



NEW YORK
CITY BAR

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By Facsimile and Regular Mail

November 12, 2009

Hon. Carl Levin
Chair, U.S. Senate Armed Services Committee
269 Russell Senate Office Building
Washington, DC 20510

Hon. John McCain
Ranking Minority Member, U.S. Senate Armed Services Committee
241 Russell Senate Office Building
Washington, DC 20510

Re: Request for Senate Armed Services Committee Hearing On Don't Ask Don't Tell

Dear Senator Levin and Senator McCain:

We are writing on behalf of the Association of the Bar of the City of New York (the "City Bar") to respectfully request the Senate Armed Services Committee to hold a public hearing regarding the immediate repeal of "Don't Ask Don't Tell" (DADT).

The City Bar, founded in 1870, is a private, non-profit organization of more than 23,000 attorneys, judges and law professors, and is one of the oldest bar associations in the United States. The City Bar's committees regularly address legal and policy issues on a local, state and national level, including issues involving civil rights, the military, and lesbian, gay, bisexual, and transgendered (LGBT) persons. In 2006, we testified before your Committee, the Senate Armed Services Committee, regarding the U.S. Supreme Court's decision in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) and the military commission system. Now, we wish to present you testimony on the issue of Don't Ask, Don't Tell.

Under current law, LGBT individuals serve in the United States Armed Forces by denying their identity or running the risk of being actively excluded from serving their country. In 1993, President Clinton signed into law DADT, which states that military personnel will no longer be questioned about their sexual orientation, and current members can no longer be discharged for being gay.¹ The statute provides, however, that service members can be discharged for engaging in homosexual acts, for stating they are homosexual or bisexual, or for marrying someone of the

¹ Pub.L. 103-160, Div. A, Title V, § 571(a)(1), Nov. 30, 1993, 107 Stat. 1670, *codified at* 10 U.S.C. § 654.

same sex.² Since the enactment of DADT, thousands of service members have been discharged based on sexual orientation and, according to a recent analysis of Pentagon statistics, female service members are disproportionately impacted by the policy.³

It is beyond dispute that DADT has resulted in the discharge of thousands of qualified individuals who identify as LGBT. For example, between 1998 and 2004, the military discharged twenty six gay linguists, twenty of whom were fluent in Arabic and six fluent in Farsi.⁴ This law is contrary to the policy of military effectiveness in that highly qualified individuals with specialized skills needed during a time of war are discharged simply based on their sexual orientation. The policies of other countries are illustrative. Great Britain, Australia, Canada and Israel, to name a few, have successfully integrated their militaries. The results of other countries' successful integration of gay and lesbian service members into their militaries confirm that the continued official ban in the United States is not necessary to fulfill military objectives and in fact undermines military authority.⁵ Indeed, military leaders themselves are now publicly speaking out against DADT and its consequences.⁶

Further, scores of Members of Congress are asking that DADT be repealed and replaced with a policy of nondiscrimination and have introduced legislation to do so. H.R. 1283, the *Military Readiness Enhancement Act*, now has 180 co-sponsors.⁷

Moreover, DADT denies to the LGBT community the opportunity and privilege to volunteer and serve their country. It is beyond dispute that LGBT members have served, and continue to serve, in the Armed Forces and have done so with distinction. It is time to repeal DADT, which continues to deny them the fundamental civil right to serve their country.

² 10 U.S.C. § 654(b).

³ Palm Center, Don't Ask Don't Tell Discharge Data, http://www.palmcenter.org/resources/dadt/discharge_data (last visited Oct. 29, 2009); see *Women More Likely to be Expelled Under 'Don't Ask'*, AP October __, 2009 (Leff, L.) ("Women accounted for 15 percent of all active-duty and reserve members of the military but more than one-third of the 619 people discharged last year because of their sexual orientation."); see also Office of the Under Secretary of Defense (Personnel and Readiness), Report to the Secretary of Defense: Review of the Effectiveness of the Application and Enforcement of the Department's Policy on Homosexual Conduct in the Military (April 1998).

⁴ See Department of Defense data, <http://www.msnbc.msn.com/id/6824206> (last visited November 4, 2009).

⁵ See, e.g., The Secretary of State for Defense Mr. Gregory Hoon, Statement to Parliament (Jan. 12, 2000) (after Great Britain repealed its policy of discharging gay and lesbian service members, the Ministry of Defense conducted a study six months after the lift of the ban and found neither any significant problems with unit cohesion, nor a drop-off in recruitment or increase in resignations); General Accounting Office, *Homosexuals in the Military: Policies and Practices of Foreign Countries* (Washington D.C.: U.S. General Accounting Office, 1993) (after Canada revoked its ban against allowing gay and lesbian service members to serve in the military, the U.S. National Defense Research Institute Report found that there was "no evidence that the policy change had had any appreciable effect on any aspect of military life or performance"); Belkin, A. & Levitt, M. (2001). Homosexuality and Israel Defense Forces; Did Lifting the Gay Ban Undermine Military Performance?. *Armed Forces and Society*, 32 p. (the effects of the lifting of the ban in Israel have not undermined military performance, cohesion, readiness, morale or effectiveness).

⁶ See, e.g., Om Prakash, *The Efficacy of "Don't Ask Don't Tell,"* 55 Joint Force Q., October 2009, at 88, http://www.ndu.edu/inss/Press/jfq_pages/editions/i55/14.pdf.

⁷ Press Release, Rep. Patrick Murphy, Rep. Tim Walz Announce 180 Cosponsors on Repeal of "Don't Ask, Don't Tell" (Oct. 15, 2009).

The City Bar urges that the Senate Armed Services Committee heed the call of Members of Congress, military leaders, active and discharged service members, and a growing chorus of the public, to immediately hold hearings on the most expeditious and effective way to repeal the insupportable law of DADT, and to replace it with a policy of nondiscrimination. This is not only critical to the lives and dignity of LGBT individuals in the Armed Forces and their families, but also, imperative to returning our Armed Forces to their fullest and most able capacity.

Thank you for your consideration of the City Bar's position. Should the Senate Armed Services Committee go forward with a public hearing, the City Bar stands ready to present testimony in support of repealing DADT.

Respectfully,

Committee on Civil Rights



By: Peter Barbur, Chair

Committee on Lesbian, Gay, Bisexual and Transgender Rights



By: Carmelyn Malalis, Chair

Committee on Military Affairs and Justice



By: Myles K. Bartley, Chair