

DoD Plan for Implementation of LGBT Law for the Military

Part One — Relevant Admissions, Omissions, Confusions and Contradictions

Background and Overview

On April 1, 2011, Under Secretary of Defense for Personnel & Readiness **Clifford L. Stanley** and **Vice Adm. William Gortney** testified before the House Armed Services Personnel Subcommittee. Significant admissions in their testimony and written responses prior to the hearing undermine the Defense Department's claims that the **Repeal Implementation Plan (RIP)** is proceeding smoothly and implementation will do no harm to the military.

These are highlights of key points that should be explored by the full House Armed Services Committee, addressed in seven subject areas addressed at the April 1 hearing. Quotations from that hearing are approximate, since a transcript is not yet available. Some responses are in bold for emphasis, and comments on each topic are in italics.

1. The DoD Admits that Most Findings in the Original Law Are Still Valid

In response to 49 written questions from HASC Personnel Subcommittee Chairman **Joe Wilson**, Secretary Stanley sent twenty pages of comments. Chairman Wilson asked whether findings in the current law are no longer valid, and if they are valid, what is the justification for moving ahead with repeal?

In his response, Dr. Stanley made a significant admission: **"In my view, findings 1 through 12 remain valid.** Thirteen and 15 do not." (Stanley,03/30, p. 1)

The findings in question are indeed sound. Final action to abolish findings 1-12 and 14 would leave no guidance on a number of critical policy decisions. Finding #9, for example, makes it clear that rules of conduct apply constantly, 24/7, on- and off-base, for as long as a person remains in the military.

It would seem that if we've "moved on" from sensitivity about sexual orientation, the DoD could just recognize that fact, instead of going to great lengths to teach that theory as fact. Dr. Stanley did not answer Chairman Wilson's question about justification for repeal. Nor did he explain why if there is no constitutional right to serve in the military (Finding #2), it is necessary to abolish Finding #13 and #15, the only two that mention homosexual conduct.

2. Witnesses Unable to Claim any Benefits from Final Repeal

Chairman Wilson asked the DoD: "How would implementation of repeal improve standards of military readiness, effectiveness, unit cohesion, and recruiting and retention in the military?" **Rep. Vicky Hartzler** pressed witnesses Stanley and Gortney on this point, asking, "How will repeal improve the military mission?"

Sec. Stanley responded: **“We don’t know.** But at least people won’t have to ‘lie,’ and we may keep some skill sets of service members who left under DADT.” Adm. Gortney gave an equivocal answer, claiming, **“This change will not impact our ability to win.”**

It is significant that when the witnesses were given two chances to articulate an affirmative, strong case for how repeal will improve military, they could not do so. Nor did Dr. Stanley’s written responses point to a single benefit to the military from repeal. VADM Gortney’s answer, if anything, indicated that he didn’t believe repeal would benefit or improve the military. Dr. Stanley’s “skill sets” answer focused only on a minority of persons who, under current law (Section 654, Title 10, USC), are not eligible to join the military. His answer ignored how many more “skill sets” could be lost because of the repeal.

3. DoD Policies Would Disrespect Personal Privacy

During the second round of questioning, **Rep. Mike Coffman** asked how the military plans to address the Marines’ concerns about forcing heterosexuals to share berths with homosexuals. Dr. Stanley confirmed, **“We’re not going to do separate berthing.”** Following up on Rep. Coffman’s questions, Rep. Hartzler called attention to an obvious inconsistency in the Pentagon’s position: *Women* are not forced to share showers and private living quarters with *men*. Such arrangements respect the privacy of all personnel, with no implication of bias against one or the other.

VADM Gortney admitted that the separation of the sexes is done to protect **“good order and discipline”** and that, without it, **sexual attraction** would inevitably harm that interest. Secretary Stanley again tried to distinguish separate billeting by noting that gender is public but sexual orientation is private.

*As Rep. Hartzler observed, however, the “personal and private” response is a red herring. Gender alone is not the basis for segregated berthing/showers. All “gender” means, apart from sexual attraction, is physical appearance. But the military does not accept the complications and expense of separate facilities simply because men and women look different. Rather, as VADM Gortney admitted, **it is because sexual attraction inevitably harms good order and discipline if separate facilities are not provided.***

“Sexual attraction” is the same thing as “sexual orientation.” Thus, what the military already knows about sexual attraction means that repeal without provision of separate facilities will create what is usually called a “hostile work environment,” harming good order, discipline, and morale. The President, Secretary of Defense and Chairman of the Joint Chiefs of Staff cannot certify otherwise. The military’s obvious and compelling interest in preserving good order and discipline runs contrary to the notion that disregarding sexual attraction would not undermine good order, discipline, and morale.

The DoD has suggested that some commanders may be able to make adjustments on a “case-by-case” basis. When Rep. Coffman asked whether persons requesting berthing re-assignment

because of sexual orientation would be penalized, **VADM Gortney said that will “absolutely” not happen.** RIP materials do not identify any policies to ensure that reprisals would not occur.

4. DoD is Not Gathering Data to Evaluate This Unprecedented Social Experiment

Chairman Wilson asked the witnesses what objective and subjective measures were in place to ensure that repeal was being implemented in a manner that would do no harm to the Armed Forces. Dr. Stanley responded, “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)

The DoD compiles enormous amounts of demographic data tabulated in scores of categories; e.g., age, sex, race, religion, ethnic background, etc. If open and professed sexual orientation is henceforth not a matter of controversy, data relating to it should be no different.

In answer to a question about objective evaluation measures, VADM Gortney and Dr. Stanley said that 87 policy and regulation changes had been made, and a high percentage of training already has been completed. The witnesses also identified two subjective measures: (1) What commanders thought about military readiness, unit cohesion, and recruitment and retention, and (2) Feedback of leadership regarding the quality of the training materials and what those being trained were saying about it. During a later response to a question from **Rep. Chellie Pingree**, VADM Gortney said the military was “carefully looking for” certain “criteria” to detect any problems with repeal.

These responses are not consistent with the witnesses’ admissions that they are not gathering data on sexual orientation, especially since the word “criteria” has not been defined. It is a mystery how the DoD intends to evaluate the results of this unprecedented experiment.

Furthermore, DoD’s reliance on the number and speed of one-hour PowerPoint presentations is peculiar. This is like measuring whether a teacher is successful by asking whether she’s written a curriculum and handed out workbooks to the students, instead of whether the students can actually read, write, and do arithmetic after she teaches them. The refusal to test the policy by formal inquiry mechanisms is like saying that students are literate because they sat through a reading course—while refusing to ask them to read.

Rep. Hartzler noted that the DoD Working Group survey found that significant numbers of personnel, especially in the combat arms, may leave because of repeal. She asked how the Repeal Implementation Team (RIT) plans to measure retention issues formally.

Sec. Stanley said that commanders can do informal “climate surveys” of their troops, but service members cannot just leave because they signed a contract. VADM Gortney said that other militaries thought such problems would emerge when they homosexualized their militaries, but they didn’t.

*The answer is convenient but unverifiable because most “other militaries” that include homosexuals do not track such information either. At the March 18 RIT meeting at the Pentagon, DoD officials admitted that, while the military does ask service members why they retire, **they are not keeping any data on responses that cite repeal as a reason for retiring.** It appears that the DoD does not want it known that they are NOT tracking objective data regarding sexual orientation at all.*

5. The DoD is Still Evaluating and Apparently Without a Plan to Protect Religious Freedom

In written responses, Dr. Stanley said that chaplains would not be required to change their views on the issue of homosexuality, and would be free to speak to that issue within the context of worship services: “...adequate guidance [will apply] in relevant areas, apply[ing] uniformly to all personnel, and promot[ing] an environment free from personal, social or institutional barriers that prevent Service members from rising to their highest potential.” (03/30, p. 10) Secretary Stanley’s choice of words in the written response suggests that the review would focus on sexual minorities, not the chaplains or people of faith who have a constitutional right to exercise their religion.

The DoD has claimed many times that existing guidelines for chaplains are adequate. “In today’s military, people of different moral and religious values work, live and fight together. This is possible because they treat one another with dignity and respect. This will not change.” (03/30, p. 10)

The comment misses the point, since all groups representing chaplains who are concerned about this issue recognize and do not dispute the duty to minister to all, regardless of denomination and without discrimination. There would be a significant difference under the new policy, however, since chaplains who provide counsel on other matters, such as adultery, are not required to condone or endorse behaviors they consider immoral.

*It is fair to ask, how will the word “respect” be defined in actual practice? The **“Implementation Plan”** of the **DoD Comprehensive Review Working Group** admitted that on a number of issues affecting chaplains, **“Boundaries are not clearly defined”** (p. 80) and **“the dictates of a person’s conscience, religion, or personal philosophy cannot justify or excuse the disobedience of an otherwise lawful order.”** (p. 51) At the April 1 hearing, Dr. Stanley essentially admitted that **there are no guidelines for chaplains on this point.** He added that they are **“reviewing guidelines”** and the issue of specific guidelines is **“under review.”***

Since there are no guidelines, chaplains (and service members) are facing a significant chill on their free exercise of religion and speech. If you know there’s a cliff ahead of you but you don’t know where it is, you will stop walking forward. Similarly, chaplains who know that they can lose their ministries and their careers by saying the “wrong” thing in the “wrong” context will self-censor.

This problem will be worsened by the case-by-case, base-by-base approach to deciding whether a chaplain has “crossed the line.” Thus, for example, an overzealous commander in Fort Bragg (who faces punishment if he does not investigate situations “properly” and who has no guidelines to help him decide a politically-charged conflict) will end up chilling speech at Fort Hood. Chaplains everywhere will get the message that the word “respect” means that they cannot provide counseling that involves this issue, outside of worship services. Accordingly, many will self-censor or make plans to leave.

6. DoD Policies Would Undermine Chaplain Retention

During the second round of questioning on April 1, Chairman Wilson asked what specific procedures were being put in place to (1) allow chaplains to report pressures on them to silence their speech and (2) keep chaplains from facing career-ending retaliation. Sec. Stanley said that chaplains can still rely on the First Amendment to protect them, and emphasized that they were bound by contract to serve regardless. VADM Gortney simply said that the military’s chaplains were great and that they have to deal with many moral issues.

*Two problems: First, the witnesses essentially admitted that there are no procedures of the type Rep. Wilson requested. Second, First Amendment rights in the military are, admittedly, “**not clearly defined,**” and Dr. Stanley’s comment about chaplains being forced to serve did not suggest much respect for the fundamental dilemma chaplains face.*

When Rep. Wilson re-emphasized his question about protections from retaliation for chaplains, he was told that chaplains can essentially just run the problem up the flagpole, and it will be up to “leadership” to respond appropriately. During the hearing the words “leadership” and “respect” became overworked catchphrases—ultimately empty language that was employed to answer almost every question.

*When Chairman Wilson persisted, asking whether any formal mechanisms would be put in place to monitor the chill on chaplains, the answer was again “leadership”—commanders will simply have to address that situation as it arises and do a good job. Sec. Stanley admitted that the problem will get more attention **after repeal.***

*The comment was not reassuring, since the CRWG report recommended that no new guidelines or policies be issued for chaplains. **Repeal Implementation Team (RIT) officials confirmed that position at a meeting conducted at the Pentagon on March 18.***

In written inquiries, Chairman Wilson asked whether a chaplain who is removed from service by his or her sponsoring organization would be required to fulfill active duty service commitments in a capacity other than as a chaplain. Dr. Stanley’s answer was not fully responsive: “If a chaplain loses his/her Ecclesiastical Endorsing Agent (religious organization representative) endorsement, then the chaplain will need to acquire another endorser or begin the process of being separated from the military.” (03/30, p. 11)

Tier One Training prepared for Army chaplains, in notes below PowerPoint slide #11 titled “**Vocational Reflection,**” mentions that a chaplain has “two contracts,” one with the endorsing agent and one with the military. Briefing notes indicate that chaplain may request voluntary separation, but “It is very important to note that the loss of endorsement relieves the chaplain of their obligation to represent the endorsing faith group but does not automatically relieve a chaplain of their military obligation.”

In Senate Armed Services Committee testimony last December, CRWG Co-Chair **Jeh Johnson** admitted that the DoD expects to lose chaplains. When Chairman Wilson asked how many, Dr. Stanley responded, “**I do not have this data.**” (03/30, p. 11)

7. Plans to Include LGBT Curricula in Defense Department Schools Are Unclear

A member of the panel asked, “Will LGBT (lesbian, gay, bisexual, transgender) curricula be taught in DOD schools?” Dr. Stanley replied, “**I don’t know—I’ll have to answer later.** But most kids in military families aren’t in DOD schools.”

The DoD Implementation Plan specifically calls for the publishing and distribution of materials on “repeal” to “family support organizations, counseling centers, pediatric clinics, family practice clinics, and other areas frequented by military families.” It also recommends that chaplains work with family support staff and counselors to discuss [LGBT] issues. (p. 34)

The addition of LGBT curricula in civilian school systems is among the most controversial and divisive issues in American communities today. The DoD operates the largest school and child care systems in the world. DoD RIP documents recommend training for families and access to educational materials on websites—presumably those that promote or support LGBT curricula, not websites that discuss the same subjects from a traditional perspective.

The issue is important because even though details of LGBT training for families were not included in the DoD survey, responses to the official survey of military families indicated that “only” 12% of families would be likely to decline re-enlistment should the law be repealed. (pp. 4, 69, CRWG report) Civilian community schools, whether they enroll military children or not, will be pressured to comply with military requirements for LGBT curricula.

Conclusion

Members of the Personnel Subcommittee did a good job in raising many questions in a limited amount of time. More issues need to be addressed in the coming weeks, including the fact that the DoD has no contingency plans with regard to benefits for same sex couples and dependents if the administration is successful in helping to repeal the **Defense of Marriage Act (DOMA)**. (Implementation Plan, pp. 54-55) In the meantime, members of the committee should call on President Obama to defer “certification” until the 112th Congress has sufficient time to review the DoD Repeal Implementation Plan with the careful oversight that it deserves.