

# Ex-Navy officer challenges gay policy

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Buoyed by a recent Supreme Court ruling on homosexual rights, a former Navy lieutenant yesterday asked the high court to hear its first challenge to the Defense Department's ban on open homosexuals in the military.

Attorneys for Paul Thomasson, whom the Navy discharged in 1995 after he proclaimed "I am gay," filed a petition saying "considerable confusion and disarray" lie ahead unless the court makes a final judgment on the issue.

If the court agrees, the justices likely would hear arguments this fall and issue a landmark ruling in 1997 on the "don't ask, don't tell" policy.

Allan B. Moore, Mr. Thomasson's attorney, filed the petition a few days short of a 90-day deadline. He said he had been surveying the "lay of the land" and the landscape improved greatly with the court's May 20 ruling striking down a Colorado anti-gay-rights amendment to the state constitution.

## Asks Supreme Court to hear case

Like the Thomasson case, the Colorado decision, *Romer vs. Evans*, hinged in part on the 15th Amendment's equal-protection guarantees.

Justice Anthony Kennedy, writing for a 6-3 majority, said the court must overturn laws "born of animosity toward the class of persons affected."

"In some ways this case is a more obvious violation of the Constitution than the provisions in *Romer* because in this case the statute at issue is a gag rule," Mr. Moore said. "I think this case as it currently stands violated where the law is on the First Amendment."

The policy allows homosexuals to serve as long as they keep their sexuality private. The statement "I am gay" triggers a presumption that the person engages in prohibited homosexual conduct, the regulation states.

Robert Maginnis, a retired Army lieutenant colonel who is an

analyst at the Family Research Council, said the *Romer* decision — and the Supreme Court's opinion that the Virginia Military Institute must admit women — leads him to believe the court will overturn the homosexual ban.

"To use an Army saying, red star clusters sent into the air signal the high court's willingness to enter the cultural revolution with people trying to reconfigure our society somehow," said Col. Maginnis, whose group filed legal arguments in the Thomasson case.

"The military is not like the people of Colorado," he added. "The military is not like a public military institution. The military has a very special function for the people of the United States. The court has long recognized that."

Military commanders argue that open expressions of homosexuality would disrupt unit cohesion and hurt force readiness.

The 4th U.S. Circuit Court of Appeals in Richmond voted 9-4 in

April to deny Mr. Thomasson's appeal and uphold the Navy's right to discharge him. The majority wrote that President Clinton and Congress had broad constitutional authority in 1993 when a law and new regulations were adopted barring open homosexuals from serving. But six of the nine judges also wrote that the "don't ask, don't tell" regulations do not match the 1993 law.

"Because it ultimately asks more questions than it answers, the decision . . . threatens to spawn considerable confusion and disarray," Mr. Thomasson's petition said.

In a related case yesterday, the 2nd U.S. Circuit Court of Appeals in New York threw out a district judge's ruling that said "don't ask, don't tell" was unconstitutional. The legal challenge, *Able vs. the Defense Department*, was brought last year by six service members.

The appeals court told Judge Eugene Nickerson in Brooklyn that he cited the wrong reasons in his opinion and asked him to reconsider the case.