



FOR IMMEDIATE RELEASE

March 15, 2010

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EXPERTS BRACE FOR SUBSTANTIVE CHANGES TO GAY BAN

Expected Pentagon Revisions Could Mean Allowing Openly Gay Service

SANTA BARBARA, CA, March 15, 2010 - The Pentagon set a deadline of this week for announcing substantive changes to the “don’t ask, don’t tell” policy intended to apply the law in “a manner that is more appropriate and fair,” according to Defense Secretary Robert Gates. Scholars at the Palm Center expect the changes to reflect some of the options outlined by Palm last July in a [memo](#) showing what the military has the authority to implement even without any change in the law by Congress.

Those changes, referred to collectively as the Obama rule, could include modifying what counts as admissible evidence to initiate a discharge, raising the level of review for who can launch or approve a discharge, and limiting investigations based on third-party allegations, among others. The effect of the Obama Rule could be the official tolerance of openly gay service for the first time.

According to Diane Mazur, who authored Palm’s July 2009 memo, some of the expected changes could provide a “small zone of privacy” to gay service members, but anything short of full suspension or repeal of the ban would continue to incur substantial national security costs by keeping troops “from engaging in the routine conversations and exchanges that establish bonds with military colleagues.” Mazur, a former Air Force officer, is currently Legal Co-director at Palm and a Professor of Law at University of Florida College of Law.

Aaron Belkin, Director of Palm, said the military has authority to modify how “don’t ask, don’t tell” is applied, even if Congress takes no action to suspend or repeal the policy. The basis of that authority is laid out in the July 2009 memo. “While the immediate fate of repeal in Congress remains unclear,” said Belkin, “the law gives the military important discretionary powers in how and whether gay service members are ferreted out,” a fact echoed by Secretary Gates who has said the military has “latitude within the existing law to change our internal procedures.”

According to Nathaniel Frank, Senior Research Fellow at Palm and author of “Unfriendly Fire: How the Gay Ban Undermines the Military and Weakens America,” the upcoming changes could mark the “beginning of the end” of “don’t ask, don’t tell.” “In other countries which have successfully lifted their gay bans,” he said, “the elimination of discrimination was usually preceded by a relaxing of the bans by the militaries themselves. Once doubters saw there was no basis for their concerns, the policies were usually ended in short order.”



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The Palm Center is a think tank at the University of California, Santa Barbara. Since 1998, the Center has been a leader in commissioning and disseminating research in the areas of gender, sexuality, and the military. For more information visit www.palmcenter.ucsb.edu.