



Finish the Job

The Senate Must Vote to Repeal “Don’t Ask, Don’t Tell” in 2010

Jeff Krehely and Crosby Burns | November 2010

Our nation is actively engaged in combat around the globe, and our military needs every man and woman with the willingness and ability to serve. But the “Don’t Ask, Don’t Tell” law bans openly gay men and women from serving in the United States military. It undermines unit cohesion and military readiness by forcing gay soldiers to live a lie. It is a failed policy that Congress should repeal immediately.

Congress is closer than ever to repealing DADT. Actions in the United States Senate during the next several weeks will determine whether this policy is repealed in 2010 or if it remains on the nation’s books for years to come.

The landscape of DADT repeal

President Obama pledged during his State of the Union address in January to work with Congress to end DADT. Defense Secretary Robert Gates and Chairman of the Joint Chiefs of Staff Admiral Michael Mullen both testified before Congress shortly after the president’s pledge, saying that they believe the DADT policy is outdated and unfair. They soon announced a plan to survey the military and their families on their opinions about open service, and to study how to implement repeal of the policy in a way that ensures a smooth transition to such a policy. The Pentagon will complete their findings from this research on or before December 1, 2010. Key military leaders, including the service chiefs, Chairman Mullen, and Secretary Gates will discuss and vet the report before it is publicly released.

Early reports from the Pentagon’s survey suggest that most troops and their spouses either support open service or simply have no opinion on the matter. And most people expect that the Pentagon will announce that the armed forces can

implement open service following modest changes to existing military rules and regulations. Yet the military will not be able to implement this new policy until Congress repeals the existing DADT law or the federal courts strike it down.

The Senate Armed Services Committee and the House of Representatives passed identical measures in May that provide a path to repealing DADT by linking its repeal to the successful completion of the ongoing Pentagon study. This measure is included in the 2011 National Defense Authorization Act. But the motion to proceed on this bill failed in the Senate in late September due to a Republican-led filibuster. This has pushed the bill into the post-election legislative session, which starts in mid-November.

Yet the NDAA may never come before the Senate for a vote due to the short legislative calendar and competition with other issues that need the Senate's attention before the end of the year—when the 111th Congress comes to a close. This could delay legislative repeal until 2013 at the earliest given that many DADT repeal supporters will not return to Congress next year.

A federal district judge issued a sweeping ruling this fall declaring that DADT is unconstitutional and undermines military readiness, which for a very short time meant that openly gay men and women could serve in the U.S. military. Yet the 9th Circuit Court of Appeals ruled on November 1 that DADT must remain in place pending the Department of Justice's appeal of the decision. Some legal experts think the case will make it to the United States Supreme Court, but that could take a couple of years with no guarantee that the ruling would favor open service. Another problem for the Pentagon is that the legality of the policy might change several times as the case winds its way to the Supreme Court.

The best option is for the Senate to begin debate on the NDAA as soon as the chamber begins its post-election session and to expeditiously pass the bill with the DADT repeal language intact. We strongly encourage them to do so.

Current DADT repeal language

The DADT repeal language in the Senate version of the NDAA—which is identical to the language passed by the House in May—calls for the careful implementation of open service for gay men and women. The language respects and incorporates the Pentagon's current review process, and acknowledges that implementing DADT repeal is best left in the hands of the Pentagon.

Here's how repeal will happen if Congress passes the current DADT language:

- The Pentagon will complete its ongoing study of how to implement DADT.
- President Obama will then transmit a written certification to the House and Senate Armed Services Committees saying that he, Secretary Gates, and Chairman Mullen have considered the recommendations contained in the Pentagon report and the plan to implement repeal, and that moving forward with open service will not jeopardize or hamper the military's readiness or effectiveness.
- Congress has 60 days to review the certification and policy recommendations contained in the Pentagon report.
- The Pentagon, after those 60 days are up, finally begins to develop and implement the regulations that will allow gay men and women to serve openly.

The amendment to repeal "Don't Ask, Don't Tell" shows great deference to the troops and military commanders. This careful approach ensures a smooth transition that respects our armed forces without sacrificing the necessary expediency of implementing repeal.

Senate vote

A majority of senators supported repealing DADT at the time of the failed motion to proceed vote earlier this fall. The number of supporters should increase as more information about the Pentagon study is made public, because several senators have stated that their decision on the matter is based largely on what the Pentagon study recommends.

Even if the Senate begins work on the NDAA when Congress returns in mid-November, senators will still be debating the bill on December 1 when the Pentagon releases its report. Practically speaking, this means that all senators will have the opportunity to review the Pentagon study, assess the evidence, and then decide if the DADT repeal language should stay in the NDAA. But to get to that point, they must vote in mid-November to allow the NDAA to come up for consideration before the full Senate.

Conclusion

DADT is a discriminatory policy that needs to be repealed as soon as possible. A growing body of research, expert opinion, and the experiences of U.S. allies—including Israel and Great Britain—show that gay men and women can serve openly without jeopardizing military readiness or effectiveness. If the Senate fails to move the NDAA forward, the DADT policy will likely remain on the books for years to come.

The time to act is now.

Jeff Krehely is the Director of the LGBT Research and Communications Project and Crosby Burns is Special Assistant for LGBT Progress at American Progress.