 of the Articles of War.¹¹ At that time, unit commanders had the discretion to discharge soldiers for "inaptness or for undesirable habits" (Section VIII of Army Regulation 615-200).¹²

During the Second World War, the Army developed a medical approach to homosexuality. Soldiers identified as homosexuals were first medically treated and if they failed to respond to treatment were discharged under Section VIII.¹³ In 1947, the Army's policy was revised to discharge soldiers identified as having "homosexual tendencies."¹⁴

In 1950, the modern Uniform Code of Military Justice included Article 125, a prohibition of sodomy, and in the same year, the Army adopted a mandatory policy for administrative separation of homosexuals. The Army's policy stated, "True, confirmed, or habitual homosexual personnel, irrespective of sex, will not be permitted to serve in the army in any capacity and prompt separation of known homosexuals from the army is mandatory."¹⁵

In the late 1970s, the "Report of the Joint Service Administrative Discharge Study Group" recommended that the



military reaffirm the longstanding ban on homosexuals by incorporating into the policy the principle, "Homosexuality is incompatible with military service." It called for the statement, "Processing (for separation) is mandatory unless ... the allegations are groundless," to be included in all subsequent Department of Defense directives. It also recommended some leniency in cases of "unsuitability." That is, those with homosexual tendencies or involved in homosexual acts between consenting adults would be honorably discharged.¹⁶

This review led to the publication of the department's changed policy. On January 28, 1982, the Pentagon published a conduct-based policy, "which authorized separation of persons who by their acts or statements, demonstrate a propensity or intent to engage in homosexual conduct, and eliminated 'homosexual tendencies' as a reason for separation."¹⁷ The changed policy, drafted during the Carter administration, was incorporated into DoD Directive 1332.14, which provides the current authority for enlisted administrative separations, and DoD Directive 1332.30, which governs officer administrative separations.¹⁸

In 1992, during the presidential campaign, candidate Bill Clinton promised that one of his first actions in office would be to lift the military's homosexual ban. On January 29, 1993, nine days after his inauguration, President Clinton directed Secretary of Defense Les Aspin to "submit to me prior to July 15, 1993, a draft of an executive order ending discrimination on the basis of sexual orientation in determining who may serve in the armed forces of the United States."¹⁹

PENTAGON STUDIED ISSUE TO PREPARE CONGRESS

In April 1993, Secretary Aspin convened a Military Working Group (MWG) to respond to the president's directive to draft an executive order.²⁰ That group, which met for three months, weighed all material from the perspective of its likely impact on combat effectiveness within the military's tough 24/7 lifestyle that requires a unique blend of skills, ethics, culture, and bonding to ensure an effective war fighting force. It heard from individuals and groups holding a broad spectrum of views and then reported findings regarding the likely impact of open homosexuality for combat effectiveness and practical considerations.²¹

The MWG defined combat effectiveness in terms of unit cohesion and readiness. The report states, "Unit cohesion encompasses a number of factors which, although often intangible, are fundamental to combat effectiveness." Cohesion is the lifeblood of combat effectiveness, which the military has long studied, documented and done everything possible to foster.

The U.S. Senate Armed Services Committee hosted a hearing on military cohesion and the MWG considered that material. The key witness was Dr. William Henderson, former commander of the Army Research Institute, and author of *Cohesion: The Human Element in Combat*. Henderson defined cohesion as a condition that makes soldiers "...willing to risk death to achieve a common objective."²²

Henderson testified that introducing open homosexuals in units with soldiers opposed to homosexuality would seriously impair cohesion. Another witness, Dr. David Marlow, chief of military psychiatry, Walter Reed Army Institute of Research, said, "The impact on cohesion depended on two things: whether or not [there was] knowledge that people were homosexual, [and] whether or not they brought overt homosexual behaviors into the group."²³

The MWG documented open homosexuality's impact on cohesion's building blocks such as bonding, leadership and privacy. Bonding



is the glue that holds units together and the MWG concluded the presence of open homosexuals will "...polarize and fragment the unit and destroy the bonding."²⁴

The MWG found it would be extremely difficult for an open homosexual to exercise authority or serve effectively as a leader because the values and lifestyle might be perceived as contrary to those in the unit. "That ineffectiveness would be further undermined by perceptions of unfairness or [same sex] fraternization," the report concludes.²⁵

Once an individual's homosexuality becomes known, concluded the MWG, privacy becomes a significant issue. For some military members, allowing open homosexuals in an environment of forced association and limited privacy will constitute "...a major and unacceptable invasion of what little privacy remains."²⁶

The second component of combat effectiveness is readiness, which has three subcomponents: medical, recruiting, and retention. The report asserts, "The homosexual lifestyle has been clearly documented as being unhealthy. Due to their sexual practices, active male homosexuals in the military could be expected to bring an increased incidence of sexually transmitted diseases and other diseases spread by close personal contact."²⁷

Homosexual practices haven't changed for the better since 1993. Recent U.S. Government reports indicate 71 percent of all American males living with HIV/AIDS infections are "men who have sex with men,"²⁸ even though less than three percent of the male population identify themselves as homosexual or bisexual.²⁹ A March 2010 fact sheet from the Centers for Disease Control

reported that "the annual number of new HIV infections among MSM [men who have sex with men] has been steadily increasing since the early 1990s."³⁰

The MWG found open homosexuality would reduce the propensity of many eligible young Americans to enlist due to parental concerns, peer pressure, and a tarnished military image. Today, any reduction in propensity to enlist due to similar concerns would make recruiting even more challenging, because due to other disqualifying criteria, only three in ten American youth, ages 17-24, are eligible to serve.³¹

Retention of service members opposed to homosexuality would suffer. The MWG concluded, "...surveys indicate a significant number of service members say they would not



reenlist if open homosexuals were allowed to serve.”³² Conversely, the MWG asserted that discharges for homosexuality accounted for only one-third of one percent of all military discharges.³³

The potentially devastating impact repealing the law would have for retention and recruitment was highlighted last year. In March 2009, more than 1,000 retired flag and general officers signed a letter to President Obama expressing their strong support for the law on homosexuality. They warned that repealing the law “would undermine recruiting and retention, impact leadership at all levels, have adverse effects on the willingness of parents who lend their sons and daughters to the military service, and eventually break the all-volunteer force.”³⁴

Finally, the MWG examined a number of practical considerations such as billeting. It cautioned open homosexuals could create tension which may require them to be housed apart from others “in order to maintain good order and discipline.” Segregating heterosexuals and homosexuals would cost more, and there are situations where separation is not possible, such as aboard ships, which could create discipline challenges.³⁵

The report concluded that military families would object to the voluntary participation of open homosexuals in programs to which they entrusted their children, such as sports and social clubs. Family members also expressed concern about their military spouse’s privacy during deployments, medical risks, and breakdown of unit cohesion.³⁶

Congress used the MWG’s report to write the 1993 law known as the “Policy Concerning Homosexuality in the Armed Forces,” 10 U.S.C. § 654. The law outlines 15 findings as the basis for excluding homosexuals.³⁷ They are as follows:

1. Congress has the authority to make laws governing the military.
2. “There is no constitutional right to serve in the military.”
3. Congress can “establish qualifications” for service.
4. The military’s purpose “is to prepare for and to prevail in combat.”
5. Military service requires “extraordinary sacrifices.”
6. Successful units “are characterized by high morale, good order and discipline and unit cohesion.”
7. Unit cohesion is “one of the most critical elements” for combat effectiveness.
8. “Military life is fundamentally different from civilian life.”
9. A soldier is always on duty.
10. “Military standards of conduct” apply “on and off duty.”

11. Military members must be ready to deploy at all times.
12. Service members must often accept Spartan living conditions.
13. The homosexual prohibition is “longstanding.”
14. The military must preclude persons who present an “unacceptable risk.”
15. ”The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.”

THE LAW vs. “DON’T ASK, DON’T TELL”

Unfortunately, there is nearly universal misunderstanding of the relationship between the *law* which excludes homosexuals from military service (see pp. 7-8) and the “Don’t Ask Don’t Tell” *policy*. “Don’t Ask Don’t Tell” is usually described as permitting homosexuals to serve as long as they are not open about their sexual orientation. Few people realize that the DADT *policy* implemented by President Bill Clinton is *not* the law. In significant ways, “Don’t Ask Don’t Tell” is in tension with, or even contradicts, the statutory law.

When President Clinton pressed forward in the early days of his administration (in January 1993) with his campaign promise to lift the ban on homosexuals in the military, he faced a huge backlash in Congress and in public opinion. This resulted in the president retreating, in July of 1993, to the compromise position known as “Don’t Ask Don’t Tell.”³⁸ However, Congress adopted (and President Clinton signed into law) the much stronger statutory language noted above as part of a defense authorization bill in November of 1993.³⁹

Its only concession to the DADT concept was to express the “sense of Congress” that the Defense Department should continue to refrain from asking recruits their sexual orientation (the “don’t ask” part of DADT). However, the law also provided that the Secretary of Defense may reinstate “the question” at any time.

Federal government departments are expected to issue regulations that enforce laws passed by Congress and signed by the president. Congress should hold the government accountable for regulations that fail to execute the letter and intent of the law.

On February 28, 1994, the Clinton Pentagon published the homosexual exclusion law’s implementing instructions by modifying Department of Defense Directive 1332.30, “Separation of Regular Commissioned Officers,” and Department of Defense Directive 1332.14, “Enlisted Administrative Separations.” The sections of these directives dealing with homosexuals resemble the “Don’t Ask, Don’t Tell” compromise more than they implement the actual law. Under this regulation, a soldier can be discharged if (1) he engages in homosexual acts, (2) states that he is a homosexual, or (3) is “married” to, or attempts to “marry,” a person known to be of the same sex.



Judge J. Michael Luttig, with the U.S. Circuit Court of Appeals in Richmond, Va., exposed the Clinton regulations as inconsistent with the law. In the 1995 case of *Thomasson v. Perry*, Luttig wrote a concurring opinion that labels “Don’t Ask, Don’t Tell” implementing regulations “politically expedient fiction.” He suggests, “I would simply invalidate the administration’s regulation as in excess of its statutory authority.”⁴⁰

Judge Luttig rightly discerned politically inspired differences between what the law allows and what the regulations enforce. Some of those differences are as follows:

The law forbids service by homosexuals. The Clinton regulations drop the principled, unambiguous and long-standing statement that “homosexuality is incompatible with military service.”⁴¹

The law requires the discharge of people with a propensity to engage in homosexual conduct. The regulations replace *propensity* with a narrower term, *likelihood*. Under the regulations, homosexuals can continue to serve once identified if they convince an administrative board that they will not engage in homosexual conduct.⁴²

The law relies on commander discretion to initiate investigations. The regulations create a criminal-like standard before investigations can begin.

The law forbids homosexual service for readiness reasons. Yet, contrary to 230 years of military practice, the Pentagon no longer considers homosexual behavior a marker for increased security risk. Information discovered during a security investigation cannot be used for adverse action without permission from high-level political appointees.

The differences between the law and the Pentagon’s “Don’t Ask, Don’t Tell” regulations confused the public. But the courts, which consistently upheld the law, understood the statute and deferred to Congress’ constitutional right to write the rules and regulations for the military.

GATES' REVIEW PROCESS

There has not been a serious threat to the military's homosexual ban until President Obama. Previously, there were various bills offered in the U.S. House of Representatives but none had the needed votes, and after the 1993 debacle, no president tried to advance such a radical change until President Obama took office. With his 2010 State of the Union address, he launched a process that he hopes will lead to repeal of 10 U.S.C. § 654.

Secretary Gates embraced the task of preparing for repeal by launching a Pentagon review of the policy, and appointed two officials to lead the internal assessment – Gen. Carter Ham, commander of U.S. Army forces in Europe, and Pentagon general counsel and Obama appointee Jeh Johnson.

On March 2, 2010, Gates issued his directions to Ham and Johnson via a letter with an attachment, “Terms of Reference [TOR], Comprehensive Review on the Implementation of a Repeal of 10 U.S.C. § 654.” Gates wrote, “The Chairman of the Joint Chiefs and I owe the president an assessment of the implications of such a repeal, should it occur.”⁴³

The TOR outlines the objectives, scope, methodology, and deliverables expected of the review team. The service chiefs “shall be afforded the opportunity to review and comment” before the report is delivered to the secretary not later than December 1, 2010.⁴⁴

The review team will examine the “issues associated with repeal of the law should it occur and will include an implementation plan that addresses the impacts, if any, on the department.” The TOR demands a comprehensive effort to identify “the impacts to the force of a repeal” which include readiness, military effectiveness, unit cohesion and family cohesion. It expects the team to consider issues related to standards of conduct, changes to existing policies and the Uniform Code of Military Justice, issues related to

ongoing litigation, and ways to monitor the climate should the law be repealed.⁴⁵



The methodology is comprehensive. The team will review all Pentagon directives and instructions potentially impacted by the repeal. It will tap all segments of the military community, members of Congress and “stakeholder groups.” The team will employ research methods to engage the military community and task the Rand Corporation to update its 1993 study, “Sexual Orientation and U.S. Military Personnel Policy: Options and Assessment.”⁴⁶

The inclusion of a Rand Corporation update to the 1993 study is a red flag, however. That \$1.3 million study was a flawed and hurried effort that made inappropriate comparisons between the homosexual issue and the integration of African Americans, made false parallels with other militaries and paramilitaries, misused AIDS survey information, misrepresented the volumes of material available on cohesion, and downplayed the impact of homosexual behavior.⁴⁷

Gates’ directions to the review team appear to address the same issues studied by the 1993 MWG. The bonus with the new team is the requirement to involve a cross section of the military community. Of course, the execution of that effort must be carefully monitored to ensure it is free of bias and done scientifically.

CONGRESSIONAL REPEAL EFFORTS

Congress will take the Pentagon's review and then debate the issue, host hearings, and decide whether to repeal the law. Ultimately, however, whether Congress repeals the homosexual law may depend more on politics than the best interests of the military.

Congress is constitutionally responsible for setting the rules and regulations for the military, not the president.⁴⁸ But homosexuality is a political issue that could trump military effectiveness for some members of the Congress. Only one-quarter of all members have any military service experience.⁴⁹ That is important because firsthand understanding of the military's very unique culture must play a central role when considering issues of cohesion, morale, and readiness.

But there is evidence the Obama administration and some congressional Democrats are not waiting for the Pentagon's study. Sen. Joseph Lieberman (I-Conn.) introduced a bill (S. 3065) on March 3, 2010 to repeal the ban,⁵⁰ adding it to a House bill introduced in March of 2009 (H.R. 1283). It is unclear if Lieberman's bill will get the 60 votes needed to overcome a filibuster.

Secretary Gates' timeline for the review (not later than December 1, 2010) appears to be strategically significant and perhaps tied to the 2010 Congressional elections. Bill Gertz of the *Washington Times* suggests two reasons for the date: the most ardent opponents to lifting the ban, like Marine Commandant Gen. Conway, will be retired, and the lame-duck Democratic Congress (perhaps eager to make a final mark on history, particularly if they lose power to the Republicans in the November elections) would debate the issue and then vote on repeal.⁵¹

QUESTIONS AND ANSWERS

Consider answers to frequently asked questions regarding the military homosexual issue.

What might be the consequences of repealing the homosexual law?

The 1993 MWG and the new review team were charged with answering this question. The MWG convinced Congress that the risks to the military were sufficiently severe as to compel that body for the first time ever to write the ban into statutory law, rather than relying on military regulations alone. In 2010, Secretary Gates told Congress, “The question before us is not whether the military prepares to make this change, but . . . how we best prepare for it.”⁵² However, he also told the leaders of the new Comprehensive Review Working Group that they should “assess and consider the impacts, if any, a change in the law would have on military readiness, military effectiveness and unit cohesion”⁵³ Hopefully, the Working Group will be honest as to the consequences of such a policy change, which are likely to include the following:

- **Damage to unit effectiveness.** Cohesion studies,⁵⁴ the 1993 MWG and the experience of more than 1,000 flag and general officers attest to the readiness-busting impact open homosexuality would have for military units. Reputable think tanks like the Washington, DC-based Center for Strategic and International Studies agree. That group conducted 125 focus groups to understand military culture and concluded “the vast majority of military personnel believe that homosexual men and women serving openly in the military would undermine cohesion.”⁵⁵
- **Health consequences with high cost.** Homosexuals are identified by the U.S. Government as a cohort at high risk for sexually transmitted diseases like HIV/AIDS. At the National HIV Prevention Conference in August 2009, the Centers for Disease Control and Prevention (CDC) reported that AIDS is fifty times more common in men who have sex with men (homosexuals and bisexuals) than in other populations.⁵⁶ HIV is already a threat to military readiness—although HIV-positive recruits are excluded from the military, those who become HIV-positive while serving are not automatically discharged if they are found otherwise fit for service, but they also cannot be deployed overseas.⁵⁷ Whether through the military health system or the veterans’ health system, taxpayers bear the cost of their treatment for life. However, this is far from the only health risk to homosexuals. One of the nation’s leading AIDS researchers, Ronald Stall, has declared, “It may be a fallacy to say that HIV is the dominant, most dangerous and most damaging epidemic among gay men in the United States today. There are at least four other epidemics occurring among gay men that are intertwining and making each other worse. This is called a syndemic.” The “four other epidemics” are “substance abuse, partner violence, depression and childhood sexual abuse.”⁵⁸

- **Recruiting impact.** The all-volunteer force will likely face tougher recruiting. Last year, the Pentagon met 103 percent of its fiscal year recruiting goal, in part because of high unemployment and generous enlistment bonuses. But the pool of eligible candidates is shrinking, because nearly three-quarters of today's high school graduates go on to college, compared to 50 percent in the 1980s.⁵⁹ Other factors such as obesity, which affects one in four American youth, make finding fully qualified recruits difficult.⁶⁰ Repeal the homosexual ban, and there will be some candidates, with the encouragement of significant others like parents, who will remove themselves from the military's pool of eligible candidates. Conversely, there is no evidence qualified homosexuals – who make up barely two percent of the American public⁶¹ – will flood into the military to make up any shortfall.
- **Long-term retention threat.** Retention in war time is tough, and repealing this law will encourage some to leave earlier than expected. Once again, this number is hard

to predict, but a 2008 *Military Times* survey indicates that as many as 10 percent (or 142,000) would leave and 14 percent (or 199,000) more would consider leaving.⁶²



- **Threat to those who morally object to homosexuality.** Many service members and their families have objections to homosexuality, including faith-based convictions, which will impact their morale and could encourage them to leave the services. The introduction of open homosexuals would seriously impact chaplains. They might no longer be permitted to speak against homosexual behavior in chapels or counsel a service member confused about his sexuality to abstain from

homosexual conduct; and conceivably, pressure will be placed upon them to marry homosexual couples. If such threats to religious liberty and conscience rights develop, some chaplains will leave the military and chaplain sending agencies will stop sponsoring military chaplains.⁶³

- **Homosexuals will earn special protections.** Heterosexuals would be judged on their acceptance of open homosexuality and there will be special sensitivity classes promoting the lifestyle. The Pentagon will create a variety of mechanisms to ensure that the new policy works, such as punishing those who object to homosexual service.

Also, one could expect selection and promotion boards to receive instructions that ensure homosexuals are selected and promoted at a rate commensurate with all other groups.

- **Military benefits.** Homosexuals would earn all the rights and privileges of other service members. Homosexual activists are already demanding that the partners of “married” homosexuals in the military be allowed access to all the benefits that legally married heterosexual spouses enjoy.⁶⁴ (Providing such benefits would conflict with the federal Defense of Marriage Act, or “DOMA,” but that just means that opening the military to homosexuals would increase the pressure for DOMA’s repeal). Even lifestyle medical problems like sexually transmitted diseases would be treated at government expense.
- **New living arrangements to protect privacy could be costly.** The military provides separate billeting for men and women. Separating open homosexuals from heterosexuals would likely be viewed by homosexual activists as intolerable, but failing to implement such separation would mean invading the privacy of heterosexuals, which could result in a serious morale problem.⁶⁵ Of course, the privacy barriers are often stripped away once military personnel deploy away from their home station, and then privacy-related issues become more acute.
- **Military law and regulations.** If people who not only experience homosexual attractions, but also act upon them, are to be allowed to freely serve in the military, the Uniform Code of Military Justice (UCMJ) would have to be amended to repeal the provision (Article 125) which still criminalizes sodomy. (“Sodomy” can be heterosexual or homosexual—but such conduct is relatively more common among homosexuals.) Sodomy charges are not outmoded or rare in the military—in Fiscal Year 2009, over a hundred sodomy cases were investigated,⁶⁶ and seven percent of all sexual assaults in the military were male-on-male,⁶⁷ despite the fact that less than three percent of American men identify themselves as homosexual or bisexual.⁶⁸ Sexual harassment and fraternization regulations must address same-sex violations as well.

Why shouldn’t the U.S. military be homosexual-tolerant like other countries’ armed services?

Although policies of foreign military organizations are worth monitoring, their experiences are seldom relevant for the United States. No other nation in the world requires its soldiers to serve under the conditions that face our personnel. There is no other nation that has the international responsibilities, overseas deployments, degree of field exercises, daily operating tempo, and frequency of circumstances in which members must live in forced intimate situations.

Four factors distinguish the U.S. military from even our best allies – culture, size, type of service and recruitment of personnel with specific characteristics. First, the American culture includes a very politically active and litigious homosexual movement. Homosexual activists seek to force the U.S. military to embrace their radical views and sexual conduct, no matter the consequences for combat effectiveness.

Second, the U.S. military's size – active, reserve, National Guard and the civilian force – exceeds two million personnel. That dwarfs all but a few other militaries and only 25 of the world's nearly 200 militaries allow open homosexuals to serve.⁶⁹ But homosexual activists contend the U.S. military should embrace the open homosexual policies of small forces like the United Kingdom (26th in size), Israel (34th in size) and Australia (67th in size).⁷⁰ By comparison, the world's ten largest militaries (including three – the U.S., India, and Pakistan – which are all-volunteer forces) all ban homosexuals, as do all Islamic countries, Russia, China and Japan.

Third, the type of service matters. Militaries that rely on conscripts can impose virtually any draconian rule but all-volunteer forces like the U.S. must be sensitive to the risk of alienating their current and prospective members. All-volunteer militaries maintain their effectiveness by nurturing an internal culture that sustains the necessary combat ethos, which open homosexuality would surely undermine.

Finally, very large and expeditionary militaries like the U.S. must seek personnel with specific characteristics to ensure consistent quality. In order to guard its combat effectiveness, the military must be selective, with the consent of Congress, based on a number of categories: moral character, physical fitness, medical condition, associations, age, education and citizenship. Through more than 230 years of experience, the institution has discovered groups of people that best meet tough military requirements.

The 1993 MWG consulted with many nations about their policies and concluded, "The policy and practice of foreign militaries regarding homosexuals actively serving do not always match."⁷¹ Although those experiences are informative, they don't necessarily apply to America's unique armed forces.

Secretary Gates' new review should include an effort to reach out to other militaries to better understand why they embraced homosexuals and the impact of that decision on combat effectiveness. For example, do such forces have hard data on trends regarding sexually transmitted diseases and incidents of sexual harassment and assault before and after they were opened to homosexuals? The secretary must insist upon objective, scientific data and not just anecdotes shared by a few political or senior uniformed officials.

How do the numbers of personnel discharged under the 1993 homosexual law compare to the total number of personnel discharged since the enactment of that law?

The Department of Defense reported in 2005 that for the years 1994-2003 the average percentage of discharges due to homosexuality was 0.37 percent.⁷²

Between the years 1994 and 2008 there were 12,785 personnel discharged for homosexuality compared to 90,302 for drug use, 55,790 for failing to meet weight standards and 39,454 for pregnancy.⁷³ The fact is, the military is a selective organization with high standards based on military effectiveness requirements.

A 2009 Congressional Research Service report notes that most homosexuals discharged are “junior personnel with very little time in the military,” and “the number of cases involving career service members is relatively small.” CRS added, “The great majority of discharges for homosexual conduct are uncontested and processed administratively ... more than 98 percent [in FY 1997] received honorable discharges.”⁷⁴



Doesn't the current policy of exclusion violate the civil rights of homosexuals?

No. As Congress clearly stated in the 1993 eligibility law, “There is no constitutional right to serve in the armed forces.” Military service is a privilege, and sometimes a duty, but it is never a “right.” Eligibility to serve in the military is limited on the basis of age, number of dependents, indebtedness, height, weight, and dozens of other characteristics.⁷⁵ In many cases, it would be illegal to consider these characteristics in civilian employment—but not in the military, because of the unique demands and lifestyle of military service.

Isn't the integration of homosexuals similar to the integration of blacks?

In 1948, then-President Harry Truman signed Executive Order 9981 which declared, “There shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion, or national origin.”⁷⁶ That order led to the desegregation of the armed services, which improved the efficiency of the force.

Truman moved the military from its previous practice, which was one of racial segregation—not one of exclusion. Racial segregation affected readiness and combat effectiveness. It is faulty logic to compare the move from segregation to integration to justify the move from exclusion to integration, because they are very different. There is no evidence that the inclusion of homosexuals has any real military justification, and there are numerous reasons not to assume the risk.⁷⁷

Also, the homosexual ban is not the moral equivalent of the military's pre-1948 policy of racial segregation. Racial classes and "sexual orientation" are very different aspects of a person's identity, and as Gen. Colin Powell said in 1992, comparing skin color – a benign, non-behavioral characteristic – with sexual preference "is a convenient but invalid statement."⁷⁸ The law excluding homosexuals from the military makes a distinction based on conduct and the propensity to engage in that conduct, not based on one's superficial appearance (skin color), which is genetically fixed.

Why do homosexuals want to serve in the military openly?

Homosexuals can be patriotic, hard-working people. Like other Americans, homosexuals are attracted to the military's offer of a challenging and exciting life with a reasonable income and benefits.

It is also true, however, that radical "gay rights" advocates/activists want to use the military to advance an agenda. They want the military to repeal the law against sodomy in the Uniform Code of Military Justice (Article 125); recognize same-sex partners; set quotas for homosexual recruitment; and provide special protection for homosexuals. If they can accomplish these goals in an institution as traditional as the U.S. military, they will have gone a long way toward eliminating resistance to their agenda for the full acceptance of homosexuality in society at large.

Today, society is more accepting of homosexuality than ever before. Why shouldn't the military mirror society's changes?

Military personnel policies should be based on the realities of the harsh battlefield and not on the values of social engineers in society. The culture may have become more tolerant of homosexual conduct, but that tolerance should have no bearing on the military, which must continue to be highly disciplined in order to operate in an environment marked by imminent death, austere living conditions and minimal privacy. The same arguments for maintaining the historic exclusion of homosexuals from the military which convinced the Democratic 1993 Congress still apply today.

Isn't the question of homosexuals serving with heterosexuals in the military the same as women serving with men?

No. The military does not require men and women to shower or to sleep in close quarters together. In fact, the military has discovered that the lack of sexual privacy, as well as sex between male and female soldiers, undermines cohesion, order, discipline, and morale. That is why the sexes are separated in their living quarters. Most service members of both sexes find being stripped of privacy before the opposite sex to be repugnant.

In the same way, most heterosexuals dislike being exposed to homosexuals of their own sex. If we respect women's need for privacy from men, then we ought to respect heterosexuals' need for privacy with regard to homosexuals.

CONCLUSION

President Obama intends to repeal the military's homosexual ban. His Secretary of Defense launched a review of the policy and promised by the end of 2010 to deliver a report to Congress to inform their repeal consideration. If that review is objective it will validate the law, but as with other political issues, the outcome may contradict the facts. That is why proponents for preserving our military's effectiveness must insist the review is objective and Congress is properly informed on the issue. Congress must exercise its constitutional duty to protect the military from the president's radical plan.



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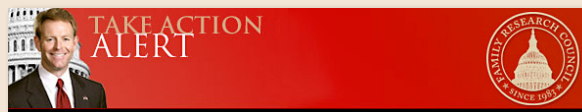
Homosexual activists have a clear agenda that demands the universal acceptance of homosexual acts and relationships—morally, socially, legally, religiously, politically and financially. In fact, the homosexual activists would have us believe that homosexuality can be equated with race as a defining personal characteristic. The homosexual movement is built, not on facts or research, but on mythology – with some myths being rather widely accepted. But the facts are not on their side, as this pamphlet clearly makes evident.



Homosexuality Is Not a Civil Right BC07I01

By Peter Sprigg

This pamphlet clarifies certain misconceptions about the meaning of “discrimination” (some forms of which can’t-and shouldn’t-be eliminated) and of “civil rights” (distinguishing those which limit government power from those which limit the rights of others). It also explains why homosexual conduct is not comparable to other characteristics usually protected by civil rights laws (“race, color, religion, sex, or national origin”). Protection against private “discrimination” has historically been offered only for characteristics that are inborn, involuntary, immutable, innocuous, and/or in the Constitution-yet none of these describe homosexual behavior.



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