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U.S. House of Representatives

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Memorandum for Members of the Republican Conference

From: Steve Buyer, Chairman, Military Personnel Subcommittee

Subject: Policy Regarding the Present Ban on Homosexuals in the Military

In response to recent press attention on homosexuals in the military, the purpose of this memorandum is to provide background information about the underlying law on the issue.

Although some would assert that section 654 of title 10, United States Code (Included in the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, November 30, 1993) embodied the compromise now referred to as "Don't Ask, Don't Tell," there is no evidence to suggest that the Congress believed the new law to be anything other than a continuation of a firm prohibition against military service for homosexuals that had been the historical policy. The law, as well as the accompanying legislative findings and explanatory report language, makes absolutely clear that known homosexuals, identified based on acts or self admission, must be separated from the military. After extensive testimony and debate, the Congress made a calculated judgment to confirm the continued bar to the service of homosexuals in the military. The case supporting the Congressional position is well documented and compelling.

Some of the findings (section 654, title 10, United States Code) and statements of the Congress (House Report 103-200, pages 287-290, July 30, 1993; Senate Report 103-112, pages 263-297, July 27, 1993) include the following:

- There is no constitutional right to serve in the military.
- Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.
- Military life is fundamentally different from civilian life with unique conditions and responsibilities that require the military community to exist as a specialized society characterized by its own laws, rules, customs, and traditions, including restrictions on personal behavior that would not be acceptable in civilian society.
- Standards of conduct apply to military members 24 hours a day whether on duty or off duty, or on base or off base.
- Military missions require members to involuntarily accept living and working conditions that are Spartan, primitive, and characterized by forced intimacy with little or no privacy.
- Homosexuality is incompatible with military service and presents a risk to the morale, good order and discipline, and unit cohesion that is the essence of military capability.
- Commanders and NCOs in the military chain of command charged with maintaining the military capability, unit cohesion, morale, welfare, and discipline of their units should have great discretion as to what constitutes sufficient information upon which to question a member on their status as a homosexual.

The only element of the November 1993 law that could be considered a compromise was the suspension of the long-standing military policy of asking recruit candidates if they were homosexual before entering service. On a personal note, I have reservations about the suspension of asking the question because I believe it is disingenuous and creates a misunderstanding that is a disservice to the homosexual recruit candidate and the military.

Those condemning the current policy often blame the increased rate of discharges on a hostile environment where homosexuals are ruthlessly pursued. In fact, the vast majority of homosexuals are separated because of unprompted self admissions which I believe result from the false expectations of the "Don't Ask, Don't Tell" policy that misleads homosexuals to believe they may serve in the military.

Those that claim the "Don't Ask, Don't Tell" policy has failed simply do not understand the underlying law. The prospect of a homosexual openly serving in the military was never contemplated by the Congress and any policy that suggests that the military should be receptive to the service of homosexuals is in direct violation of the law.]

It is important for all members to understand that any call for lifting the ban on military service for homosexuals, or improving access and quality of life for open homosexuals in the military would require a change in the law.