

# Military Culture Coalition

## Would LGBT Law and Policies *Benefit or Harm Our Military?*

On December 18, 2010, Congress rushed to pass “privileged” legislation (HR 2965) to repeal Section 654, Title 10, USC, often referred to as “Don’t Ask, Don’t Tell” (DADT). The Obama Administration, working through political appointees at the Pentagon, is trying to impose a new LGBT law and unprecedented policies to accommodate open lesbian, gay, bisexual and, eventually, transgendered personnel in our military.

High level military officials expressed serious concerns about repeal, but they were ignored. The 111<sup>th</sup> Congress voted in the lame-duck session to repeal the law with delayed implementation. The 1993 statute remains in effect, giving the 112<sup>th</sup> Congress the opportunity—indeed, the duty—to address unresolved issues. During a January 28 Pentagon briefing, Marine General James Cartwright, Vice Chief of the Joint Chiefs of Staff, acknowledged uncertainty when he said this:

**“...[I]f there's an outstanding issue that we just didn't anticipate, we certainly would reserve the right for that service chief, one, to have a voice in it, and, two, to potentially be determinative of delaying activity.”** (Transcript, Department of Defense, emphasis added)

This compendium of topics and questions spotlights scores of “outstanding issues” that the Pentagon has failed to anticipate or resolve. Unrealistic promises, and flawed assumptions and platitudes about leadership in the Defense Department’s November 2010 “Comprehensive Review Working Group” report are no substitute for clarity, sound priorities, high standards, and empirical evidence that reflects military experience, not civilian or academic theories.

Radical cultural change involving human sexuality cannot be “managed” with a few sensitivity training classes prior to a meaningless “certification” document denying problems, which is supposed to trigger final repeal 60 days later. Because people are human and far from perfect, sexual tensions and problems that harm morale, discipline, and readiness are inevitable. They are also avoidable.

Members of Congress must ask the following questions, which are not easy, and conduct immediate hearings on the answers provided. If Pentagon officials cannot or will not provide specific answers, it is not fair to expect commanders in the field to sort it all out.

LGBT lawyers for the ACLU stand ready to take contentious issues to federal courts. Absent current law, activist judges will hand down rulings imposing harmful consequences that the Pentagon disavows today. Members of Congress have the responsibility to ask two primary questions repeatedly, “*How would expected problems not undermine military recruiting, retention and readiness, and how would LGBT law and policies benefit or improve the All-Volunteer Force?*”

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*This document is a condensed version of a more detailed 25-page list of questions prepared by the Center for Military Readiness, an independent public policy organization that specializes in military/social issues, on behalf of the Military Culture Coalition. The full-length document, which provides references to the CRWG Report, is available at [www.militaryculturecoalition.com](http://www.militaryculturecoalition.com) and [www.cmrlink.org](http://www.cmrlink.org).*

### **Issue No. 1: Over-Archiving Purposes of the 1993 and New LGBT Laws**

**Topics:** Flaws in the two-volume report of the Pentagon’s “Comprehensive Review Working Group” (CRWG); Text and legislative history of the current law, Section 654, Title 10, U.S.C.; and Purpose of current and future LGBT law and implementing regulations.

- a) Which of the fifteen findings in Section 654, Title 10, U.S.C., upheld as constitutional several times, are no longer valid?
- b) If all or most of the findings, which describe differences between military and civilian life and other basic realities, are still valid, what is the rationale for abolishing them?
- c) If the DADT administrative policy is the problem, why did the Defense Secretary not exercise his option to drop DADT, and thereby improve understanding of the actual law?
- d) What is the primary purpose of the new LGBT (lesbian, gay, bisexual, transgendered) law and associated policies for the military?

### **Issue No. 2: Practical Consequences of the New LGBT Law and Related Policies**

**Topics:** Prohibition against collection of data about sexual orientation; Prohibition of separate accommodations for sexual minorities in areas offering little or no privacy, such as showers and barracks, in all military branches and communities; Obligation to follow orders regarding LGBT law/policies even if reservations are based on personal “*moral or religious beliefs.*”

- a) Will LGBT personnel be assigned to direct ground combat units such as Army and Marine infantry or special operations forces, plus Submarines and Navy SEALs?
- b) If different types of sexual orientation do not matter, what is the rationale for not requesting and reporting statistical information about sexual orientation?
- c) What would the rationale be for allowing “case-

by-case” exceptions to policies mandating cohabitation with same-sex orientation groups, and how would they be defended in court?

- d) If cohabitation of different same-sex groups is not a problem, why are military men and women not housed together in deployed living facilities offering little or no privacy?
- e) What rights will male and female personnel have if they disagree with the new LGBT law/policies for reasons of personal privacy or the desire for modesty in sexual matters?

### **Issue No. 3: Privacy, Morale and Discipline**

**Topics:** The consequences of altering personal conduct rules that currently govern personal conduct, both on-base and off-base; Likelihood that “equal” standards for personal conduct will lower standards for all; Expectations that LGBT personnel will be discrete most of the time; Need for additional legal support and counseling services; Expected increases in sexual misconduct incidents.

- a) Will implementation plans permit consensual sexual relationships off-base but not on-base? If so, how would that inconsistent policy *not* undermine military discipline?
- b) If rules regarding sexual misconduct are supposed to apply equally, how will officials define “partners” or “committed relationships” for purposes of recognition, benefits, etc.?
- c) What is the estimated annual increase in the number and costs of misconduct cases, to include male/male and female/female incidents?
- d) Will regulations forbid or punish passive/aggressive behavior that creates a “hostile work environment” conveying an unwelcome message suggesting same-sex attraction?
- e) Will authorities consider the complainant’s attitudes to be possibly biased against LGBT personnel, and if so, would that determination be reason to disregard the complaint?
- f) Will regulations protect the rights of personnel who are falsely accused of harassment or worse, regardless of the gender of both parties?

- g) What recourse will subordinates have if an LGBT superior commander makes unwanted advances, and will they receive respect and supportive legal assistance if they come forward?
- h) How will military commanders resolve “he said/ he said” and “she said/she said” accusations regarding alleged same-sex misconduct?
- i) Will the DoD publicly report the number of sexual misconduct incidents, both consensual and non-consensual, to include information regarding the sexual orientation of all parties?

**Issue No. 4: LGBT Training and Corollary “Zero Tolerance” Policies**

**Topics:** The military services’ mandatory “three-tiered” education program to change attitudes and opinions on implementation of the new LGBT law and policy; Career consequences of dissent.

- a) What training programs are officials using to prepare men and women for routine personal exposure to others who may be sexually attracted to them? (Provide written materials, PowerPoints, sources, consultants, vignettes, and curricula.)
- b) What type of additional training will officials use to overcome resistance to the LGBT law/policy in close combat units and submarines? (Provide the same materials and curricula.)
- c) What type of LGBT training will be required for family members and children in DoD support programs, schools, and child care centers? (Provide the same materials and curricula.)
- d) Will authorities provide alternative options such as school choice vouchers for military families who object to LGBT curricula in classrooms and extra-curricular activities?
- e) What types of disciplinary measures and penalties will apply to personnel who object to training that promotes acceptance of LGBT law and policies?
- f) What disciplinary policies will apply to military personnel who write books, articles, letters, or website statements that question or are critical of LGBT law and policies?
- g) Will military service academies and war colleges

be allowed to invite presentations by civilian guest lecturers who do not support LGBT law and policies?

**Issue No. 5: Military Effectiveness and Unit Cohesion**

**Topics:** Claims in the CRWG Report that “*leadership, training, and education*” are the answer to all expected problems, Claims that “*risks*” can be “*mitigated*” by employing the CRWG’s own unrealistic plans; Cohesion with foreign troops hostile to homosexuality.

- a) If LGBT personnel in the same or different chains of command are permitted to date or to live with each other as “partners,” how would fraternization rules *not* be weakened for all?
- b) What options will individuals in a given unit have when they are aware of problems associated with LGBT conduct, whether consensual or non-consensual?
- c) How will commanders restore discipline and horizontal cohesion when individuals in a given unit *do* or *do not* report problems associated with LGBT conduct, due to concerns about retaliation by peers or by superiors?
- d) How will military commanders restore horizontal unit cohesion when exclusive emotional/romantic bonds between LGBT personnel interfere with unit cohesion?
- e) If commanders find it necessary to remove personnel from close combat units due to breakdowns in cohesion and discipline, where will replacement troops come from?
- f) What recourse will subordinates have if they perceive that officials are reluctant to correct problems related to LGBT law and policies, due to possible retaliation and career repercussions?
- g) How will commanders respond when same-sex relationships between persons of different rank, in the same or different chains of command, disrupt vertical unit cohesion?
- h) How will evaluation systems correct apparent bias when LGBT commanders show favoritism

that condones questionable behavior by LGBT subordinates?

- i) With the ACLU standing ready to file lawsuits, who will defend local commanders who try to preserve discipline and morale by protecting sexual privacy, or by suggesting that LGBT personnel should not reveal their sexuality?
- j) How will commanders protect cohesion in teams that are assigned to train foreign troops in countries where severe punishment or death are penalties for homosexual conduct?

### **Issue No. 6: Religious Liberty for Chaplains and People of Faith**

**Topics:** Punishments for “resistance” and “zero tolerance” of disagreement; Dilemmas for chaplains in religious, training, and social activities; Inconsistent guidelines that “chill” religious speech; Lack of religious liberty protections; Defense Department Working Group report misrepresentations and disregard for credible advice from religious and chaplain leaders; Numbers of chaplains expected to leave or be forced out of service.

- a. Will chaplains of all faiths face career penalties if they defer the duty to perform same-sex marriage ceremonies or to conduct LGBT diversity/acceptance training to someone else?
- b. Will chaplains of all faiths be required to hire LGBT assistants for religious ministry, or to conduct religious services with LGBT clergy?
- c. Will chaplains of all faiths be required to conduct diversity training programs that present LGBT conduct as equivalent to heterosexual conduct?
- d. Will chaplains be subject to career penalties for making statements in any training program or role that expresses support for the traditional (opposite sex) definition of marriage?
- e. What will the Defense Department position be with regard to legal exemption provisions to protect religious freedom for chaplains and service members?
- f. Will chaplains, visiting clergy, lay people, and/or Boy Scout troops who disagree with LGBT

policies be allowed to participate in lectures and public events on military bases?

- g. What is the estimated number of chaplains who are likely to decline re-enlistment, or to receive career-ending penalties, due to disagreement with LGBT law and policies?

### **Issue No. 7: Sustaining Recruiting and Retention in the All-Volunteer Force**

**Topics:** CRWG survey results indicating strong opposition and potential losses among close combat troops; No credible evidence of improved recruiting; Flawed reliance on theories, not actual experience and credible advice like that represented by 1,167 retired flag and general officers who signed a formal statement supporting the current law.

- a) Where is the credible evidence that allowing gays and lesbians to serve openly would *improve* recruiting or propensity to serve in the military?
- b) Where is the credible evidence that gays and lesbians serving *openly* would *increase* support for military service among parents and others who influence potential recruits?
- c) Referencing survey results, what is the estimated number of close combat troops who are likely to decline re-enlistment or consider ending their careers if LGBT law/policies are implemented?
- d) Referencing survey results, what is the estimated number of losses if 12% of families decline re-enlistment and leave short of full careers if LGBT law and policies are implemented?
- e) Will exit interviews include specific questions seeking opinions on the effect of the LGBT law and associated policies on the service member’s decision to leave?

### **Issue No. 8: Family, Social, and Medical Concerns**

**Topics:** Conflicts with the Defense of Marriage Act (DOMA), which the administration will no longer defend as constitutional; Benefits for same-sex couples; Status and benefits for transgendered recruits and personnel; Dress codes, social behavior, and housing arrangements; Potential litigation;

Health risks and benefits for HIV+ personnel.

- a) Since the administration will no longer defend DOMA in court, on what basis would the services deny housing and benefits for same-sex couples on military bases?
- b) Given the administration's new argument that "sexual orientation" demands "heightened" scrutiny in court, how will the Defense Department define and accommodate same-sex "committed partners?"
- c) With the ACLU standing ready to file lawsuits, what will the position of the Defense Department be on adoption of unrelated children, and on medical and other benefits for surrogate mothers hired by same-sex couples?
- d) What will Defense Department policy be with regard to military living quarters for same-sex couples, with or without official status?
- e) Will the Defense Department authorize or require housing, medical, family separation and education benefits for same-sex partners, with or without official status?
- f) What are the estimated costs of extending housing, medical, family separation and education benefits to LGBT partners who *do* or *do not* have officially-recognized status?
- g) What will the DoD policy be with regard to military transportation access and benefits for LGBT partners who *do* or *do not* have officially-recognized status?
- h) Will LGBT personnel serve as coaches, teachers, and counselors for family-oriented military events involving children, including sports?
- i) What will Defense Department policy be regarding family or adult-oriented social events and dinners, to include codes for acceptable male and female attire?
- j) Will military bases sponsor special "LGBT Diversity Day" events comparable to White House observances of June as "LGBT Equality Month" in 2009 and 2010?
- k) Will recruiters be required to induct transgendered persons or individuals who desire "gender reassignment" treatment and surgery? If not, what would the legal rationale be?
- l) What will Defense Department policy be with regard to military medical services and medications for gender-transitioning personnel, to include hormone treatments and surgery?
- m) What will Defense Department policy be with regard to military uniform differences, exceptions, or alterations for persons transitioning to a different "gender assignment?"
- n) What will Defense Department policy be with regard to the housing of transgendered biological males living with females, and vice versa?
- o) Will a male who reports for duty in a regulation female uniform, or a woman in a man's uniform, be considered appropriately dressed? If not, what would the legal rationale be for discriminating against them?
- p) Will the services allow cross-dressing men to wear male uniforms on-base, but female clothing off-base? If not, what would the rationale be ?
- q) Will LGBT individuals or couples be allowed to participate in social events dressed in ways that express their sexuality, in the same way that women dress to please men?
- r) What is the estimated medical cost of continuing mandatory policies that exempt HIV+ personnel from deployment overseas, while retaining them in the military for as long as they are able?
- s) Based on CDC reports and expected increases in male homosexual servicemembers, what is the estimated annual number of personnel likely to become HIV+ and therefore non-deployable?
- t) If servicemembers become infected with HIV due to blood transfusions, or the failure of a partner to admit HIV + status or to take precautions, will that be considered a service-related disability eligible for benefits?

## **Issue No. 9: Anticipated Revisions in Military Law and Regulations**

**Topics:** Expected official acceptance of “legal” homosexual acts; Conflicts between the LGBT law/policies and UCMJ provisions regarding personal conduct; Proposed changes in the UCMJ to achieve “equality” in personal conduct regulations; Pending litigation.

- a) What will the position of the Defense Department be with regard to repeal of Article 125 of the UCMJ, which forbids sodomy, the conduct that defines homosexuality?
- b) What will the position of the Defense Department be with regard to repeal of provisions in the UCMJ that regulate other types of consensual behavior, including adultery?
- c) What recourse will subordinate personnel have if they are aware that LGBT superiors are engaging in personal conduct that violates provisions of the UCMJ, to include protection against retaliation?
- d) How will the granting of retroactive promotions, pay, and other benefits to otherwise-qualified formerly-discharged homosexual individuals—most likely court-ordered— affect the morale of others?
- e) How will the currently denied but politically-correct, inevitable use of “diversity metrics” to achieve significant numbers of LGBT personnel in higher-ranked positions affect the morale and retention of others who are displaced?

## **Bottom-Line Questions**

- a) How will the consequences of this social experiment be evaluated—not just in terms of “diversity,” but in terms of military necessity?
- b) Given the wide array of complex, unresolved issues and questions surrounding repeal of the 1993 law, plus negative official survey results and 2010 Senate testimony calling for “mitigation” of avoidable problems with no benefits in return, how can designated officials honestly “certify” that repeal of the law will not undermine “*military effectiveness, unit cohesion, recruiting and readiness*” in the All-Volunteer Force?
- c) How will this unprecedented social experiment benefit or *improve* our military?



- f) Will the Defense and Justice Departments permit federal judges to effectively make policy for the military, due to unchallenged Ninth Circuit rulings in the *Witt* case?

## **Issue No. 10: Other Arguments for Repeal**

**Topics:** Differences between American and foreign militaries; Number of discharges for homosexual conduct compared to potential losses of heterosexual personnel; Misrepresented survey results.

- a) Which allied nations shoulder the same burdens as the American military in terms of force strength, responsibilities to engage in offensive combat, long deployments, etc.?
- b) Do potential *adversaries*, such as China, N. Korea, and Iran, accommodate professed LGBT personnel, and accept the associated burdens of LGBT law and policies?
- c) Do Middle Eastern allies approve of the imposition of LGBT law/policies in small military training teams in regions that severely punish adult homosexual conduct?
- d) Why should the military trade the small number of homosexual personnel losses (less than 1%) for the significant losses, both voluntary and involuntary, projected to result from LGBT law and policies?
- e) Why did the CRWG misrepresent an innocuous survey question about personal friendships, falsely implying that 70% of troops favored repeal of the law?

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*Nothing in this informational document should be construed as support for or opposition to legislation. The Center for Military Readiness (CMR) is an independent public policy organization that specializes in military social issues.*

*More information is available at [www.cmrlink.org](http://www.cmrlink.org).*