



Center for Military Readiness — Policy Analysis —

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The 1993 Law Regarding Gays in the Military Deserves Continued Support

The Obama Administration is pushing for repeal of the 1993 law stating that homosexuals are not eligible for military service. This law, Section 654, Title 10, U.S.C., protects good order, morale, and unit cohesion in the unique environment of the military. A new “LGBT Law” for the military would harm recruiting, retention, and readiness, while providing no significant benefits for the All-Volunteer Force.

1. The Purpose of Current Law: Section 654, Title 10, U.S.C.

In 1993 bipartisan, veto-proof majorities in both Houses of Congress approved the current law, which is usually mislabeled “Don’t Ask, Don’t Tell” (DADT). Section 654, Title 10, which federal courts have upheld as constitutional several times, includes fifteen findings that remain valid today:

a) Quoting from the law, *“There is no constitutional right to serve in the armed forces.”* The military is a *“specialized society”* that is *“fundamentally different from civilian life.”* It demands *“extraordinary sacrifices, including the ultimate sacrifice, in order to provide for the common defense.”* Furthermore, military personnel must accept living conditions that often are *“characterized by forced intimacy with little or no privacy.”*

b) In addition, there are *“numerous restrictions on personal behavior that would not be acceptable in civilian society...”* [S]tandards of conduct...regulate a member's life for 24 hours each day...[and] *“apply to a member of the armed forces at all times...on base or off base, and whether the member is on duty or off duty.”*

c) Homosexual conduct presents *“an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.”* Therefore, *“The prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service.”* (Finding #13, emphasis added.)

Congress considered but did not vote for President Bill Clinton’s plan to allow discreet homosexuals to serve, known as “Don’t Ask, Don’t Tell.” Instead, Congress codified long-standing regulations stating that homosexuals are not eligible for military service. Clinton imposed his DADT concept on the military anyway with administrative regulations that are not consistent with the statute.

2. Problems With the Proposed New “LGBT Law” for the Military

Rep. Patrick Murphy (D-PA) is the lead sponsor of H.R. 1283, legislation to repeal Section 654, Title 10. If passed, the Murphy bill would forbid discrimination based on *“homosexuality or bisexuality, whether the orientation is real or perceived.”*

This open-ended law would require acceptance of open and professed (not discreet) lesbian, gay, bisexual, and probably transgendered (LGBT) sexual minorities in all branches and communities of the military. These would include Army and Marine infantry, Special Operations Forces, Navy SEALs, surface ships, and submarines, on a constant (24/7) basis.

If passed, H.R. 1283 would be retroactive, inviting otherwise-qualified sexual minorities to join, claim promotion to higher rank, and/or file litigation to obtain compensation for past discrimination.

3. Problems with the New LGBT Law

Passage of H.R. 1283 would trigger an unprecedented social experiment with human sexuality in the

military—unwise at any time but especially in time of war.

a) “Separate but equal” accommodations for at least four different gender and sexual identity groups would be impractical, hugely expensive (consider submarines), or unacceptable to gay activists who insist that “separate but equal” housing would violate their “civil rights.”

b) Stated in gender-neutral terms, the new LGBT Law would require routine exposure of uniformed *persons* to *persons* who may be sexually attracted to them. Military conditions involving “forced intimacy” would become a “hostile work environment.”

c) Risks of both consensual and nonconsensual misconduct will escalate to include male/male and female/female issues in addition to incidents that already occur. It is unrealistic to expect men and women to be perfect, and homosexuals to be more perfect than everyone else.

d) Men and women who want to avoid or need to complain about inappropriate actions in close quarters would face counter-charges questioning their own “attitudes.” Disciplinary proceedings would have to sort out emotional “he said, he said” accusations and counter-charges. Many personnel will not complain even in cases of actual assault or abuse of rank, due to fear of career repercussions. They will simply decline reenlistment.

e) Many first-term enlistees normally leave, but the loss of even a few thousand careerists in communities, grades, and skills that are not quickly or easily replaceable would come at a crippling cost—especially when we are trying to grow the force. Personnel remaining would have to face more deployments and potential combat situations with fewer, less-skilled people.

f) As in Britain, same-sex couples likely will reside in family housing and receive comparable benefits. DoD school and child care systems (the largest in the world) will reflect LGBT curricula, consistent with adult “sensitivity training.” These cultural changes would weaken family retention. Eventually, precedents set would affect civilian institutions and laws such as the Defense of Marriage Act (DOMA).

4. “Civil Rights” and “Zero Tolerance” of Dissent

Advocates for homosexuals in the military are trying to invoke the military’s proud history regarding civil rights for racial minorities. On the contrary, the historic Executive Order ending racial segregation reflected military necessity, not equal opportunity alone.

The “civil rights” analogy breaks down because racial segregation was and is not rational, but the separation of men and women in situations involving sexual privacy is rational and customary in civilian life as well as in the military.

Designating LGBT rights as a matter of “civil rights” would impose corollary “zero tolerance” policies that impose career penalties on anyone who disagrees, for any reason. Denial of promotions will end the careers of thousands of good people, starting with chaplains and personnel associated with most major faiths.

Conclusion

More than 1,160 retired flag and general officers, 51 of 4-star rank and many with leadership roles in recent wars, have personally signed a statement urging support for Section 654, Title 10. (See www.flagsandgeneralofficersformilitary.com.) Writing from experience as military leaders, they expressed concern that repeal would “*undermine recruiting and retention...and eventually break the All-Volunteer Force.*”

Everyone can serve America in some way, but there is no “constitutional right” to serve in the military. The issue is not individual desires—it is morale, military readiness, and the culture of the armed forces, on which our national security depends.

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The Center for Military Readiness is an independent 501(c)(3) public policy organization that specializes in military/social issues. More information is available on the CMR website, www.cmrlink.org.