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Ending “Don’t Ask, Don’t Tell”

Practical Steps to Repeal the Ban on Openly Gay Men and Women in the U.S. Military

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Center for American Progress



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Introduction and summary

Conversations I've held with service members make clear that, while the military remains a traditional culture, that tradition no longer requires banning open service by gays. There will undoubtedly be some teething pains, but I have no doubt our leadership can handle it.¹

– Gen. John Shalikashvili, former Chairman of the Joint Chiefs of Staff

You don't have to be straight in the military; you just have to be able to shoot straight.

– Sen. Barry Goldwater

Then-Senator Barack Obama pledged during the 2008 presidential campaign that he would work with military leaders and Congress to repeal the law that bans openly gay men and lesbians from serving in the military. Yet the law commonly known as “Don't Ask, Don't Tell,” or DADT, remains in effect despite his campaign promise and subsequent pledges to fulfill it.

As a consequence, more than 265 service members have been discharged on the basis of this discriminatory, outmoded, and counterproductive policy since Obama took office.² Furthermore, the policy has deterred untold others who want to defend their country from serving. Gary Gates, a senior research fellow at the UCLA School of Law, found that if the proportion of gay men in the military was allowed to rise to equal that in the general population, “the military could raise their numbers by an estimated 41,000 men.”³

DADT has resulted in the discharge of more than 13,000 patriotic and highly qualified men and women since its enactment more than 16 years ago. At least 1,000 of these 13,000 have held “critical occupations,” such as interpreters and engineers.⁴ Moreover, approximately 4,000 service members leave the service voluntarily per year because of this policy.⁵

For example, by the end of fiscal year 2003, a few months after the fall of Baghdad, the military had forced out more than 320 service members with vital language skills such as Arabic and Farsi.⁶ These are the very critical specialties in which the military con-

tinues to face personnel shortfalls. Meanwhile, the Army and Marine Corps have been forced to significantly lower their moral and aptitude standards in order to overcome recruitment shortfalls. Perhaps most troubling is the fact that the military has at the same time granted so-called “moral waivers” to thousands of new recruits, including people with felony convictions.

Despite these serious losses, there are no signs of momentum within the Obama administration to fulfill its campaign promise to repeal DADT. Earlier this year, Defense Secretary Robert Gates stated that “The president and I feel like we’ve got a lot on our plates right now and let’s push that one down the road a little bit.”⁷ Admiral Michael Mullen, Chairman of the Joint Chiefs of Staff, recently noted that “The president has made his strategic intent very clear ... that it’s his intent at some point in time to ask Congress to change the law.”⁸ Admiral Mullen and Secretary Gates display a clear lack of urgency on a major campaign promise; as President Clinton’s experience in 1993 demonstrates, any delay can allow those who oppose repealing DADT to seize the momentum.

But unlike 16 years ago, “Don’t Ask, Don’t Tell” is no longer supported by the majority of the American people, nor is it even supported by a majority of service men and women. Numerous public opinion polls within American civilian society over the past decade have noted a substantial increase in the acceptance of openly gay men and women serving in the military. Polls of men and women in the armed forces have shown a similar increase. For example, a 2006 Zogby International poll of returning Iraq and Afghanistan veterans found that 73 percent were personally comfortable around gays and lesbians.⁹

There is also no credible evidence supporting the underlying arguments for retaining the law—namely that it would undermine unit cohesion and military effectiveness. Even architects of “Don’t Ask, Don’t Tell” have acknowledged that the policy was “‘based on nothing’ but ‘our own prejudices and our own fears.’”¹⁰ As Dr. Nathaniel Frank, perhaps the foremost authority on the military’s current policy on gay troops and author of the seminal study on the issue, *Unfriendly Fire: How the Gay Ban Undermines the Military and Weakens America*, has noted, “The ban on openly gay service was not based on sound research because no research has ever shown that openly gay service hurts the military.”¹¹ Indeed, the experiences of our allies, as documented as long ago as 1993 in a Government Accountability Office study, show that allowing gays in the military “is not an issue and has not created problems in the functioning of military units”¹²

Perhaps most important, this outmoded policy sends the wrong signal to the young people—straight or gay—that the military is trying to recruit. It tells them that the military is an intolerant place that does not value what they value, namely, diversity, fairness, and equality. What’s more, military recruiters face generalized hostility and opposition everywhere from high schools to colleges and law schools over the issue of discrimination against gays.

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– Dr. Nathaniel Frank

Air Force Lt. Col. Victor Fehrenbach and Army Lt. Daniel Choi

“Don’t Ask, Don’t Tell” continues to exact costly losses on the military despite wide recognition of these realities. The recent cases of Air Force Lt. Col. Victor Fehrenbach and Army Lt. Daniel Choi demonstrate the financial and readiness costs of DADT. Fehrenbach was formally notified last September that he would be discharged from the Air Force not because he had announced his sexual orientation, but because someone had notified his commanding officer that he had a male partner. Over the course of his Air Force career, Fehrenbach, a highly decorated F-15 fighter pilot and an 18-year veteran of the Air Force, had flown 88 combat missions, including operations in Iraq and Afghanistan. During his career he had logged more than 2,000 flying hours, nearly 1,500 fighter hours, and 400 combat hours.

Fehrenbach was two years short of being able to retire with a full Air Force pension and “despite a record of documented heroism and an unblemished career; despite the fact that, [as] he estimates, the U.S. military

spent roughly \$25 million training him, Lieutenant Colonel Fehrenbach is being discharged.”¹³

Then there’s Lt. Daniel Choi, a graduate of the U.S. Military Academy at West Point and a veteran of the war in Iraq. Choi was a National Guard infantry officer whose training as an Arab linguist was vital to the Army’s capability to perform effectively in Iraq. Yet he is also being discharged because of DADT, despite the fact that he served effectively for more than a decade under DADT with no impact on his unit’s cohesion or effectiveness.

Lt. Col. Fehrenbach and Lt. Choi’s distinguished military service illustrate what every credible study that has ever analyzed the role of sexual orientation in the U.S. or any other military has concluded: sexual orientation is not germane to effective military service.

It is evident that this policy does not make sense practically, it does not make sense financially, and by acting in a discriminatory fashion, it certainly does not make sense morally.

Now is the time for President Obama to fulfill his pledge and begin the process of repealing this outmoded, unfair, unnecessary, and costly law. This is not just a fight about the rights of patriotic American men and women; it is about military readiness as well.

Yet, it is puzzling that there is not a stronger momentum within the administration to begin the process of repealing DADT, given the unacceptable moral and national security implications of DADT, as well as President Obama’s stated campaign pledge. This inaction is due, in part, to the commonly held belief that there exists no road map for repealing and then implementing the new policy once DADT is overturned. However, this is not the case.

A clear and comprehensive road map for repealing DADT and implementing an alternative, non-discriminatory policy already exists.¹⁴ This report provides a realistic outline for repealing DADT and opening our armed forces to the many qualified men and women who have been excluded under that law. These steps include:

1. Signing an Executive Order banning further military separations based on DADT and sending a legislative proposal on DADT repeal to Congress¹⁵
2. Forming a presidential panel on *how* to implement the repeal

3. Repealing DADT in Congress and changing the Uniform Code of Military Justice, or UCMS
4. Changing other necessary military guidelines to conform to the new policy
5. Following-up to ensure that the armed forces implement the policy changes

This report draws upon lessons from previous attempts at ending discrimination and effecting change within the military in order to place these steps into proper context.

It also highlights years of research and evidence to illustrate the unnecessary and inexcusable cost that this policy has levied on the American taxpayer and our service members. This research challenges the notion that repealing the ban on openly gay men and women in the military will have a significant effect on either force quality or effectiveness.

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