

## **Military Culture Coalition 2012 Presidential Candidate Survey**

### *Background on Issues of Concern to MCC*

#### **1. Repeal of the 1993 Law Regarding Gays in the Military (Sec. 654, Title 10, USC)**

The 1993 law regarding homosexuals in the military, Section 654, Title 10, USC, is usually mislabeled "Don't Ask, Don't Tell" (DADT). A recent paper produced by the [Congressional Research Service](#) explains that DADT was an administrative policy, different from the actual law passed by Congress with veto-proof, bipartisan majorities in 1993.

The statute approved by Congress in 1993 distinguished the unique conditions of military life from civilian occupations, and clearly stated that homosexuals were among many groups that are not eligible for military service. The only compromise allowed then-President Bill Clinton to drop "the question" about homosexuality that used to appear on induction forms.

Bill Clinton signed the 1993 law but later issued administrative regulations suggesting that discrete gays could serve in the military. The DADT concept was inconsistent with the law, and has been the source of confusion and misunderstandings about eligibility to serve ever since. Contrary to numerous claims, there never was a law requiring military personnel to "lie." Personnel who chose to join despite their ineligibility were comparable to under-age persons who purchase alcohol in an establishment that does not check ID.

Throughout 2010, Defense Department officials were unable to support any claim that repeal would benefit the military in any way. Instead, they claimed that problems would be "mitigated" at unknown cost. With discharges for homosexuality always less than 1%, there was no compelling need to repeal the law.

In 2010, the Obama Administration established a Comprehensive Review Working Group (CRWG) to review and publish a report on ways to implement repeal of the 1993 law. The CRWG conducted an extensive survey of active-duty and reserve troops, but according to an investigation done by the [Department of Defense Inspector General](#), the Executive Summary of the poll's results was being pre-scripted in July 2010, before the survey even began.

Throughout that year, during scores of CRWG focus groups, personnel who supported the current law encountered many barriers and some were publicly criticized. All of the voices raised in support of the 1993 law were reduced to a brief sentence buried in the report: *"Our sense is that the majority of views expressed were against repeal of the current policy."*

That admission, and survey results showing strong opposition among Army and Marine combat troops ranging from 60% to 67%, were not included in the Executive Summary that someone (identity still unknown) leaked to the *Washington Post*. The highly-misleading claim that "70% of the troops" were unconcerned about repeal dominated the news, misled the public, and effectively precluded informed debate in Congress.

The repeal bill failed in the Senate twice, in September and early December, but it was rammed through on December 18, during the lame-duck session. Several Republican senators went back on their written pledge to have full hearings and a vote on the budget before voting for repeal. The rushed process disrespected the troops, who thought that their views would be heard. For the sake of the majority of troops, not just sexual minorities, this issue deserves reconsideration.

In a July 28 statement following President Obama's "certification" that repeal of the law would not cause problems for the military, House Armed Services Committee Chairman Howard P. McKeon said, "*When viewed in its totality, the repeal of Don't Ask, Don't Tell resulted from a process that insulted the legislative and oversight responsibilities of the House of Representatives.*"

## **2. LGBT (Lesbian, Gay, Bisexual, Transgender) Law in the Military**

The repeal legislation required detailed regulations to spell out what the new policy would mean in actual practice. As Chairman McKeon stated forcefully in a [September 12 letter](#) asking for delay in implementation, the Pentagon has not fulfilled this obligation. One-hour training programs and classroom slides do not constitute regulations spelling out the consequences of LGBT law and enforcement in the military.

The new policy applies to all units including Army and Marine infantry, Special Operations Forces, Navy SEALs, surface ships and submarines. It is based on ideological theories that disregard normal human feelings, including the desire for privacy and modesty in sexual matters.

Some Defense Department training and directives issued in anticipation of final repeal of the law have been overly simplistic. For example, "*Commanders may not establish practices that physically segregate service members according to sexual orientation.*" This is a departure from sensible policies that respect sexual differences. Women are not required to live in close quarters with men, or to accept conditions tantamount to a "hostile work environment."

Various types of sexual misconduct occur because men and women are human, sexuality is a powerful force, and homosexuals are no more perfect than everyone else. The new policy will not reduce the number of incidents that already occur among men and women. Instead, such problems will start to include male/male and female/female incidents, both voluntary and involuntary. Increased sexual tension in the close quarters of military life (or accusations of same) would add to the burdens of military life, especially in close combat units.

During two public hearings conducted by the House Armed Services Committee on [April 1](#) and [April 7](#), 2011, the question asked most often was "*How will repeal of the 1993 law improve the All-Volunteer Force?*" The military service chiefs who testified frequently answered that question with "*I don't know.*" Now the military service chiefs are following orders, without the option to express opinions contrary to the LGBT law. Uniformed personnel also are constrained in what they can say about the new policy, since their own attitudes might be questioned.

As reported in the [New York Times](#), a future president could issue regulations that reduce or eliminate harmful consequences of the LGBT law, and a future Congress could write a new law when the political situation changes. At a minimum, the next president can and should direct

Defense Department appointees to carefully and objectively track and report consequences of the current law, with an eye toward fixing problems with regulations or new legislation if necessary.

### **3. The Defense of Marriage Act (DOMA) in the Military**

In 2010 the Department of Defense assured Congress that the Defense of Marriage Act (DOMA), which defines marriage as the union of one man and one woman, would preclude same-sex marriages on military bases. The legislation repealing Section 654, Title 10 included a clause to ensure enforcement of the DOMA in the military.

But in January 2011, the administration dropped its legal defense of the DOMA, making it necessary for Congress to hire legal counsel to defend the law. In April 2011, the Chief of Navy Chaplains sparked enormous controversy by issuing a preliminary memo preparing for same-sex marriages on Navy and Marine bases. Sixty-two members of the current Congress, led by House Armed Services Committee member Rep. Todd Akin (R-MO) protested the Navy plan to violate the DOMA. The controversial Navy memo was temporarily suspended but not revoked.

In May, the House passed amendments to the Defense Authorization and Appropriations bills to reaffirm congressional intent that the DOMA be applied and enforced in the military. But In August, the Justice Department began attacking the constitutionality of the DOMA in court. In September, Defense Department officials issued two memos authorizing unofficial "religious ceremonies" on military bases, but without the Defense Department "endorsement" that triggers benefits associated with marriage. (Many benefits can be designated to non-spouses.)

The two policy statements invited lawsuits from activist LGBT lawyers who are already challenging "disparate treatment" of same- and opposite-sex couples. As explained in this CMR Policy Analysis, the September Defense Department memos that attempt to circumvent the DOMA, together with predictable litigation, are attempts to impose minority views on the majority of voters in more than 30 states:

#### **Congress Must Protect Defense of Marriage Act in the Military**

The administration's flawed social policies are likely to weaken marriage, divide the chaplain corps, impose incalculable costs, and undermine military culture and morale.

### **4. Religious Liberty and "Zero Tolerance" of Dissent**

Some Defense Department officials have invoked the military's proud civil rights history in suggesting that sexual orientation should be treated as an "equal opportunity" issue, applying the same "strict scrutiny" principle that bars discrimination based on race, color, sex, religion, or national origin. The claim fails to recognize that unlike racial bias, respect for differences between men and women is rational and customary in civilian matters as well as in the military.

Legislation to repeal the 1993 law regarding homosexuals in the military did not protect the rights of chaplains or people of faith to express their convictions regarding homosexual conduct in settings other than religious worship, such as counseling, education, and family activities. According to leading organizations that endorse or represent chaplains, LGBT law and policies

now being implemented could lead to self-censorship in order to avoid career penalties for expressing sincerely held opinions and convictions espoused by most major religions.

Chaplains also are concerned about pressure to participate in same-sex marriages. Defense Department training programs strongly suggest that chaplains who cannot reconcile their views with the new LGBT policy should seek withdrawal of the religious endorsement needed to serve as a chaplain, and leave with an honorable discharge if additional time in service is not required.

Mandatory "diversity" training programs are already attempting to stifle dissent, even in matters of religious conviction or concerns about personal privacy. "Zero tolerance" and career-ending penalties could force thousands of personnel to leave or to avoid the military entirely.

## **5. LGBT Celebrations**

President Obama has celebrated June as "[LGBT Equality month](#)" three times in the White House since 2009. The new policy, therefore, should be called the "LGBT law for the military." Although the administration currently is denying that transgender individuals will be eligible for military service, [transgender activists](#) are demanding executive action to lift rules against cross-dressing and other forms of sexual expression that are openly celebrated in San Francisco.

Activist groups have made it clear that [they expect](#) representation at gay pride observances and full extension of military marriage and family benefits to same-sex couples. The consequences of attempts to blend LGBT values with the military's culture of obedience have yet to be seen.

## **6. Women in Direct Ground Combat/Selective Service Obligations**

In the current wars, female soldiers and Marines are assigned to female units, variously called cultural support or female engagement teams. These units search female civilians in ways that male soldiers cannot, due to cultural sensitivities. It is a dangerous mission that deserves special training and recognition, but it does not fit the definition of direct ground combat (DGC), which involves deliberate offensive action against the enemy.

In order to accommodate women in Marine and Army infantry, armor, and Special Operations Forces, training programs and scores inevitably would be gender-normed to remove "barriers" to women's success in direct ground combat. There is no gender-norming on the battlefield, where physical abilities and other factors are crucial for survival and mission accomplishment.

The ACLU has repeatedly filed [lawsuits](#) challenging young women's exemption from Selective Service registration and penalties imposed for non-compliance, such as denial of college scholarships. The Supreme Court has upheld women's exemptions because no one is drafted unless there is a prolonged need for combat "replacements." Elimination of women's exemptions from direct ground combat would trigger another lawsuit on behalf of men, which would probably be successful in imposing equal Selective Service obligations on young women.

***More information on all of the above questions is available at [www.cmrlink.org](http://www.cmrlink.org).***