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## LEGAL BRIEFS

**D.C. INITIATIVE FIGHT:** An attempt to get an initiative on the D.C. ballot to authorize prayer in public schools has gotten the attention of the Gay and Lesbian Activists Alliance.

The initiative is being sought by Wright Mahdi Bray and David New, and the D.C. Board of Elections ruled last year it could go on the ballot.

But a lot of people and groups, including GLAA, the ACLU, and People for the American Way, filed a lawsuit arguing that the initiative is unconstitutional and in violation of a D.C. elections law, which says no measure which could authorize violations of the D.C. Human Rights Act can be put to popular vote.

D.C. Superior Court Judge Geoffrey Alprin ruled Wednesday that "there is virtually no doubt that the initiative under consideration, if it became law, would be declared unconstitutional" and prohibited the Board from putting it on the ballot for that reason alone.

GLAA was instrumental in securing the law in the late 1970s, after Anita Bryant led the repeal of a human rights ordinance protecting Gays in Dade County, Fla.

In a brief to the court, GLAA said it feared that al-

lowing an initiative on the aspects of the human rights law which prohibit religious discrimination "may set a precedent that would expose other minorities in the District of Columbia, including but not limited to the District's gay and lesbian population, to the evils of initiative or referendum campaigns aimed at restricting their civil rights."

According to GLAA official Craig Howell, one of the initiative's proponents, David New, is affiliated with televangelist Pat Robertson's anti-Gay groups.

People for the American Way's deputy legal director, Judith Schaeffer, who argued in court that the initiative is unconstitutional, said the initiative was "dangerous" because it would have led "people to believe that constitutional rights are up for a vote."

**MILITARY SCORE: 3-4:** For the third time in seven federal district court decisions, a judge has ruled that the military's new policy on Gays is unconstitutional.

Judge Sandra Brown Armstrong (a Bush appointee) issued an opinion Friday, March 29, saying that the so-called "don't ask, don't tell" policy violates

the guarantees of equal protection and free speech under the U.S. Constitution.

The ruling came in a case brought by Army Lt. Andrew Holmes, a member of the National Guard Reserves in California. He was discharged in 1993 after he wrote a note to his commander saying that, "As a matter of conscience, honesty and pride, I am compelled to inform you that I am gay."

Armstrong's ruling came in the U.S. District Court for California's Northern District; the U.S. government is expected to appeal. Two other decisions have found the policy unconstitutional: in a New York City district court and in a Virginia Eastern District court. The New York City case, *U.S. v. Able*, is awaiting a decision from a federal appeals panel.

Four other district court judges have found the new policy constitutional. One of those cases, *Thomasson v. U.S.*, is awaiting a decision from the full 4th Circuit U.S. Court of Appeals.

**SUING THE STATES:** Last week's U.S. Supreme Court decision preventing the Seminole Tribe from

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# Federal judge orders Navy to halt discharge

by Lou Chibbaro Jr.

A federal judge in D.C. on Friday, March 29, issued a temporary restraining order barring the Navy from discharging a female sailor who was accused of engaging in homosexual conduct prohibited by military law.

Judge Emmet G. Sullivan of the U.S. District Court for D.C. said attorneys for Seaman Amy L. Barnes, 20, presented evidence that the Navy may have violated the government's "don't ask, don't tell" policy on Gays in the military. He said Barnes should not be discharged until he issues a final ruling on the case.

Barnes was among a group of 60 women assigned to the *USS Simon Lake*, a ship which supplies submarines and is stationed in Sardinia, Italy. The women were targeted for what Barnes's attorneys are calling a Gay witch hunt.

Michelle Benecke, co-director of the Servicemembers Legal Defense Network, a D.C.-based group that assists servicemembers who are in jeopardy of discharge under the military's policy concerning Gays, said the case marks the first time the government, rather than a member of the military, has been accused in court of violating the policy.

On Monday of this week, three days after he issued his restraining order, Sullivan (a Clinton appointee) rejected a request by Justice Department lawyers that he allow the restraining order to expire in 10 to 20 days. Instead, Sullivan, in a second court hearing, indicated he is inclined to issue an injunction barring the Navy from discharging Barnes until he has a chance to review the merits of the case and make a final determination within 60 to 90 days.

Sullivan ordered Justice Department attorneys, who are representing the Navy, to submit briefs this week stating why the Navy opposes the injunction. He scheduled a hearing for April 26 to hear oral arguments and to issue a ruling on the injunction. The judge said he would most likely be unable to rule on the merits of

the case until June.

Barnes has charged in court papers that the Navy violated the military's "don't ask, don't tell" policy by initiating an investigation into her sexual orientation based solely on "rumor and innuendo." Barnes's attorneys also charged Navy investigators with violating the policy by investigating Barnes without obtaining official approval by a commanding officer.

SLDN hailed Sullivan's decision to issue the restraining order as a clear indication that the judge believes evidence exists that the Navy acted improperly when it investigated Barnes about her sexual orientation. Under normal court procedures, judges agree to issue restraining orders only when they believe those requesting them have a reasonable chance of winning their cases.

Sullivan issued the restraining order following arguments by Justice Department attorneys that there was no compelling need for the court to block the Navy from discharging Barnes. Justice Department attorney Sylvia Kesar urged Sullivan to continue the practice of judges in past cases by allowing the Navy to discharge Barnes now. Kesar said Barnes, like other servicemembers being discharged under the policy, could pursue her opposition to the Navy's action after the Navy discharged her.

Kesar argued that Navy investigators obtained sufficient evidence to discharge Barnes on grounds of homosexual conduct. She noted that two of Barnes's shipmates gave statements alleging that they saw one of Barnes's female friends make repeated visits to Barnes's sleeping quarters. Kesar told Judge Sullivan that one of the shipmates reported seeing Barnes's friend climb out of Barnes's bunk bed and that the two had been kissing.

Laura Jehl, one of Barnes's attorneys, has argued that Navy investigators have failed to provide evidence showing that the friend did anything other than visit



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Barnes in her sleeping quarters. Jehl has pointed to a statement by Barnes's visitor that she and Barnes exchanged a "brother-sister kiss" and that the visitor merely sat on the edge of Barnes's bunk.

Jehl told Sullivan a discharge would cause Barnes "irreparable harm" because it would create a stigma associated with wrongdoing and a homosexual conduct discharge.

Jehl, who is part of a team of attorneys representing Barnes from the D.C. law firm Covington and Burling, submitted lengthy court briefs last week describing evidence that Navy investigators on the *Simon Lake* violated Barnes legal rights in the course of their investigation. The briefs, among other things, charge that the investigators coerced Barnes into giving a statement that she engaged in sex with a woman prior to her enlistment in the Navy. Barnes has since submitted an affidavit recanting that statement. The briefs also accused the investigators of

coercing other female sailors on the *Simon Lake* into giving statements claiming they heard others say Barnes was a Lesbian.

According to the briefs submitted on Barnes's behalf, the investigators failed to inform the sailors of their right to remain silent and their right to legal counsel.

The briefs also charge investigators with threatening to imprison at least two sailors if they did not sign statements that Barnes was a Lesbian.

The "don't ask, don't tell" policy was first proposed by President Clinton in 1993 after key members of Congress informed Clinton that Congress would kill his earlier proposal to lift the ban on Gays in the military. Congress later revised Clinton's "don't ask, don't tell" policy, then enacted it into law. It took effect in early 1994. The policy allows Gays to serve in the military as long as they keep their sexual orientation confidential and as long as they do not engage in sex with a person of the same gender.

Most Gay activists said the new policy is no better than the one it replaced. The old policy flatly banned Gays from serving in the military. White House officials and members of Congress who supported the "don't ask, don't tell" policy said they were hopeful that the policy, if nothing else, would put a stop to Gay witch hunts. But SLDN and other groups monitoring the policy have said witch hunts are continuing under the new policy. SLDN released a report last month showing that the military discharges on grounds of homosexuality are increasing.

Barnes, a native of Jeffersonville, Ind., had been working as a radio seaman apprentice at the time she was named in the investigation. She has been in the Navy for two years and three months. Last month, officials transferred her to the Norfolk, Va., Naval base to be processed for discharge. ▼

by Clint Smith