

The author of this article is a Captain in the United States Air Force who wishes to remain anonymous. The views expressed are the author's and do not necessarily reflect the position of the Air Force or the Department of Defense.

As an active duty Air Force officer in March 2010, I appreciated receiving the letter to Airmen¹ in which my Service's top leaders vowed to seek feedback from Airmen and their families concerning the implications of repealing the military's longstanding prohibition of homosexual conduct, presently codified at 10 U.S.C. § 654. I also was heartened to read the letters each military service's Chief of Staff sent to Congress requesting that the law remain unchanged until the Defense Department's working group has fully assessed the implications of repeal. It is certainly imperative for a thorough review to be done before such a drastic change is made to a policy that has served our military well throughout its history.

However, the actual opportunity to provide input through official channels has been insufficient. The 2010 DoD Comprehensive Review Survey of Uniformed Active Duty and Reserve Service Members, touted as the primary means of learning servicemembers' views on the potential repeal of the law, was only offered to a limited group of personnel and never asked the critical question, "Do you believe the statute declaring homosexual conduct to be incompatible with military service should be repealed?" Moreover, the sole "town hall" forum at my installation was by invitation only, and the Pentagon's semi-public comment submission website limits input to 1,000 characters of text. As if that weren't enough, Congress has rushed ahead, heedless of the Service Chiefs' pleas, to repeal the law regardless of the consequences, and well before the 1 December 2010 date that has been appointed for the completion of the Defense Department's review.

So why do I write this? I believe the U.S. military's longstanding position that homosexual conduct is incompatible with military service, dating back to the Continental Army² and codified since 1993 at 10 U.S.C. § 654, is correct and must be maintained. In this article, I will argue the following:

- (1) Why the ban on homosexual conduct is sound;
- (2) Flaws with arguments for repeal;
- (3) The negative likely consequences of repeal, beyond those identified in the law; and
- (4) How to eliminate the confusion of "Don't Ask, Don't Tell."

1. Why the Ban on Homosexual Conduct Is Sound

In the 1993 law, Congress was careful to lay out the reasons why the unique and extraordinary responsibilities of military life require high standards of conduct, more strict in

¹ Available at <http://www.af.mil/information/viewpoints/tri.asp?id=542> (last viewed 19 Sep 10).

²As commander of the Continental Army in 1778, General George Washington court-martialed and dishonorably discharged a lieutenant for attempting to commit sodomy with another soldier. George Washington, *The Writings of Washington*, John C. Fitzpatrick, ed. (Washington, D.C.: U.S. Government Printing Office, 1932), Vol. XI, pp. 83-84, from General Orders at Valley Forge on March 14, 1778.

innumerable ways than those required of civilians. These standards justify discharging people for homosexual conduct because: “The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the armed forces’ high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.”³

This was not a bare assertion, but one well supported by common sense and knowledge of human nature. As Congress recognized, the needs of the military often “make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.”⁴ Moreover, through the structure of rank, command, and military law, senior members of the military wield a powerful and potentially quite coercive authority over their subordinates—necessary for discipline, but dangerous if abused for personal gain. However, if people with a propensity for homosexual conduct are allowed into those environments of “forced intimacy,” or put in positions of military authority, some of them will likely take inappropriate advantage of the situation for their own sexual gratification, leading to the abuse of other military members and the breakdown of good order, discipline, morale, and unit cohesion. Even if they do not do so, but others in the unit know of their sexual proclivities, their fellow Airmen will still be wary of the possibility for abuse or simply uncomfortable around them, and morale and unit cohesion will still suffer.

The U.S. military already has more than enough problems with sexual misconduct between men and women—I know it well, having prosecuted it on numerous occasions in my career as a JAG, and provided support to many victims of sexual assault through the Victim and Witness Assistance Program. Even with the protections we have in place, from sexual assault awareness education, to segregation of male and female trainees, to having separate men’s and women’s locker rooms, sexual misconduct happens; and when it happens it is profoundly corrosive to military discipline. We absolutely must not compound the problem by putting homosexuals in situations where they would be tempted and have opportunities to approach their fellow servicemembers sexually. Just as it would be unconscionable to insist on ordering male and female recruits to shower or bunk together, it would be profoundly wrong for the military to knowingly put homosexuals into those same environments, with such a high potential for temptation and abuse.

Another common-sense proposition stated in the law is that military service is a privilege, not a right.⁵ The military can discharge or deny enlistment to people for a whole host of reasons, including such things as failure to meet physical fitness standards, medical and psychological problems, patterns of misconduct, alcohol and drug abuse, and criminal behavior. Homosexual conduct is just one of many categories of behavior and circumstance that degrade the military’s effectiveness, and which it is entirely fitting and proper to consider as a barrier to military service.

³ 10 U.S.C. § 654(a)(15).

⁴ 10 U.S.C. § 654(a)(12).

⁵ 10 U.S.C. § 654(a)(2) states, “There is no constitutional right to serve in the armed forces.”

2. Flaws with Arguments for Repeal

Advocates of permitting homosexuals to serve openly in the armed forces have advanced several justifications for their argument. Chief among these is a deeply flawed but perhaps superficially persuasive analogy to racial and gender integration in the military. As secondary matters, they point to individuals who have served honorably but later revealed themselves to be homosexuals, and they claim there is a dire need for people in certain specialty fields that will go unmet if homosexuals in those areas of expertise are unable to enlist.

The “civil rights” analogy is inapposite for two primary reasons. First, as noted in the law, military service is not a right. The military, in order to preserve a fit and vital fighting force, necessarily discriminates against people on the basis of age, disability, and in some ways sex, even though such distinctions would not be permitted in the civilian world. Second, and more crucially, homosexual conduct should be distinguished from race, color, and ethnicity because it is a behavior, not an inborn, innocuous, and unchangeable physical characteristic such as skin color. Moreover, it is a behavior that has long been recognized as immoral by most of the world’s major religions; it is strongly correlated with other harmful behaviors such as sexual promiscuity, venereal disease, alcohol and drug abuse, and suicide; and as described above, it is inherently detrimental to military good order and discipline.

Regarding former military members who revealed their homosexual proclivities after a period of honorable service, I do not deny that it is possible for someone to perform duties well while keeping homosexuality a secret. But if they do not engage in homosexual conduct while in service, then they do not run afoul of the law. If they do indulge in homosexual conduct during service, but keep it secret until after separation, they should not be held up as exemplars of why the law should be repealed. Suppose, for example, someone develops a seizure disorder, or commits murder, while on active orders, and keeps it a secret until after he separates from the service. Does that then mean that the military should never discharge people for seizure disorders or murder? Of course not.

Finally, proponents of repeal claim the ban on homosexual conduct deprives the military of the services of homosexuals who might have skills in critical fields such as Intelligence and Arabic translation. This argument fails for the same reasons delineated above. There are many conditions that may make a person unfit or unsuited for duty, regardless of career field, and the Air Force routinely court-martials and administratively separates people—including those in critically manned specialty fields—for falling afoul of military standards. Moreover, as the Center for Military Readiness has reported, less than 1% of military discharges are for homosexual conduct.⁶ The number of homosexuals discharged who possess critically needed skills is smaller still.

Repeal would also hurt recruiting and retention among people opposed to the change in policy, some of whom undoubtedly also have such critical skills. These losses would likely far outweigh the purported benefit of allowing in a new (and likely small) influx of homosexual servicemembers. I know of military members who have pledged not to re-enlist

⁶ See Center for Military Readiness, “False ‘National Security’ Argument for Gays in the Military, *available at* <http://cmrlink.org/CMRDocuments/DoDDDischarges1.pdf> (last viewed 19 Sep 10).

if the ban on homosexual conduct is repealed, and I am certain they are not alone. As 1,163 distinguished retired flag and general officers from across the military stated in a letter to the President and Congress this year, the repeal of 10 U.S.C. § 654 could literally “break the All-Volunteer Force.”⁷

3. Additional Problems Likely to Result from Repeal

Beyond the direct threats to morale, good order and discipline suggested in 10 U.S.C. § 654, and outlined above, I fear some equally serious second-order harms will result if the law is repealed.

First and foremost, I fear for religious liberty in the military. In the Jewish and Christian traditions, homosexual conduct has been recognized as inherently immoral for thousands of years.⁸ It is also condemned in Islam,⁹ and for most of the history of the United States has been widely recognized as not only immoral, but criminal¹⁰—as in fact sodomy remains under Article 125 of the Uniform Code of Military Justice (UCMJ).

Yet if the ban on homosexual conduct is repealed, the proponents of repeal will not be content to stop there. As has been made manifestly clear in the civilian world, homosexual activists seek not only to decriminalize their preferred sexual conduct and remove it as a barrier to military service, but to transform themselves into a protected class akin to racial or religious minorities. This has already resulted in a plethora of codes and court decisions that prohibit discrimination based on sexual orientation, that provide quasi-marital status to same-sex partners, and that all too frequently attempt to coerce American citizens into endorsing relationships that they believe to be immoral—such as Elaine Huguenin, the Christian photographer who politely declined to photograph a lesbian “commitment ceremony” and was fined \$6,000 by the Orwellian-sounding New Mexico Human Rights Commission. Homosexual activists and their allies desire not only to avoid condemnation of their sexual conduct, but to flip the moral tables entirely, such that any who would dare to criticize homosexual conduct would now be publicly condemned and driven out of the military. Sadly, some senior military and civilian leaders have already made public comments in support of this very agenda, even though 10 U.S.C. § 654 is still the law of the land.¹¹

Based on the pattern described above, if the ban on homosexual conduct is dropped, there will inevitably be a push to give homosexuals special protected treatment through military-

⁷ Available at <http://cmrlink.org/CMRDocuments/FlagOfficersLetterPOTUS-033109.pdf>; signatories at <http://cmrlink.org/CMRDocuments/FGOM-SigList%281087%29-033109.pdf> (both last viewed 19 Sep 10).

⁸ See, e.g., Leviticus 18:22, Romans 1:26-27, 1 Corinthians 6:9-10.

⁹ See, e.g., Qur’an 7:80-81.

¹⁰ See “Brief Amicus Curiae of the Center for the Original Intent of the Constitution in Support of Respondent,” filed in *Lawrence v. Texas*, 539 U.S. 558 (2003), available at http://supreme.lp.findlaw.com/supreme_court/briefs/02-102/02-102.mer.ami.coic.pdf (last viewed 18 Sep 10).

¹¹ See, e.g., the following comment attributed to Army Lt Gen Thomas P. Bostick, “But these people opposing this new policy will need to get with the program, and if they can’t, they need to get out. No matter how much training and education of those in opposition, you’re always going to have those that oppose this on moral and religious grounds just like you still have racists today.” “New gay Army,” *The Washington Times* (16 Sep 10), available at <http://www.washingtontimes.com/news/2010/sep/16/new-gay-army/> (last viewed 19 Sep 10).

wide “diversity” and “sensitivity” training that promotes acceptance of homosexual behavior, and to punish chaplains, counselors, and others who state what their religion teaches about homosexuality.¹²

In the same way, if the law is repealed and the pattern holds, homosexual partners of servicemembers will begin suing for military dependent status, with all the rights to increased housing allowances, separation allowance, and medical care that entails. If they grant these rights to homosexual couples, Congress and the Department of Defense will then be under pressure to extend benefits to the unmarried but cohabiting heterosexual partners of servicemembers, and their children as well. Laws such as the Servicemembers’ Civil Relief Act and the Uniformed Services Former Spouses’ Protection Act will be altered to accommodate the ever-expanding web of relationships that constitute “families” in this brave new world. These developments will contribute to the further skyrocketing of personnel costs, which are already eating up far too large a share of the Defense Department’s budget.

4. How to Eliminate the Confusion of “Don’t Ask, Don’t Tell”

The present statutory ban on homosexual conduct is not the problem. As I see it, the problem with the military’s policy on homosexual conduct is the “Don’t Ask, Don’t Tell” (DADT) compromise that removed the question about homosexual conduct from the induction questionnaire and led to the hair-splitting distinction between the “personal and private matter” of sexual orientation, and the separation-worthy “propensity to engage in homosexual conduct” evident in today’s military regulations.

Back in February 2010, in his official Twitter feed reiterating his support for repeal, the Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, tweeted, “Stand by what I said: Allowing homosexuals to serve openly is the right thing to do. Comes down to integrity.”¹³ I disagree strongly with the Chairman’s first sentence. But I agree with him, up to a point, on the second. DADT allows people with a homosexual orientation to join the military, but if they join they are bound to experience tension between their own desires and self-identification and the legal requirement that they not demonstrate any propensity to engage in homosexual conduct. Some therefore perceive the “Don’t Tell” part of the policy’s nickname as an incentive for concealment and dishonesty.

The best way to address this problem is not to normalize homosexual conduct in the military, but to bring back the screening question that asks potential recruits whether they are homosexual, and denies enlistment or commissioning if they are. This would preserve the integrity of the system, reduce the incidence of homosexual conduct in the military, and deter individuals with homosexual proclivities from putting themselves into an untenable position in which their personal desires conflict with their military duties.

All that said, however, even the current status of the law with DADT is far preferable to open acceptance of homosexual conduct within the ranks. Though closeted homosexual

¹² Numerous retired chaplains have spoken of this danger in a public letter to President Obama and Secretary Gates, available at <http://oldsite.alliancedefensefund.org/userdocs/DADTletter.pdf> (last viewed 18 Sep 10).

¹³ See <http://twitter.com/thejointstaff/status/8553057480> (last viewed 19 Sep 10).

servicemembers may experience tension between what they want to do in private and what the military demands of them, the same is true for members who engage in other forms of conduct prohibited by military law and regulation. If we applied Admiral Mullen's standard across the board, "integrity" would require that, for example, we abolish Article 112a of the UCMJ just because it puts drug abusers in a position where they have to choose between keeping their preferred behavior a secret or getting investigated and discharged from the military. We must not accept such a low standard. The military already informs all recruits on what the law is: that homosexual conduct is incompatible with military service. If someone with a homosexual orientation wants to join anyway, he is on notice, and should bear the consequences if he breaks the law and engages in homosexual conduct nonetheless. Integrity is not merely a matter of internal consistency, but of moral uprightness—a standard that comes from outside the self. It is *this* standard of integrity that we must uphold by preserving the ban on homosexual conduct, and abolishing only the DADT compromise.

5. Conclusion

The full Senate is set to vote this week on whether to repeal 10 U.S.C. § 654. The House has already voted to do so. President Obama will undoubtedly sign the bill for repeal if it passes. There isn't much time left. Please pray, for the sake of our military members and our national security, that the Senate will make the right decision in this matter. And please continue to pray for our troops in harm's way.