



Center for Military Readiness



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Continued Confusion About 1993 Gays-in-Military Law

In response to an announcement by Secretary of Defense **Robert Gates** regarding the results of a 45-day review of the so-called “**Don’t Ask, Don’t Tell**” (**DADT**) policy, **Elaine Donnelly**, President of the **Center for Military Readiness**, issued the following statement:

“Secretary Gates has sent a confusing message to the troops. By applying new regulations applying only to the small number of discharges that occur for homosexuality, he has invited noncompliance with the extant 1993 law, [Section 654, Title 10](#), in future cases and those that are still pending.

“Instead of taking the opportunity to clarify the meaning and intent of the law, Secretary Gates seems to be condoning unwarranted delays. Local commanders who trying to do their duty by enforcing the law deserve support, not second-guessing by higher-level officials who seem more concerned about President Obama’s views than they are about the terms and intent of the law.”

Donnelly continued, “Whether intended or not, regulation changes announced today could create an incentive for ‘third parties’ to ‘out’ someone who is not eligible for military service. This will undermine respect for the law and perpetuate the institutional dishonesty that Joint Chiefs Chairman **Adm. Mike Mullen** complained of in February.”

She added, “It is unfortunate that Adm. Mullen has mischaracterized the views of active-duty subordinates who are not truly free to express their own opinions, due to the Chairman’s inappropriate personal statement prematurely calling for repeal of the law. Admiral Mullen has disingenuously claimed little disagreement with his personal view among active-duty troops. But junior personnel will not disagree with the Chairman of the Joint Chiefs during focus group meetings, and those who do agree with Mullen should not be used as props in the presence of the media.”

She added, “It is also ironic that Adm. Mullen has criticized a three-star general for expressing a personal view in support of the 1993 law, even after Mullen himself expressed a personal opinion favoring repeal of the same law before the Senate Armed Services Committee on February 2. This appears to be a double standard

that is not helpful.

“Furthermore, Secretary Gates has once again insisted that the **Comprehensive Review Working Group (CRWG)** that he has established should limit its report only to “*how*” and “*when*” to repeal the law—not “*if*” the law should be repealed. This posture effectively cuts out Congress and the American people, who will oppose any attempt to impose a European-style **LGBT Law** and lesbian, gay, bisexual, transgendered policies on our military by what **Sen. John McCain** described as a ‘fiat.’

She continued, “If Secretary Gates really wants to make enforcement of the law ‘more humane,’ he should follow the legal mandate to explain [the purpose and meaning of the law](#) more accurately, and exercise his legally-authorized option to reinstate ‘the question’ about homosexuality that used to appear on induction forms. All of the personal stories about servicemembers discharged for homosexuality could have been avoided if the Bush and Obama Administrations had taken steps to more fully explain and enforce the actual law.

“Despite the unnecessary and unfortunate confusion caused by Secretary Gates today, I remain confident that members of Congress ultimately will retain current law, which is important to protect recruiting, retention, and readiness in the All-Volunteer Force.”

Background: Why Exceptions in Enforcement Are Not Justified

With regard to the matter of “third party outings” generally, Finding #15 in the statute clearly states that “*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.*” Because there is no constitutional right to serve, the creation of an unjustified exemption for persons revealed to be gay by others would contradict the plain meaning and intent of the law.

In a prominent case that sparked the discussion of “third parties” last year, Air Force **Lt. Col. Victor Fehrenbach**, a former weapons systems officer, continues to claim that he should be spared discharge. An investigation by Fehrenbach’s local newspaper, the *Boise Statesman*, found that he was accused of sexual assault by a “third party” he solicited for consensual sex on a gay website. A police report ensued, but Fehrenbach was cleared when he proved the incident was consensual.

[Defining Discipline Down](#)

It is unclear whether new regulations will allow Fehrenbach to remain in the Air Force. Nothing in cases involving “third parties” justifies a suspension of enforcement, since the law clearly states that homosexuals are not eligible to

serve.

More information on this issue is available on the website of the Center for Military Readiness, www.cmrlink.org. To schedule interviews, call Elaine Donnelly at 734/464-9430 or CMR Executive Director Tommy Sears, 202/347-5333.

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