



Frequently Asked Questions on *Log Cabin Republicans v. United States of America*

Prepared by White & Case LLP and Log Cabin Republicans
July 2010

What is the history of this case?

The highly contentious policy banning openly gay, lesbian, and bisexual individuals from serving in the United States military ('Don't Ask, Don't Tell') has been extensively debated since it was first enacted in December 1993. Since that time, many challenges to the policy have been made, but the case that has garnered the most attention is this one, filed in 2004 by the Log Cabin Republicans, that directly challenges the constitutionality of the policy. Specifically, the lawsuit seeks a ruling that the policy violates constitutional protections of due process and freedom of speech.

Why did Log Cabin Republicans choose to bring this case?

Log Cabin Republicans believes the 'Don't Ask, Don't Tell' policy violates constitutional protections of due process and free speech. This country is now fighting two wars, and gay and lesbian members of our Armed Forces are serving their country honorably and dying on the battlefield even as the U.S. military officially continues to bar them from service. Indeed, the fact that Log Cabin had to sue the government – and work to overcome roadblock after roadblock – to try to convince the Obama Administration to abandon this policy should be an outrage to all those who seek fairness in this case.

Where will the trial take place and why?

This case was filed in the U.S. District Court for the Central District of California. When the judge in Los Angeles originally assigned to the case retired, the court assigned the case to Judge Virginia A. Phillips, who happens to preside at the court's branch in Riverside, California.

How is this case different from all the other 'Don't Ask, Don't Tell' cases that have been filed over the years?

This case is the only current case in the country that challenges the constitutionality of the ‘Don’t Ask, Don’t Tell’ policy. Other prior, ‘Don’t Ask, Don’t Tell’ cases have been brought on behalf of individual service members, whereas Log Cabin’s case goes right to the heart of whether this policy itself is legal. Specifically, the lawsuit seeks a ruling that the policy violates constitutional protections of due process and freedom of speech.

President Obama, Secretary of Defense Gates, and other top figures in the Obama Administration have all said they favor repeal of ‘Don’t Ask, Don’t Tell’. Yet, the Justice Department is fighting this lawsuit which would achieve exactly that outcome. Are you saying that, in this case, the US government is at odds with the President and the Secretary of Defense?

Even as President Obama says he is committed to repealing ‘Don’t Ask, Don’t Tell’, his Justice Department has chosen to do just the opposite in this case. In one instance, the President himself said that ‘Don’t Ask, Don’t Tell’ “weakens our national security.” So, in court, Log Cabin asked the government to admit that the President made this speech on the date he made it, and they admitted that. Log Cabin asked them further to admit that the President used those words and they also admitted that. And, then, Log Cabin asked the government to admit that ‘Don’t Ask, Don’t Tell’, using the President’s exact words, “weakens our national security.” But, the government refused to do that. It objected on spurious grounds.

Log Cabin Republicans filed a motion with the Court to compel the government to answer that question, and Log Cabin won. The government then appealed. Log Cabin won again and finally the government had to answer the question. In doing so, the Justice Department denied that ‘Don’t Ask, Don’t Tell’ “weakens our national security” – exactly the opposite of what the President had said.

As the legislative approach moves forward, does the President have any other options for ending ‘Don’t Ask, Don’t Tell’ more quickly?

The military could opt to enforce the law differently. The US military doesn’t need to be kicking people out. There are other ways to enforce this.

The need for a faster solution is quite pressing since, while many believed that the election of President Obama would help put a swift end to ‘Don’t Ask, Don’t Tell’, such change has not materialized. Indeed, hundreds of people have been discharged from our armed forces under the policy since he took office and thousands more have either not re-enlisted or not enlisted this year. Meanwhile, his lawyers at the Justice Department continue to fight the Log Cabin Republicans’ lawsuit in court and have refused Log Cabin’s proposal for a moratorium on discharges.

With Congress poised to enact repeal of ‘Don’t Ask, Don’t Tell’, why is Log Cabin Republicans still pursuing this case?

Log Cabin believes its case can work in concert with the legislative process that is now underway. It is important to remember that the legislation is conditional upon the House and Senate passing their own bills, and then coming together in a conference committee to work out

the details of a final bill that will then have to pass both chambers. The Senate already has members on record as opposed to the repeal of 'Don't Ask, Don't Tell', and the November elections could add to that opposition. Moreover, if Congress succeeds in passing a bill this year, repeal would become effective at an indeterminate date in the future.

This case, on the other hand, is now entering its final phase after some six years in litigation. The judge has repeatedly ruled in our favor and granted Log Cabin Republicans the legal standing to bring this case that the government has fought for so long to deny. With the trial date of July 13th, fast approaching, we believe we are poised to bring a speedy and definitive end to this policy. Indeed, depending on how the judge rules, such repeal could become effective immediately – a stark contrast to the approach Congress is considering. Some five years after this case was first brought, we are now within striking distance of ending this misguided policy.

What are the arguments in favor of Log Cabin's position?

- No objective studies, reports, or data, either pre- or post-enactment, support the rationality of DADT and its congruence to Congress's stated objectives;
- At the time DADT's enactment, the only objective studies showed that DADT would not benefit unit cohesion and troop morale but those studies were either ignored by or hidden from Congress;
- Sexual orientation is not germane to military service; many gays and lesbians have served our country bravely;
- The enactment of DADT was motivated by animus towards gays and lesbians;
- The enactment of DADT was based on the private biases of influential leaders about gays and lesbians rather than military judgment;
- DADT is applied more frequently in time of peace than in time of war; the military has knowingly deployed openly gay and lesbian members to foreign combat operations such as Afghanistan (ISAF) and Iraq (MNF-I);
- DADT has had a disproportionate impact on women, resulting in a higher rate of discharge;
- When DADT was enacted, comparable foreign militaries, e.g., Israel, had already changed their policies to allow open service by gays and lesbians without any negative impact on unit cohesion, a factor ignored by Congress;
- U.S. servicemembers train and fight side-by-side with openly gay and lesbian servicemembers of coalition armed forces of foreign militaries without any impact on unit cohesion. In some instances, are commanded by openly gay and lesbian officers from other countries, e.g., ISAF and MNF-I operations;
- Servicemembers in non-combatant, but critical, occupations such as linguists, translators, intelligence analysts, doctors, nurses, dentists, surgeons, lawyers, and others have been discharged under DADT;

- Openly gay and lesbian servicemembers are not allowed to serve in the U.S. Armed Forces but are recruited to work alongside their counterparts in the CIA, FBI, NSA, State Department, the Defense Department, and defense contractors where sexual orientation is not grounds for dismissal.
- DADT perpetuates the threat of blackmail and compromises national security while undermining military effectiveness, readiness, unit cohesion and troop morale;
- DADT violates First Amendment rights;
- DADT impairs recruitment and retention in the military; the military currently has over 4,000 convicted felons in service while discharging a greater number of honest, patriotic gays and lesbians.

What evidence does Log Cabin intend to present at trial?

Log Cabin intends to offer the testimony of several witnesses who have been adversely impacted by the ‘Don’t Ask, Don’t Tell’ policy and the testimony of several leading experts in their respective fields on different aspects of DADT, as well as hundreds of documentary exhibits. Log Cabin expects all of their evidence to show that DADT is unconstitutional.

Media Contacts

Charles T. Moran
Log Cabin Republicans
(310) 774-1258
Charles@CharlesTMoran.net

Nicholas Clarke
White & Case LLP
(212) 819-7808
nclarke@ny.whitecase.com