

## **DoD Plan for Implementation of LGBT Law for the Military**

### **Part Two – House Armed Services Committee Hearing – April 7, 2011**

#### **Background and Overview**

The April 7 hearing of the full House Armed Services Committee, chaired by **Rep. Howard P. “Buck” McKeon**, revealed many reasons why the Obama Administration cannot in good conscience “certify” that no harm would come to the military if the 1993 law regarding gays in the military finally is repealed. The four military service chiefs who testified delivered scripted, consistent messages, but admissions, confusions and contradictions in their statements made the case for more independent oversight and hearings in the 112<sup>th</sup> Congress.

During this and a previous hearing of the Personnel Subcommittee on April 1, administration witnesses and military leaders primarily focused on the three-tiered training program to implement repeal of the 1993 law, mislabeled “**Don’t Ask, Don’t Tell.**” This would occur 60 days after President **Barack Obama**, Defense Secretary **Robert Gates**, and Joint Chiefs Chairman **Adm. Mike Mullen** “certify” that repeal would do no harm to the military.

The **Repeal Implementation Plan (RIP)** training program, which permits no dissent on the repeal issue itself, promotes acceptance of what should be called the **LGBT (lesbian, gay, bisexual, transgender) law** for the military. As Rep. Alan West noted during an April 1 hearing conducted by the House Armed Services Personnel Subcommittee, the plan departs from the tradition of conforming new recruits’ behavior to the Army. Instead, in this case, the Army is being forced to change its culture to accommodate a behavior.

**The DoD witnesses claimed “success” for the program due to the lack of dissent—even though dissent is and never was an option.** It is not surprising or particularly significant that military personnel worldwide have been dutifully sitting through mandatory PowerPoint presentations. No one predicted mass resignations overnight, or disappointed Marines handcuffing themselves to the White House gate.

**Military personnel, from the service chiefs on down, are obligated to follow civilian orders.** This reality increases the responsibility of the **112<sup>th</sup> Congress** to exercise careful oversight by asking questions and taking action to protect military effectiveness and the well-being of the troops. The HASC hearings and written inquiries in April 2011 took solid steps in the right direction, but a host of major issues remain unresolved.

The 112<sup>th</sup> Congress Armed Services Committee deserves praise for having two hearings with witnesses affiliated with or under the command of the administration. To continue the process of responsible oversight, the committee should hear from independent witnesses who can analyze testimony already given, and present concerns about issues that the previous hearings did not address.

## **Summary of DoD Implementation Plan: Generals and Admirals Hope, Junior Officers Cope**

In December 2010 the lame-duck 111<sup>th</sup> Congress rushed to pass open-ended legislation to repeal the 1993 law, **Section 654, Title 10, U.S.C.**, with delayed implementation. Some defeated legislators, and senators who ignored their earlier promises to hold hearings on the results of the Pentagon's "**Comprehensive Review Working Group**" (CRWG) report, voted for the "privileged" fast-track bill before the House had a single hearing on the DoD report.

During the April 7 hearing, a number of Republicans asked respectful questions that repeatedly revealed deep flaws in the Repeal Implementation Plan. The following summary highlights significant testimony from the hearing. Quotations are approximate; a transcript is not yet available. Some responses are in bold for emphasis, and comments on each topic are in italics.

### **1. Witnesses Unable to Claim Any Benefits From Final Repeal**

None of the Pentagon officials and four-star officers who testified were able to make a single positive argument for repeal of the law in terms of military necessity. Nor did they respond to the specific inquiry made by Chairman McKeon in an [April 4 letter](#), "[H]ow would implementation of repeal of Don't Ask, Don' Tell improve morale, unit cohesion, good order, discipline, recruiting and retention, and ultimately combat readiness in the military?" (emph. in original)

Chairman McKeon and Personnel Subcommittee Chairman **Rep. Joe Wilson** were justifiably critical of the previous Congress' rush to repeal. Rep. Wilson instructed the Chiefs of Staff to make every effort to look into factors such as readiness and cohesion, since the previous Congress had failed to do so. During the hearing, **Rep. Duncan Hunter** said on the record, "**I want to know how repeal increases combat effectiveness.**" Responses, non-answers and equivocations from the Pentagon revealed disarray and doubts about the Implementation Plan.

- **Army Chief of Staff General George Casey**, in an April 6 letter: "...I believe it is too early to say what the impact on implementation of the repeal of DADT will have on our morale, unit cohesion, good order, discipline, recruiting and retention in the Army."
- **Army Vice Chief General Peter W. Chiarelli** (standing in for Gen. Casey) **In his opening statement, the general did not answer the question about improving the force.**

Instead, Gen. Chiarelli admitted that the Army has not completed enough training to say repeal of the law doesn't come with some risk to readiness. In response to Rep. Hunter, Chiarelli added, "As I mentioned earlier, **we don't know yet how it's going to affect combat readiness...but as we work this out over time, inclusive organizations are usually the best kinds of organizations.** [HASC Video, at approx. 89:00]

**Note:** *In November 2009, in the aftermath of the **Fort Hood** shootings by self-proclaimed jihadist **Maj. Nidal Hasan**, Army Gen. Casey made a controversial statement*

*reflecting the same misplaced priorities: “Our diversity, not only in our Army, but in our country, is a strength. And as horrific as this tragedy was, **if our diversity becomes a casualty, I think that’s worse.**”*

- **Marine Commandant General James Amos: In his prepared testimony Gen. Amos did not answer the question about improving the Marine Corps.**

When questioned by Rep. Martha Roby, Gen. Amos replied, “**Maam, I can’t tell you at this point... [W]ill it improve recruiting, retention, and combat effectiveness? I can’t address that because I don’t know.**” [74:00] And in response to Rep. Hunter: “**[It is] too soon for me to tell—some of this will become evolutionary, revealed over time...I think it will increase peace of mind for a portion of our Marine Corps that is gay and lesbian.** [90:58]

**Note:** *The majority of military personnel should not have to shoulder heavy burdens just to give “peace of mind” to a minority of persons who joined the military despite ineligibility requirements set by Section 654, Title 10, U.S.C. The CRWG report included but downplayed troubling findings in the Defense Department’s official survey of the troops: “Nearly **60%** of respondents in the **Marine Corps** and in **Army combat arms** said they believed there would be a negative impact on their unit’s effectiveness in this context; **among Marine combat arms the number was 67%.**” (p. 74)*

- **Chief of Naval Operations Admiral Gary Roughead: In his prepared testimony, Adm. Roughead did not answer the question about improving the Navy.**

Instead, Adm. Roughead stressed the *process* of training, claiming that at best, “...Combat effectiveness is what we provide the nation and **repeal will not change** who we are or what we do.”

In response to Rep. Hunter, Adm. Roughead focused on a small minority of homosexual sailors, “We won’t have sailors, because of their orientation, always looking over their shoulder.” Rep. Hunter: “**Do you think Navy SEALs’ combat effectiveness will improve after repeal?**” Adm. Roughead, again focusing only on the politically-favored minority: “I believe that we will see great young sailors, who perhaps otherwise would not serve, able to serve.”

**Note:** *Considering the potential cost in terms of morale, “no change” does not meet the burden of proof that ought to be met by the advocates of radical change. Admiral Roughead’s reliance on “**Master Mobile Training Teams**” was not convincing. Untold hours of training have not resolved chronic disciplinary problems in the military services over decades. In the Navy, for example, more than one ship captain or commanding officer per month has been removed from command, usually due to sexual misconduct issues. . In the same week that Adm. Roughead testified, Navy Times reported, “**Sex Assault Reports Rise; Young Sailors Most at Risk.**” (Apr. 4) Fifteen percent of the reported victims in FY 2010 were male.*

- **Air Force Chief of Staff General Norton A. Schwartz**: In his prepared testimony Gen. Schwartz did not answer the question about improving the Air Force.

Instead, General Schwartz also stressed the training *process*, and claimed, at best, “Air Force implementation of the repeal...[will] ensure that there is **minimal impact to military readiness**. In answer to Rep. Hunter, Schwartz added, “I agree with that “peace of mind” [comment] **regarding people who would otherwise have to depart...[This] potentially increases the recruiting pool – we will have to see.”**

**Note:** *Gen. Schwartz’ testimony did not meet the burden-of-proof test. There is no credible evidence to support positive speculation about recruiting, especially when potential minuscule gains are balanced against potential losses of combat troops predicted by the DoD Survey.*

**Concluded Rep. Hunter: “I think we heard [all of you] don’t know whether repeal will increase combat effectiveness yet.” (89:00)**

**Representatives Mike Coffman, Vicky Hartzler, Martha Roby, Scott Rigell, Austin Scott, Rob Wittman, Todd Akin, and Trent Franks** also asked how repeal would improve military effectiveness, to no avail.

*Chairman McKeon and other members of the HASC were not asking about the efficiency of PowerPoint presentations. They were asking about factors that sustain our All-Volunteer Force, and how repeal would improve those factors. If training programs alone were guarantors of success, the various services would not be struggling with chronic problems related to human failings and feelings in matters involving sexuality.*

*Almost every week, Military Times newspapers reports sensational cover stories about various disciplinary problems, both voluntary and involuntary. These stories underscore the fact that decisions on matters involving human sexuality should be based on empirical evidence, defined as actual experience, not speculation and best-case-scenario theories.*

***Left unexplained: Why are leaders of the armed forces condoning a policy change that will create conditions conducive to more indiscipline, not less?***

## **2. No Rationale for Adding “Moderate Risk” to the Inherent Risks of War**

In his statement, Gen. Chiarelli reaffirmed Gen. Casey’s previous Senate testimony that repeal would pose “**moderate risk to military effectiveness** and the long-term health of the force.” Rep. Vicky Hartzler asked, “**When have you suggested a change in policy before that would put our men and women at “moderate risk?”** Gen. Chiarelli claimed that the Army’s “training package” would “mitigate risk” and drive it down, but Ms. Hartzler again asked when the services had imposed such risks before.

*Generals Schwartz and Amos, who seemed to have missed the point of her question, observed that war itself puts military men and women at risk. These gratuitous comments, which did not answer Rep. Hartzler's question, were condescending as well as unresponsive.*

Rep. Hartzler noted the distinction between the military doing its job—detering or waging war—and knowingly creating a policy that elevates the risks of warfare even more. She expressed “utmost respect” for the witnesses, and challenged them directly:

**“You are the last force that could stop this onerous policy. And I have to believe... you know this is not the right thing. I appreciate the chain of command...but there is an opportunity to not certify this, and it's fallen upon you at this time in history, to be able to give the final say to the Secretary of Defense and to Adm. Mullen, whether you...believe this is going to improve our forces from this time on out, and help us win wars. I ask you to consider this...and that you would not certify this.”**

### **3. Status and Rights of Chaplains Unclear**

Rep. Hartzler and others asked whether chaplains would face career penalties if they defer performing same-sex marriage to others. Gen. Schwartz replied, “No ma'am – We expect our chaplains to minister to all, but in those activities that are specific to denominations, they can practice as they see fit.”

The DoD has claimed that existing guidelines for chaplains are adequate, and that chaplains need only treat everyone with “dignity and respect.” The question remains, when someone complains about the expression of views regarding homosexual conduct, who will define the meaning of “respect?”

Rep. Hartzler asked whether chaplains would have to hire ministry assistants who openly engage in homosexual conduct, or suffer career penalties for failure to do so. Gen. Schwartz denied that they would, and said, “Again, we have not experienced any of the ecclesiastical agencies withdrawing endorsement of their chaplaincies and so to date that has not been an issue, Ma'am.” [67:50]

*Gen. Schwartz's answer was equivocal and his conclusion was misleading. The issue isn't whether endorsers are withdrawing chaplains at this time, but **whether chaplains are going to be pressured and discriminated against if they provide formal or informal counseling on this subject at times and in places other than worship services.***

In answer to a question from Rep Wilson about guidelines for chaplains, Adm. Roughead said that the Chief of Chaplains was involved in the development of training. Wilson asked about possible retaliation against those who express disagreement with policy. Adm. Roughead acknowledged the challenge for those who have moral objections, adding the circular argument that they would still be able to seek guidance from the Chaplain Corps. **“That said, any expression that goes beyond the norms of the normal decency and respect for one another, that's a line that I think could be crossed.”** [86:32]

*Since the DoD is in the process of redefining what some would call “norms of decency” are, the comment is not reassuring to chaplains and people of faith with traditional values. LGBT activists consider any form of verbal dissent to be “disrespectful” or worse. Chaplains are not expected to endorse or condone*

*other behaviors that their tradition considers to be immoral, but under LGBT law and policies for the military, comments regarding homosexual conduct clearly would be chilled.*

In written responses to the Personnel Subcommittee, Under Secretary of Defense for Personnel and Readiness **Dr. Clifford Stanley** said that chaplains would not be required to change their views on the issue of homosexuality, and would be free to address that issue **within the context of worship services**. This did not resolve questions about religious freedom and First Amendment rights to provide faith-based counseling and discussions about homosexuality outside of the chapel. At the April 1 hearing, Dr. Stanley essentially admitted that **there are no guidelines for chaplains on this point**.

#### **4. No Objective Means to Evaluate Recruiting, Retention, or Readiness**

Rep. Joe Wilson asked whether there would be more surveys to gauge opinion on the implementation plan. Rep. Wittman asked how the witnesses would evaluate implementation, and how the results would affect their willingness to certify repeal. Rep. Franks inquired about the military service chiefs' efforts to ascertain the effects of repeal on readiness.

Gen. Schwartz said they would not be doing a survey like the one done in 2010, but there "certainly will be an aggregation of information through the command chains and other normal reporting mechanisms, to give us the situational awareness we need to give our recommendations to the chairman..." He added that there are "18 measures to ascertain readiness," which are monitored continually. Gen. Amos agreed, saying that at the squad level Marines know what readiness is, and he did not expect to see a drop in it.

*Several times the witnesses said they would rely on "climate surveys" and inspector general reports to gauge the success of implementation. These mechanisms, however, are not set up to report on issues involving sexual orientation. Nor will data regarding sexual orientation be included in future climate surveys or inspector general reports. In answer to a question Gen. Amos confirmed that exit surveys would not ask departing Marines about the effect of the new policy on their decision to leave.*

*The official DoD plan amounts to " **We Won't Ask Because We Don't Want to Know.**"*

In written responses to Rep. Wilson prior to the subcommittee hearing, Dr. Stanley wrote, "Sexual orientation is a personal and private matter. **DoD components are not authorized to request, collect, or maintain information about the sexual orientation of Service members** except when it is an essential part of an otherwise appropriate investigation or other official action." (03/30, p. 2)

***Dr. Stanley's conflicted policy simultaneously treats "sexual orientation" as hyper-sensitive on one hand and of no consequence on the other. The inconsistency makes no sense, except in terms of political expediency. Demographic research that is routinely gathered and tabulated in many categories; e.g., age, sex, race, religion, ethnic background, etc., should include information about sexual orientation, whether repeal is certified or not. Without that information, objective evaluation of LGBT policies would not be possible.***

## **5. Recruiting and Retention At Risk**

Rep. Martha Roby asked, “**How would [repeal] improve the standards of our military effectiveness, unit cohesion, recruiting, and retention, for our military?**” General Amos replied, “**I can’t address that because I don’t know.**” [74.00] Both Rep. Roby and Rep. Scott mentioned servicemembers who had expressed their intent to resign in light of repeal. Gen. Amos said he expected that some of the 220,000 Marines might turn letters in, but “[T]he fact that they’re uncomfortable at this point, or want to resign, doesn’t necessarily mean that they’re going to be allowed to resign.”

*Of course, Marines cannot resign unilaterally and walk away. No one has predicted mass resignations overnight. But military service should not operate like a lobster trap. Some DoD officials seem to be forgetting that we have an All-Volunteer Force. Military chiefs of staff have power, but absent a draft they cannot order potential recruits to join or experienced personnel to extend their contracts.*

Generals Schwartz and Chiarelli agreed that it was premature to make judgments about recruiting or retention, but Adm. Roughead seemed unconcerned because too many people want to stay in the downsizing Navy. With the economy weak that is not surprising, but long-term difficulties in manning an overworked force are not so easily dismissed. [76:20-77:47]

*The CRWG cited a **RAND** report predicting a 7% drop in likelihood to enlist if current policy were repealed, but cited better results from a reworded poll that dropped the word “openly” from an inquiry about gays and lesbians serving in the military. (pp. 107-108) RAND’s claims were highly misleading, since omission of the word “openly” changed the question significantly.*

*The DoD report further claimed that current strong recruiting numbers will continue due to the weak economy, and claimed that a policy of not asking applicants about their sexual orientation—a “**mitigation measure**” amounting to a new version of “**Don’t Ask, Don’t Tell**”—would help to sustain recruiting numbers. (p. 108) Both of these short-sighted expectations, based on flawed assumptions and manipulated surveys, put the All-Volunteer Force at risk.*

***No one has made a credible claim that LGBT law and policies would improve recruiting or retention in the All-Volunteer Force.***

## **6. Pressure + Political Correctness = Misperceptions + Mistakes**

During the hearing several of the witnesses referred to their reliance on “feedback” from field commanders and the troops in response to a training program that is progressing smoothly. But the absence of visible protest at this time proves nothing—What did the chiefs expect? Junior officers or field commanders who express a contrary view risk destroying their careers.

Breakdowns in communication can lead to blind-sided mistakes. This danger seemed lost on Gen. Schwartz, who responded to a question from **Rep.Chellie Pingree** about an alleged

incident showing inappropriate disagreement with the training: **“If you have information about an airman who is not on board, I would like to know about it.”**

Words such as this intimidate subordinate commanders, creating the potential for communication breakdowns about problems that should be reported and acted upon.

**Rep. Allen West** expressed concern about subordinate commanders worrying about political correctness—a situation that led to tragedy at Fort Hood when commanders at Walter Reed failed to do something about Army Maj. Nidal Hasan, the jihadist in their midst.

Rep. West emphasized that the military exists to fight and win wars, and that it holds its members to objective standards (height, weight, physical fitness, etc.) that everyone must meet without exception in order to serve that mission. Military standards are different than civilian ones. **He stressed that there *cannot* be retribution by special interest groups against commanders for honest assessments given by those commanders.**

## **7. Privacy Concerns Remain Unresolved**

**Rep. Mike Coffman** criticized what he perceived as a lack of honesty in the CRWG process, and noted that the DoD was slow to provide him with specific data about the views of combat troops in the 2010 Survey. [95:40] Coffman expressed concern about the Pentagon’s apparent decision to disregard the risks of injecting sexuality into close combat units, and added, “This is not a military decision; **it’s a political decision.**” In particular, he asked about Marine infantry troops, and whether the person requesting a change in quarters would be accommodated. Gen. Amos said that individuals would be, but each case would be different. [108.21]

*The problem is that there is no plan to lend support to local commanders who want to make alternative arrangements, leaving them vulnerable to potential litigation or perceived pressure from above would have the same intimidating effect. In fact, the CRWG Implementation Plan explicitly “prohibit[s] the creation of separate bathroom and shower facilities based on sexual orientation.” (p. 18) The recommendation’s rationale reflected more concern for the LGBT minority than “respect” for the views and sensitivities of the majority.*

**Rep. Scott Rigell** asked about privacy concerns of Marines ordered to share close quarters with openly gay personnel on a constant basis. How would platoon commanders be instructed to handle problems in close berthing accommodations? (104:00) Gen. Amos said that Marines bunk in twos, and there will be no provisions for separate facilities. He expressed confidence that local commanders could resolve all problems regarding sexual privacy by looking dissenting Marines in the eye and enforcing compliance.

*Testimony on this and similar matters boils down to this: **Generals hope, junior officers cope.** This is not “leadership;” it is abdication of responsibility for subordinates. Junior officers should not be burdened with unnecessary dilemmas for which senior leaders have no answers.*

**Rep. Steven Palazzo**, who said he felt like Sam Houston when he arrived at the Alamo after its destruction, said that the 111<sup>th</sup> Congress' should not have hastily passed the policy in the lame-duck session. Noting the strong opposition from combat troops indicated by the survey, Palazzo said it is a disservice to tell people who have made great sacrifices to just leave if they are dissatisfied. [98:00]

While expressing respect for the military service chiefs, he cautioned that their legacies might be judged by their decision regarding certification. **He added that he did not envy the witnesses, and hoped that they would not agree with certification of a bad policy.**

### **Conclusion**

*The Department of Defense and witnesses charged to implement plans for repeal of the current law have failed to make a single credible argument for repeal in terms of military necessity. Nor did they ask the fundamental question put to them by Chairman McKeon and several other members: **How would this change improve combat effectiveness and the All-Volunteer Force?***

*Pentagon officials' reticence on this critical point suggests an undeniable conclusion: Seriously adverse consequences would ensue from implementation of LGBT law and policies in our military. **The administration, therefore, cannot provide "certification" to the contrary.***

*The rush to repeal the 1993 law in the lame-duck session of the 111<sup>th</sup> Congress was a disservice to men and women who volunteer to serve. In December 2010 there were no comprehensive Senate hearings to examine the report of the DoD Working Group, and none at all in the House. Given the many incomplete or unsatisfactory answers already heard and the number of issues still not addressed, members of the 112<sup>th</sup> Congress should call on President Obama to reconsider his intent, in order to allow time for a more careful review.*

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This analysis has been prepared by the **Center for Military Readiness**, an independent public policy organization that specializes in military/social issues, in consultation with other organizations affiliated with the **Military Culture Coalition**. More information is available at [www.cmrlink.org](http://www.cmrlink.org) and [www.militaryculturecoalition.com](http://www.militaryculturecoalition.com).