

**SUMMARY STATEMENT OF ELAINE DONNELLY  
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**HOUSE ARMED SERVICES COMMITTEE  
SUBCOMMITTEE ON PERSONNEL**

**In Support of Section 654, Title 10, the 1993 Law Stating that  
Homosexuals are not Eligible to Serve in the Military**

**Rayburn House Office Building, Washington D.C.  
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Thank you for the opportunity to testify before this committee today on an issue that is important to the strength, readiness, and culture of our military. The Center for Military Readiness (CMR) is an independent 501(c)(3) public policy organization that specializes in military/social issues. I have submitted a statement for the record, and will address four issues in the time allotted to me today:

1. The legislative history of the law, which is different from “Don’t Ask, Don’t Tell.”
2. The Consequences of repealing that law
3. Unpersuasive arguments being made for repeal of the law
4. Recommendations for common sense ways to deal with this issue

When President Bill Clinton attempted to lift the ban on homosexuals in the military in 1993, it was one of the most contentious efforts of his administration, sparking months of intense debate. Following twelve legislative hearings and field trips, Congress passed a law codifying and confirming the pre-Clinton policy.

That statute, technically named [Section 654, Title 10, P.L. 103-160](#), is frequently mislabeled “Don’t Ask, Don’t Tell.” A more accurate name would have been the [“Military Personnel Eligibility Act of 1993.”](#) The statute, which has been upheld by the courts as constitutional several times, clearly states that homosexuals are not eligible for military service.

In 1993 members of Congress gave serious consideration to a proposal known as “Don’t Ask, Don’t Tell,” which was announced by President Clinton on July 19, 1993. The concept suggested that homosexuals could serve in the military as long as they didn’t *say* they were homosexual.

Congress wisely rejected the convoluted “Don’t Ask, Don’t Tell” concept and did not write it into law. Members recognized an inherent inconsistency that would render that policy unworkable and indefensible in court: ***If homosexuality is not a disqualifying characteristic, how can the armed forces justify dismissal of a person who merely reveals the presence of such a characteristic?***

Instead of approving such a legally-questionable concept, Congress chose to codify Defense Department regulations that were in place long before Bill Clinton took office.

The resulting law, identified as Section 654, Title 10, continued the long-standing Defense Department policy stating that homosexuals are not eligible for military service. Following extensive debate in both Houses, the legislation passed with overwhelming, veto-proof bipartisan majority votes, and it has been upheld as constitutional several times.

In writing this law, members wisely chose statutory language almost identical to the 1981 Defense Department Directives regarding homosexual conduct, stating that “homosexuality is incompatible with military service.” Those regulations had already been challenged and upheld as constitutional by the federal courts.

The 1993 statute was designed to encourage good order and discipline, not the dishonesty inherent in “Don’t Ask, Don’t Tell.” Congress rejected that concept, and chose instead to codify findings and statements that were understandable, enforceable, consistent with the unique requirements of the military, and devoid of First Amendment conundrums.

The only “compromise” involved allowed the Clinton administration to continue its “interim policy” of not asking “the question” regarding homosexuality that used to appear on routine induction forms.

This politically expedient concession on a matter of process was ill-advised, but it did not nullify the language of the law. The Secretary of Defense is authorized to restore “the question” about homosexuality at any time, without additional legislation.

It is significant to note that the vague phrase “sexual orientation,” stated twice in Bill Clinton’s original “Don’t Ask, Don’t Tell” proposal, was not incorporated anywhere in the law that Congress actually passed. Members of Congress recognized that the phrase would be difficult to define or enforce.

Instead, the law is firmly based on conduct, evidenced by actions or statements. The law applies at all times, on base or off base. It is not necessary to be “caught” to define oneself as a

person who engages in homosexual acts. Absent unusual circumstances, a person who says that he is homosexual is presumed to engage in the conduct that defines what homosexuality is.

[Rep. Steve Buyer](#) (R-IN), then-Chairman of the HASC Personnel Subcommittee, wrote this in a December 16, 1999, memorandum to his colleagues:

*“Although some would assert that section 654 of Title 10, US Code . . . 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.”*

If the law had been given a name of its own, instead of constantly being mislabeled with the catch-phrase “Don’t Ask, Don’t Tell,” it might have been called the “Military Personnel Eligibility Act” The difference between the law and the Clinton enforcement policy explains why factions on both sides of the issue are critical of “Don’t Ask, Don’t Tell.”

Even though Congress rejected the concept in 1993, with good reason, the Clinton Administration imposed it on the military anyway in the form of enforcement regulations that were announced in December 1993. Those expendable regulations, unfortunately, remain in effect today.

To understand why “Don’t Ask, Don’t Tell” is bad policy, consider the same concept being applied the civilian world. It would be tantamount to a state law forbidding bartenders to check ID before they serve liquor to younger customers.

Such a law would force the proprietor of a bar to *assume the risk* that if an under-age customer drives and has a fatal collision on the way home, the proprietor of the bar will be held liable. That risk is reduced by the posting and enforcement of signs stating “We Check ID.”

In the same way, it makes no sense for the Department of Defense to forbid routine questions on induction forms that help to determine eligibility for military service. Such a policy (“Don’t Ask, Don’t Tell”) forces the armed forces to *assume the risk* that persons who engage in homosexual conduct will be inducted or retained in the military.

We keep hearing about personnel losses that have occurred military personnel have announced that they are homosexual, and are honorably discharged. As the graph appended to my testimony indicates, in comparison to discharges for other reasons, such as pregnancy or violations of weight standards, these numbers are quite small. They could be reduced to near-zero if the Defense Department stopped issuing misleading information about the eligibility of

homosexuals to serve in uniform. The routine inquiry about homosexuality can and should be reinstated now; no additional legislation is required.

My purpose today is to focus attention on some of the consequences that would result from repeal of this law, Section 654, Title 10.

### **1. Repeal of the Law and Forced Cohabitation**

If Congress repeals the 1993 statute stating that homosexuals are not eligible to serve in uniform, and the military is ordered to accommodate professed (not discreet) homosexuals, the culture of the military will be radically changed. Recruiters will be directed to accept and even seek out professed homosexuals for induction in all branches of the military.

This means that heterosexuals will be required to live in forced cohabitation with professed (not discreet) homosexuals, on all military bases and ships at sea, on a 24/7 basis. Such a policy would impose new, unneeded burdens of sexual tension on men and women serving in high-pressure working conditions, far from home, that are unlike any occupation in the civilian world.

The real-world issue here is not superficial. Nor is it a Hollywood fantasy portrayed for laughs in a television sitcom. We are talking about human sexuality and the normal, human desire for personal privacy and modesty in sexual matters.

Repealing the 1993 law would be tantamount to forcing female soldiers to cohabit with men in intimate quarters, on all military bases and ships at sea, on a 24/7 basis. Stated in gender-neutral terms, forced cohabitation in military conditions—which offer little or no privacy--would force *persons* to live with *persons* who might be sexually attracted to them.

Inappropriate passive/aggressive actions conveying a homosexual message or approach, short of physical touching and assault, will be permitted in all military communities, to include Army and Marine infantry battalions, Special Operations Forces. Navy SEALs, and cramped submarines that patrol the seas for months at a time.

The ensuing sexual tension will hurt discipline and morale, but commanders will not have the power to improve the situation. Individuals whose beliefs and feelings about sexuality

are violated by the new policy will have no recourse. The only option will be to avoid or leave the service.

We keep hearing that in the brave new “Will & Grace” world, none of this matters. And yet, it was only a year ago when the nation reacted with universal disapproval of Sen. Larry Craig (R-ID) and 39 others who were arrested for inappropriate behavior in a public but transient place at the Minneapolis airport over a period of three months.

Columnist Michael Medved asked a fair question: “If preventing public sex in airport men’s rooms is important enough to justify the deployment of undercover cops, isn’t it similarly important to deter the sexualization of private facilities in the military?”

## **2. Implications of the “Civil Rights” Argument**

Activists who demand repeal of the 1993 law invoke the honored standard of “civil rights.” Their cause, however, bears little resemblance to our military’s proud history of racial integration.

- If this is deemed a civil rights issue, the argument should be taken to its logical conclusion. If the military is ordered to accommodate homosexuals, it will follow the civil rights model in counter-productive attempts to make the new paradigm “work.”
- The principle of “zero tolerance” in matters of civil rights is well established. The military does not do things half-way. Nor does it tolerate members who do not support civil rights and equal opportunity in the military.
- This means that any military man or woman who expresses concerns about professed homosexuals in the military will be assumed “intolerant,” and suspected of harassment, homophobia, “bullying,” bigotry, or worse.
- Since our military does not tolerate sexual harassment or bigotry, disciplinary penalties and career-ending denials of promotions would be the logical consequence of treating homosexuals in the military as a “civil rights” issue.
- This mandate would be particularly divisive among men and women whose religious convictions are thrown into direct conflict with official military policy. As a result, thousands of valuable troops could feel compelled to avoid or leave military service.

- Those who demand repeal of the law have conceded that thousands of military people would avoid or leave the military, but they maintain that the cost in terms of lost personnel would be worth it for the sake of sexual “diversity.” For the sake of the majority our men and women in uniform, I strongly disagree.
- If there is a conflict between equal opportunity and the needs of the military—military necessity must come first.

### **3. Affirmative Action and Retroactive Consequences of a “Civil Rights” Standard**

If the civil rights model is followed in all matters involving homosexuals, it is likely that bureaucrats and judges will implement a wide array of disruptive policies that will take the principle to its logical conclusion.

Campbell University Professor of Law William A. Woodruff, an expert on the issue of homosexuals in the military, expressed concern that the full burden of the “civil rights” standard could be imposed by the federal courts, based on legal and administrative precedents.

That could mean recruiting quotas for gay personnel, the offer of enlistment to those previously denied, retroactive promotions, and financial settlements for persons claiming past discrimination.

Congress needs to answer an obvious question: How will all of these costs benefit discipline, morale, and readiness in the volunteer force?

### **4. Enforcement of Laws and Regulations Re Sexual Misconduct**

Activists demanding repeal of the law dismiss concerns about sexual misconduct by claiming that existing regulations against heterosexual misconduct can and should be equally applied to misconduct involving professed homosexuals. This is an unrealistic argument, which betrays an elitist attitude and false assumptions about military culture and law.

It is theoretically possible that incidents of sexual assault by homosexuals in our military would be punished in an even-handed way, but in actual practice this would be small comfort to persons experiencing forced cohabitation in all military communities, including Marine infantry, small surface ships and submarines.

When a female soldier reports an incident of sexual harassment or abuse, she enjoys the presumption of truthfulness. But under the new civil rights standard, if a male soldier reports an incident of homosexual harassment or abuse, he will face the suspicion, if not the presumption, of unacceptable attitudes toward fellow soldiers who are gay.

Heterosexuals whose values are violated will hesitate to file complaints, lest they be suspected and probably accused of attitudes that violate the new “zero tolerance” policy, favoring homosexuals in the military.

In messy, emotionally-charged disputes such as this, commanders themselves will be accused of homophobic attitudes if they take the side of the heterosexual person over the homosexual one. Who is bullying whom? In close quarters, it wouldn’t matter—the effect on unit cohesion would be the same.

I encourage you to read the [letter from Cynthia Yost](#), a former Army a medical corpsman, who suffered a physical assault by a group of lesbians. Yost wrote that she did not report the assault because she did not want to be accused of racism, which would have derailed her military career.

Yost predicted that if professed homosexuals serve in the military, “An assault like the one I endured would be “de-criminalized,” on the grounds that the victim is a “homophobe” if they won’t just “relax and enjoy” being sexually assaulted.

Ms. Yost made an additional point. After the sexual assault, one of the lesbians began taking surreptitious photos of her and other female soldiers in the showers—running off and laughing when the victims turned to look. In these days of digital cameras and camera phones with Internet access, such photos could be sent anywhere and everywhere in the world in seconds.

I ask the members of this panel--How would you like to be treated like this, with nowhere else to go, and no way to do something about it, without ruining your career?

In Britain, which homosexual activists point to as an example to be followed by the American military, the gay activist group Stonewall praised the Ministry of Defence (MoD) for addressing the problem of “homophobic bullying.” This is an interesting comment since activists claim that the British experience has been completely positive.

The London *Telegraph* also reported that a British Army officer was severely disciplined just for stating a negative opinion about gays and lesbians in the British military. Is this what we want in our military? Accusations and penalties could become common if gays in the military are given full civil rights status.

I ask again, How would all this turmoil improve readiness, morale, and discipline?

## **5. Inadequate Reports and Risks of Physical Abuse**

If this social experiment goes forward, you will not be able to evaluate the results. A *Navy Times* editorial noted that unlike civilian judicial system, military courts do not offer a publicly accessible docket of pending court martial cases.

The *Navy Times* further reported that incidents of male sexual assault often are underreported and may be more prevalent in the military than in other parts of society. Studies suggest that sexual assault among military men is most prevalent among junior enlisted ranks.

We also know that current discharges of persons who engage in homosexual conduct frequently are not reported as such. If an offender is court-martialed and punished for a more serious offense involving same-sex assault, or for disobedience of orders forbidding sexual activity by HIV-positive individuals, discharge records are more likely to show the more serious offense, but not homosexual conduct.

Two recent cases of homosexual conduct and abuse, which have received little public notice, demonstrate how this works:

- ***Navy Lt. Commander John Thomas Lee***

Lt. Cmdr. John Thomas Lee, a 42 year-old Catholic priest, is a Navy chaplain who tested positive for HIV in 2005. The [\*Washington Post\*](#) reported on December 7, 2007, that Lt. Cmdr. Lee pleaded guilty to several serious charges: consensual and forcible sodomy with several men, including a Naval Academy midshipman, an Air Force lieutenant colonel, and a Marine corporal.

Lee's misconduct involved indecent acts, aggravated assault for not informing at least one victim of his contagious HIV status, and conduct unbecoming an officer that was all the more reprehensible because of the betrayal of trust associated with Lee's status as a priest and chaplain.

According to court testimony and factual stipulations signed by Lee and Navy prosecutors, Lee plied the male midshipman with dinner and drinks, followed by gay sex acts

and unwanted touching. Lee also misused government computers to solicit sex partners, saving and sending more than 375 pornographic images of himself and other men.

An alarming article in *Newsweek* stated that according to a recent report, up to 60 military chaplains have been convicted or at least are strongly suspected of committing sexual abuse over the past four decades, sometimes against the children of military personnel.

The experience of the Roman Catholic Church is a cautionary tale. For many years, the church did not ask questions about homosexuality among seminarians and priests. With few exceptions, lay people did not suspect that anything was amiss, but a huge and costly nationwide scandal developed over time. Anything comparable to that could undermine public support for the volunteer force.

- ***Pfc. Johnny Lamar Dalton***

In another disturbing case reported last year, Pfc. Johnny Lamar Dalton, 25, was charged with assault with a deadly weapon — the HIV virus. The soldier reportedly failed to tell an 18 year-old teenager about his HIV-positive status before they had unprotected, consensual sex. The unnamed young man previously had been HIV-negative.

An Army spokesman confirmed that Dalton's records will only show his criminal violations, not the lesser offense of homosexual conduct. This case demonstrates why figures on discharges involving homosexual conduct may not be reported accurately. To the extent that there is a problem, repealing the law will make it worse.

## **6. Risks of HIV-Positive Non-Deployable Personnel**

Issues of health and deployability must be considered. Congress has recognized that all soldiers serving in a combat environment are potential blood donors for each other. Therefore, persons found to be HIV-positive are not deployable, but once they are in uniform they must be retained for as long as they are physically able.

[An examination of military HIV non-deployability cases](#) shows that since the passage of the 1993 law, the incidence of HIV service-wide has trended downward. Reasons are not clear, but if the law is repealed, allowing significant numbers of men-having-sex-with-men (MSM) to join the military, the HIV positive non-deployability numbers likely would trend upward.

At a time when multiple deployments are putting so much stress on the military, Congress should not implement any change in policy that could increase the number of non-deployable personnel.

## **7: Social Issues and Training to Enforce Acceptance of Homosexuality**

If the 1993 law is repealed, the armed forces will be pressured to follow the example of Britain in creating some sort of legal/social status for same-sex couples, and providing quarters for same-sex couples in family housing.

In a short amount of time civilian institutions, such as marriage bureaus, schools, and possibly churches will be pressured to follow the military's lead. If the Marine Corps recognize same-sex couples, why should the schools and churches not do the same?

We can also expect that if the military's civil rights tradition is followed, programs of "sensitivity training" would be sufficient to resolve any problems. Our military is being pressured to follow the example of the United Kingdom, which capitulated to a European Court ordering inclusion of homosexuals in the military. The British military, which has been working with gay activists for years, is now working with the "transendered" community to recognize their "right" to serve. This is where the "civil rights" model, if imposed on the military, logically leads.

British military personnel have been permitted to march in Gay Pride parades, and same-sex couples are permitted to live in family housing. These options surely contribute to the advertised level of satisfaction among homosexuals who serve, but an April 2007 report of the British Parliament indicated that the armed forces remain short of servicemen and women.

### **C. Unconvincing Arguments for Repeal**

#### **1. Surveys & Polls**

Absent credible arguments, advocates of repeal have fallen back on polls that ask the wrong questions, or spin the answers to achieve the effect desired by the sponsor of the poll. One of the most highly publicized polls was done by [Zogby International](#) in December 2006. Most news reports did not mention that the survey had been commissioned and paid for by the Michael Palm Center, a gay activist group. The poll indicated that 73% of the respondents said they were "comfortable interacting with gay people." This is an innocuous question; had I been asked, I would have said "Yes" too.

A more important question that was not even mentioned in Zogby's news release announcing the poll's results: "*Do you agree or disagree with allowing gays and lesbians to serve openly in the military?*" On that question, 26% of those surveyed "Agreed," but 37%

“Disagreed.” The Zogby poll also found that 32% of respondents were “Neutral” and only 5% were “Not sure.”

If this poll were considered representative of military personnel, the 26% of respondents who wanted the law repealed were far fewer than the combined 69% of people who were opposed to or neutral on repeal. This minority opinion was hardly a mandate for radical change. The poll was nevertheless trumpeted as if it were.

Polling organizations recognize that respondents who believe a policy is already in place are more likely to favor that policy, while those who know otherwise are less likely. For this reason, widely-believed but inaccurate claims, such as the idea that homosexuals are eligible to serve in the military, probably are skewing polls of civilians on this question.

People in the military, however, are more likely to understand what the law is. In the 2006 poll announced by the *Military Times* newspapers, in response to the question “*Do you think openly homosexual people should be allowed to serve in the military?*” Percentages, ranging from 57% to 59% in opposition have been reported by the *Military Times* survey three years in a row.

A recent *Washington Post/ABC News* poll, released on July 19, 2008, was typical of civilian polls on this issue.

The poll included two questions on the subject of homosexuals in the military, but it did not frame the real issue: *Should the military require, as a matter of policy, forced cohabitation between heterosexuals and homosexuals in all military units, including the infantry, Special Operations Forces, and submarines?*

Instead, the questions used confusing double negatives, and suggested that the main issue was being “undisclosed” or “disclosed” as a homosexual in the military. Survey questions also used the permissive word “*allowed,*” instead of “*required.*”

This was a poll of mostly civilians who know little about the military and its culture, including the need for discipline. This is tantamount to asking Americans what they think about issues currently being debated by the Canadian Parliament.

## **2. *The National Security Argument: Too Many Discharges of Homosexuals***

Turning to the so-called “national security” argument for gays in the military -- Please consider [the graph attached to my testimony](#), which demonstrates how small the numbers of

discharges have been in comparison to personnel losses for other reasons, such as pregnancy or violations of weight standards.

The cost of personnel losses related to the homosexual conduct law, whatever it is, could be reduced to near-zero if all potential recruits were fully and accurately notified that the 1993 law means that homosexuals are not eligible to serve. It is bad policy to enforce a regulatory policy such as “Don’t Ask, Don’t Tell,” which misinforms potential recruits about the conditions of eligibility and encourages people to be less than honest about their homosexuality—only to be subject to discharged later.

### ***3. Contradiction: Too Few Discharges Due to the War***

Many of the same people who claim that the military is discharging too many homosexual personnel simultaneously claim, to the contrary, that dismissals have declined because gays are needed to fight in the war. A Congressional Research Service Report to Congress discussed this argument, and confirmed that administrative discharges for homosexual conduct are not affected by wartime stop-loss procedures.

Anecdotes about homosexuals being allowed to remain in the military usually do not hold up. Still, there is a need for accurate information on what the law actually says. Officials who choose to disregard this law should be held accountable in the same way that they would be for other failures to comply with duly enacted law.

### ***4. Linguists and the Defense Language Institute***

The “Don’t Ask, Don’t Tell” policy/regulations have caused widespread confusion and costly errors, such as the admittance of twelve homosexual language trainees to the Army’s Defense Language Institute (DLI) in Monterey, California. Two of the students were found in bed together, and the others voluntarily admitted their homosexuality.

All were honorably discharged. Gay activist groups decried the dismissals as a loss for national security. The true loss occurred, however, when twelve students who were not eligible to serve occupied the spaces of other language trainees who could be participating in the current war. Military specialty schools such as the DLI should not be misusing scarce resources to train linguists who are not eligible to serve in the military. There are other ways that the Department of Defense should encourage and pursue more constructive options to solve the problem.

For example, Congress can work with the Department of State to expand the number of visas available for pro-American Iraqi and Afghan immigrants who are willing to serve as interpreters. The Department of State also should lend support to refugees from Iraq whose lives are being threatened because they provided help to American troops.

### ***5. Alleged Shortages in Critical Specialties***

In July 1994, the Palm Center claimed the military was discharging valuable personnel in important military specialties, including “49 nuclear, biological, and chemical warfare specialists.”

A closer look at the same data, obtained from the DMDC, reveals several disparities. For example, according to the official who provided the same DMDC data to the Center for Military Readiness, the category of persons in the “nuclear power” field does not necessarily mean that all the people in question were “nuclear power engineers.” More details are in my testimony for the record. Again, the number of personnel losses could be reduced to near zero if the law were accurately explained and enforced by the Department of Defense.

### ***6. The Urban Institute – 65,000 Homosexuals in the Military?***

In September 2004, the Urban Institute, a nonpartisan social policy and research organization, issued a report that was prepared in consultation with the activist Palm Center and the Servicemembers Legal Defense Network. The report estimated that approximately 65,000 gay personnel are now serving in the U.S. military. Activists constantly cite this report when advocating repeal of the 1993 homosexual conduct law.

The document, however, reveals questionable methodology, based on presumptions about the percentage of homosexuals in the general population and about the sexuality of persons interviewed by the census. Citing mathematical computations and other reports, the study speculated that household-mates of the same sex are homosexual.

Adding different sets of speculative figures regarding different military communities, the document leaped to the conclusion that there are “2.8% or 65,000 gay or lesbian military personnel.” This number is frequently trumpeted by gay activists and like-minded journalists. One guess-timate on top of another, however, does not a “solid” fact make. The census does not ask questions about sexual orientation or behavior, and all estimates are based on sheer speculation, dressed up with a public relations spin.

## **7. *Harassment of Homosexuals and Heterosexuals***

Contrary to exaggerated claims by activist groups, more than 80% of homosexual service members discharged since the law was enacted left the service not because of witch hunts rooting them out but because of voluntary statements admitting homosexuality. According to a 1998 DoD Task Force report, there were only four cases of anti-homosexual harassment reported since 1994. Two of those cases involved anonymous letters that could not be traced.

In 1999, homosexual activists crafted a polemic campaign that focused on the brutal murder of Army Pfc. Barry Winchell, an alleged homosexual, at Fort Campbell, Kentucky, in July of that year. The savage killing of Pfc. Barry Winchell has been cited as evidence that more must be done to end “hate crimes” and harassment of homosexuals.

The confessed killer, Pvt. Calvin Glover, assaulted Winchell in the barracks with a baseball bat on July 4, 1999, several hours after Winchell had beaten him in a drunken brawl. Evidence of Glover’s hostile attitude toward Winchell, who was involved with a transgender male nightclub entertainer who appeared to be a woman, was a factor in his trial and sentencing to life in prison.

Among other things, an Army Inspector General investigation noted poor morale and a tolerance of underage drinking and anti-gay language by the senior sergeant in the battalion. The report also noted the reluctance of battalion commanders to ask questions about matters involving alleged homosexuality.

Military discipline requires constant awareness of what is happening in military units, throughout the chain of command. A policy such as “Don’t Ask, Don’t Tell” that discourages the asking of legitimate questions interferes with sound leadership. In this tragic case, a failure to ask questions apparently was a factor in the creation of a volatile situation that exploded with violence. Perpetrators of this crime have been rightly punished, but there is no need for additional legislation to stop harassment or murderous assaults—of anyone—in the barracks.

Air Force Captain Devery L. Taylor was convicted and sentenced to twenty-eight to fifty years in prison for raping four men, allegedly with date-rape drugs. According to a report in *Air Force Times*, an investigator interrogating Taylor, now a convicted serial rapist, said that he would not ask any questions about the man’s sexual practices because such questions are not allowed. This statement demonstrated how misunderstandings about the 1993 homosexual conduct law help to create volatile conditions that undermine good order and discipline. Such

misconduct should not be considered “off limits” to questioning just because it happens to occur between persons of the same sex.

### **8. *Foreign Militaries***

The Palm Center and other activist groups frequently point to the experiences of other countries, such as Great Britain, Canada, Australia, the Netherlands, and Israel, which have no restrictions on professed homosexuals in their militaries.

The United Kingdom was ordered by the European Court of Human Rights to open its ranks to homosexuals in September 1999. There was some controversy in the Parliament, but instead of appealing or challenging the ruling, ultimately the nation complied—something the United States would be unlikely to do. Contrary to the notion that all has gone well, European newspapers have reported recruiting and disciplinary problems in the British military.

Canada, Australia, and the Netherlands have cultures quite different from the United States. The late Prof. Charles Moskos has noted that nations without official restrictions on gays in the military are also very restrictive in actual practice. Germany, for example, imposed many restrictions on open homosexual behavior and imposed career penalties such as denial of promotions and access to classified information.

Israel’s situation differs from the United States because all able-bodied citizens, including women, are compelled to serve in the military. Israeli soldiers usually do not reveal their homosexuality and are barred from elite combat positions if they do.

The CSSMM frequently claims that no problems have been experienced in all of the countries listed above and is critical of those who support the ban, demanding that opponents provide “empirical” evidence to support their case. The irony is that the CSSMM and other activist groups base most of their arguments on anecdotal information and opinion, largely gathered from like-minded sources.

The issue of homosexuals in the military is a major political question that should not be decided by international courts, federal courts in the United States, or by politicians who are misinformed about the nature of the 1993 law and the rationale behind it.

### **9. *Religious Bias***

Finally, advocates of gays in the military have vilified retired Marine Gen. Peter Pace, former Chairman of the Joint Chiefs of Staff, who expressed his personal views regarding gays in the military and personal morality during an interview on March 11, 2007. A wave of name-

calling and demands for an apology ensued, but Gen. Pace had no reason to apologize for a law duly enacted by Congress.

The 1993 statute reflects the views of people who see the issue in moral terms, but it uses secular language emphasizing military discipline. Duly enacted laws—including prohibitions against lying, stealing, and murder—should not be repealed just because they coincide with religious principles and moral codes such as the Ten Commandments.

## **D. Recommendations and Conclusion**

### ***1. Enforce the 1993 Homosexual Conduct Law***

Activists who want to repeal the law banning homosexuals from the military are determined to impose their agenda on the military. For the sake of civilian institutions as well as the military, they should not be allowed to succeed.

The President of the United States is obligated by the U.S. Constitution to enforce all laws, but he is not required to retain administrative regulations written or retained by predecessors, including the policy known by the catch phrase “Don’t Ask, Don’t Tell.” Whether intended or not, inconsistencies between Clinton’s policy and the 1993 homosexual conduct law create an advantage for activists who want to repeal both.

The Department of Defense should not apologize or be intimidated by civil rights analogies and pejorative accusations. As retired Gen. Colin Powell wrote in a classic letter addressing the subject to then-Rep. Patricia Schroeder (D-Colo.) in 1993,

*“Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.”*

In recent years, advocates of gays in the military have been promoting the idea that sexual modesty does not matter, since modern military facilities provide more privacy than older ones, and younger people seem to think that is not a big deal. This is an elitist argument, which is contradicted in numerous ways that usually escape notice.

A midwestern family-oriented recreation center, for example, has separate locker rooms for men and women, next to the community pool. Inside the entrance of the women’s locker room is a sign clearly stating that boys of any age are not permitted. A similar sign, regarding girls, is posted in the men’s locker room. The signs are there not as an affront to young boys (or

girls). They are there because the community respects the desire for sexual modesty in conditions of forced intimacy. This is the case even though people who use the recreation center do not live and sleep there for months at a time.

Servicemen and women in the military deserve the same consideration, and much more. As columnist Thomas Sowell wrote, *“Military morale is an intangible, but it is one of those intangibles without which the tangibles do not work.”* Military people depend on policymakers to remember basic realities and to guard their best interests. Considerations such as this strengthen vertical cohesion—the indispensable bond of trust between military leaders and the troops they lead.

To ensure that the intent of Congress is carried out with regard to homosexuals in the military, the Secretary of Defense should:

- Improve understanding and enforcement of the law by eliminating the Clinton Administration’s enforcement regulations, known as “Don’t Ask, Don’t Tell,” which are inconsistent with the 1993 law that Congress actually passed, and (better yet) restore “the question” about homosexuality that used to be on induction forms prior to January 1993.
- Oppose any legislative attempt to repeal the 1993 homosexual conduct law in Congress.
- Ensure that the 1993 statute is vigorously defended every time it is challenged in the federal courts.
- Prepare and distribute accurate instructional materials for potential recruits, recruiters, and all military personnel that include the text and legislative history of the 1993 law.
- Remind the media that everyone can serve their country in some way, but not everyone is eligible to be in the military.

## **2. *The Only Military We Have***

When it comes to national defense, there are no options from which to choose. Today’s volunteer force is the only military we have.

In a communication with CMR, Professor of Law William A. Woodruff wrote, *“The American military does not fight an armed enemy sworn to destroy our way of life by showing how enlightened and progressive our popular culture is. The armed forces exist to project combat power as an arm of foreign policy and to protect our vital national interests. Anything, whether it is height, weight, IQ, character, physical fitness, medical condition, or any other condition that detracts from unit cohesion and combat effectiveness disqualifies an otherwise*

*patriotic American from serving in the military. The military is not popular culture. It is very different and must remain so to defend the freedoms that advance our popular culture”.*

*Woodruff added, “Those who favor personnel policies grounded in notions of fairness to the individual must be required to demonstrate beyond any doubt that military discipline, unit cohesion, and combat effectiveness will not be diminished one iota by adoption of their preferred policy. Otherwise, it elevates the individual over the mission and that is the antithesis of military service.”*

Our national security depends on the men and women of the military. For our own sake as well as theirs, the co-ed military must be constructed on foundations that are sound. We have to get this right; it is the only military we have. Ours is the strongest military in the world, and we have an obligation to keep it that way.

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***Note: The text of Elaine Donnelly’s full statement to the House Armed Services Personnel Committee is expected to be posted on the website of the Committee by the end of July, 2008.***