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"Don't ask, don't tell": don't appeal



Three cheers for the ruling by U.S. District Judge Virginia Phillips ordering an immediate end to the "don't ask, don't tell" policy that bans military service by those who are openly gay. Phillips is right that this policy "infringes the fundamental rights of United States service members and prospective service members."

As a general proposition, I think courts should be very wary of overturning decisions made by elected branches of government. Such judicial decisions can look like – and often are – the imposition of a judge's political views over the political views of those elected to office by voters, i.e. politicians. Politicians have every right to have political views; judges can't just impose their political views by fiat. Moreover, there is a danger that all of us can be inconsistent in the application of the principle of judicial restraint. We hail only those judicial impositions that happen to square with our politics.

So why, beyond my own feeling about this issue, do I think this case is different? If there is ever a case for judicial action, it is in areas where individual rights, particularly the rights of minorities, are being unfairly curtailed. And "don't ask, don't tell" is one of the most bizarre policies ever devised. You can be gay and serve – as long as nobody knows you are gay. Or as long as nobody who knows tells anyone else you are gay. Or as long as nobody finds out you are gay. It just doesn't make much sense, and what can be a greater violation of individual rights than the demand that someone keep an important part of his or her identity secret? Not to mention that the policy invited dishonesty -- and, potentially, intimidation and blackmail.

The only way the policy made sense was as a halfway house. Bill Clinton ran into a political firestorm at the beginning of his presidency when he proposed simply to end the ban on gays in the services. He wasn't going to

get what he wanted, so "don't ask, don't tell" was one of those classic centrist compromises that wasn't particularly coherent, but solved a political problem and allowed us to move on. Yet DADT never made sense as a long-term policy, and it should have been pushed aside long ago.

It's worth noting that the suit overturning the policy was brought by Log Cabin Republicans, a gay Republican group. They are a vestige of an older Republican Party that was genuinely consistent in standing up for individual rights, their very name harkening back to the party of Abraham Lincoln and the fight against slavery. The GOP needs more voices like theirs across a range of issues. Yet the direction of the party at the moment seems strongly against them. It's admirable that the Log Cabin GOPers could perform this service, but notable they had to do it through the Courts, since elected Republicans helped to block changes in the policy through the normal Congressional process.

It makes no sense for the Obama administration, which opposes DADT, to appeal this decision. It should work out a schedule with the court that would end the policy for good. And service members who have been discharged under DADT should be able to appeal their discharges and have a chance to serve their country again.