



Federal Appeals Court Reinstates 'Don't Ask, Don't Tell'

Gay Military Service Members Must Again Hide Sexual Orientation

By ARIANE de VOGUE

WASHINGTON, Oct. 20, 2010—

A federal appeals court Wednesday reinstated "don't ask, don't tell," the military's policy forbidding openly gay troops from serving.

A three-judge panel granted the Justice Department's emergency request to allow the policy to remain on the books so that the appeals court could have more time to fully consider the issues presented.

A Pentagon spokeswoman applauded the panel's decision.

"For the reasons stated in the government's submission, we believe a stay is appropriate," said the spokeswoman, Cynthia Smith.

On the other side, an attorney for a gay rights group pushing to change the policy suggested today's reversal would be only temporary.

"While we are disappointed with the court's ruling granting a temporary administrative stay, we view the decision as nothing more than a minor setback," said Dan Woods, a partner at the law firm White & Case, which is representing Log Cabin Republicans in *Log Cabin Republicans vs United States of America*.

"We didn't come this far to quit now, and we expect that once the Ninth Circuit has received and considered full briefing on the government's application for a stay, it will deny that application, and the district court's injunction, which it entered after hearing all the evidence in the case, will remain in place until the appeal is finally decided," Woods said.

On Oct. 12, California District Court Judge Virginia Phillips issued a worldwide ban on the policy, and shortly thereafter the Department of Defense said it would abide by the judge's order.

That meant the policy no longer was in effect from Oct. 12 until today's ruling, meaning gay and lesbian troops and recruits temporarily did not have to hide their sexual orientation.

But gay rights advocates urged caution to those serving, warning that the policy could be reinstated at any time.

"The bottom line: If you come out now, it can be used against you in the future by the Pentagon," Aubrey Sarvis of the Servicemembers Legal Defense Network said in a statement. "As the DOJ fights to keep this unconstitutional and oppressive law, we are monitoring active-duty clients' cases and fielding calls every day to our hotline."

In court papers, lawyers for the Obama administration urged the appeals court to lift the ban on enforcement of "don't ask, don't tell" because it would cause the government "irreparable injury" and "short-circuit" a comprehensive review process of the policy currently under way at the Department of Defense.

They argued it would also interfere with other pending litigation in other federal courts, and it would cause confusion among the troops.

"A stay pending appeal," government lawyers wrote, "would obviate the confusion and uncertainty that might be caused by temporary implementation of the district court's injunction, with the looming possibility that the statutory policy could be reinstated on appeal."

But lawyers for the Log Cabin Republicans, which brought the case to court, argued against a stay.

"Each argument that the government asserts as a basis for a stay," they said, "has already been raised to the district court, which rejected them all -- not cursorily, or in passing at an oral argument, but in extensive reasoned opinions at multiple stages of the proceedings below."

The Obama administration already has notified the appeals court that it is planning to appeal Judge Phillips' finding that "don't ask, don't tell" violates the due process and free speech rights of service members.

Appeal of DADT Ruling Puts Administration in Bind

The legal wrangling has infuriated gay rights activists. The Obama administration has vowed to work to repeal the policy in Congress, but has said it does not want the issue decided by the courts. As such, government lawyers are in the awkward position of defending a statute that the administration admits it is against.

Gay rights groups urged President Obama to abide by the ruling and allow the nearly 16-year-old policy to immediately end. However, President Obama, has said he will continue to fight the policy in court and will work with the lame duck Congress to repeal it after the elections.