

**Legislative Bulletin.....December 15, 2010**

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**Key Conservative Concerns**

*Take-Away Points*

- Many conservatives have expressed concern that enacting a major cultural change in the military during the operation of two wars is a risk that we should not take.
- Congress has not yet passed the Defense authorization bill. By prioritizing passage of DADT over the Defense authorization bill we are sending a message to our troops in harm's way that Congress cares more about enacting a social change than providing them with the vital tools and resources they need to fight and win the wars in Afghanistan and Iraq.
- The Pentagon report provided no guarantee that enacting such a change would be beneficial to military life, or that it will improve retention rates, increase readiness, or increase recruitment. Many conservatives might argue that this is the standard by which we should assess such a major policy change, especially during a time of war.
- Army Chief of Staff Gen. George W. Casey Jr., along with two other service chiefs in the Armed Forces, declared that Congress should not repeal the policy while America is at war. During the Senate hearing on December 3, 2010, General Casey stated: **"Implementation of the repeal of Don't Ask, Don't Tell would be a major cultural and policy change in the middle of a war...It would be implemented by a force and leaders that are already stretched by the cumulative effects of almost a decade of war."** For more statements by other leaders of various branches of the military, please see the [top stories section on the DOD website](#).
- Repealing DADT during wartime has the chance of distracting military servicemen and women from their mission.
- The process has been closed. There have been no hearings held in the House on the results of the survey and there is no opportunity to amend the bill.

## **Senate Amendment to H.R. 2965 – Don't Ask, Don't Tell Repeal Act (Patrick Murphy, D-PA)**

**Order of Business:** The bill is scheduled to be considered on Wednesday, December 15, 2010, under a closed [rule](#) making in order a motion to amend the Senate amendment with a House amendment. This bill is the exact same text as H.R. 6520, introduced by Mr. Murphy (D-PA) yesterday. However, in order to prevent Republicans from offering a Motion to Recommit, the text of H.R. 6520 will be inserted into a bill (H.R. 2965) that passed both the House and the Senate. The text of H.R. 2965 will be completely removed and replaced with the bill to repeal “Don't Ask, Don't Tell.”

**Summary:** The bill will repeal the law (10 U.S. Code Section 654), which includes the commonly known “Don't Ask, Don't Tell” (DADT) policy. Highlights of the bill are as follows:

*DOD Policy on Homosexuality in the Military.* On March 2, 2010, the Secretary of Defense issued a memorandum directing the Comprehensive Review on the Implementation of a Repeal of 10 U.S.C. (the law that corresponds with the policy of DADT). The objectives and scope of the review were to:

- Determine any impacts to military readiness, military effectiveness and unit cohesion, recruiting/retention, and family readiness that may result from repeal of the law and recommend any actions that should be taken in light of such impacts.
- Determine leadership, guidance, and training on standards of conduct and new policies;
- Determine appropriate changes to existing policies and regulations;
- Recommend appropriate changes to the Uniform Code of Military Justice;
- Monitor and evaluate existing legislative proposals to repeal 10 U.S.C. 654;
- Assure appropriate ways to monitor the workforce climate and military effectiveness that support successful implementation; and
- Evaluate the issues raised in ongoing litigation involving 10 U.S.C. 654.

*Effective Date.* The act shall take effect 60 days after the date on which the last of the following happens (until then, 10USC Section 654 is in effect):

- The Secretary of Defense receives the report required by the memorandum mentioned above;
- The President transmits to Congress a written certification stating that the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff have considered the recommendations in the report;
- That the DOD has prepared the necessary policies and regulations to exercise the repeal; and
- That implementation of policies and regulations is consistent with the standards of military readiness, military effectiveness, and unit cohesion, and recruiting and retention of the military.

*Defense of Marriage Act.* Nothing in this bill shall be construed to violate Section 7 of title I U.S.C. of the Defense of Marriage Act (relating to the definitions of marriage and spouse).

**Background:** Among other things, [the law](#) regarding homosexuality in the military states the following:

“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 high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.”

In May 2010, the House passed a Murphy (D-PA) amendment that would have repealed DADT in the Defense authorization bill by a vote of [234-194](#). The bill did not pass the Senate with the DADT repeal and Defense authorization is still pending. In September 2010, a federal district judge ruled that DADT is unconstitutional, and banned the military from enforcing the policy. The Ninth Circuit, however, granted a stay, meaning that DADT remained policy. On November 12, 2010, the Supreme Court denied an overturning of the stay. Today, DADT is still intact.

On November 30, 2010, the Pentagon published a long-awaited report of the review of issues associated with the repeal of DADT. Secretary Gates had requested for Congress to take no action on this issue until the Pentagon could review the implications of repealing DADT to allow members of the military to express their concerns or support for such a measure. Secretary Gates has now stated that he supports repeal. Army Chief of Staff Gen. George W. Casey Jr., along with two other branch chiefs, does not believe it should take place during wartime. During a Senate Armed Service Committee hearing on December 3, 2010, General Casey stated: **“Implementation of the repeal of Don't Ask, Don't Tell would be a major cultural and policy change in the middle of a war...It would be implemented by a force and leaders that are already stretched by the cumulative effects of almost a decade of war.”** For more statements by other leaders of various branches of the military, please see the [top stories section on the DOD website](#).

The goal of the report was to determine the impact of DADT repeal on military readiness, military effectiveness, unit cohesion, recruiting, retention, and family readiness. The Secretary of Defense also charged the Pentagon with coming up with a plan for implementing a repeal of DADT to go along with the report. Part of the [report's assessment](#) was as follows: “Based on all we saw and heard, our assessment is that, when coupled with the prompt implementation of the recommendations we offer below, the risk of repeal of Don't Ask, Don't Tell to overall military effectiveness is low. We conclude that, while a repeal of Don't Ask, Don't Tell will likely, in the short term, bring about some limited and isolated disruption to unit cohesion and retention, we do not believe this disruption will be widespread or long-lasting...”

The report found that 70% believed the repeal of DADT would have a positive, mixed, or no effect on unit's ability to “work together to get the job done.” The report also found that 30% of the 115,052 surveys received (400,000 were sent out) believe that repealing DADT would have a **negative effect**. However, when the Marine Corps was asked, and

various combat arms specialties, that percentage rose to 40-60% “who predicted in some form and to some degree **negative views** or concerns about the impact of a repeal of Don’t Ask, Don’t Tell.” (emphasis added)

**Potential Conservative Concerns:**

- Many conservatives have expressed concern that enacting a major cultural change in the military during the operation of two wars is a risk that we should not take.
- Congress has not yet passed the Defense authorization bill. By prioritizing passage of DADT over the Defense authorization bill we are sending a message to our troops in harm’s way that Congress cares more about enacting a social change than providing them with the vital tools and resources they need to fight and win the wars in Afghanistan and Iraq.
- The Pentagon report provided no guarantee that enacting such a change would be beneficial to military life, or that it will improve retention rates, increase readiness, or increase recruitment. Many conservatives might argue that this is the standard by which we should assess such a major policy change, especially during a time of war.
- Army Chief of Staff Gen. George W. Casey Jr., along with two other service chiefs in the Armed Forces, declared that Congress should not repeal the policy while America is at war. During the Senate hearing on December 3, 2010, General Casey stated: **“Implementation of the repeal of Don't Ask, Don't Tell would be a major cultural and policy change in the middle of a war...It would be implemented by a force and leaders that are already stretched by the cumulative effects of almost a decade of war.”** For more statements by other leaders of various branches of the military, please see the [top stories section on the DOD website](#).
- Repealing DADT during wartime has the chance of distracting military servicemen and women from their mission.
- The process has been closed. There have been no hearings held in the House on the results of the survey and there is no opportunity to amend the bill.

**Groups Opposed:** \*Concerned Women for America, \*Eagle Forum, the \*Family Research Council, and the Southern Baptist Ethics & Religious Liberty Commission

*\* indicates that the group will be scoring a vote on the bill.*

**Committee Action:** H.R.6520 was introduced on December 14, 2010 and referred to the House Committee on Armed Services which took no official public action.

**Cost to Taxpayers:** No CBO score is available.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** Yes.

**Constitutional Authority:** No committee report citing constitutional authority is available.

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