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Justices let 'don't ask, don't tell' stand

Gay troops rule won't get review

By Lara Jakes
Associated Press

WASHINGTON -- The Supreme Court refused yesterday to hear a legal challenge to the Pentagon's "don't ask, don't tell" policy, a decision that allows the Obama administration to continue its slow, back-burner approach to letting gays serve openly in the military.

In last year's campaign, President Barack Obama indicated he supported repealing the law, but he has made no move to do so since taking office in January.

Echoing the administration's careful handling of the politically sensitive issue, Democrats who control Congress reacted tepidly to activists' calls to overturn the 1993 law that allows the Pentagon to discharge gay and lesbian troops who admit their sexuality, pleas that were renewed after the court's decision.

A Democratic aide to the Senate Armed Services Committee called a review of the law "not a high priority" and said the panel will look at the issue sometime before the end of Obama's term -- but would not specify when.

Little action from the Obama administration and Congress has frustrated advocates who accused their usually allied Democratic leaders of selling out.

"Every moment that the administration and Congress delay repealing 'don't ask, don't tell,' our nation is robbed of brave men and women who would risk their lives to keep our country safe," Joe Solmonese, president of Human Rights Campaign, said after the court's denial.

Without comment, the nation's highest court denied a review of an appeal from former Army Capt. James Pietrangolo II, who was in the Vermont National Guard when he was discharged in 2004.

"I think this decision is an absolute travesty of justice and I think every judge on this court should be ashamed of themselves," said Pietrangolo, who served six years in the Army and seven years in the Vermont National Guard, and fought in Iraq in 1991.

In court papers, the government said a Boston-based appeals court ruled correctly when it threw out Pietrangolo's case because the policy is "rationally related to the government's legitimate interest in military discipline and cohesion."

At the Pentagon, spokesman Bryan Whitman said the military was merely following the law, which he said requires the Pentagon to "separate from the armed services members who engage in or attempt to engage in homosexual acts, state they are homosexual or bisexual, or marry or attempt to marry a

person of the same biological sex."

The Supreme Court has never heard a case challenging the constitutionality of the 1993 law that was pushed by then-President Bill Clinton and adopted by Congress.

Senior Pentagon officials largely have shied away from discussing changes to the law, calling it a volatile topic for troops already stretched thin by the wars in Iraq and Afghanistan. A coalition of more than 1,000 retired military officers recently warned Obama that overturning "don't ask, don't tell" could cause problems with recruiting and retaining troops.

House Armed Services Chairman Ike Skelton, D-Mo., supports the "don't ask, don't tell" policy but is open to reviewing the law to see if it is "still appropriate for today's military," said spokeswoman Loren Dealy.

A Washington-based conservative Christian group that opposes same-sex marriage praised the court decision.

"Military service is a privilege, not a right, and anything that detracts from the ability of our service personnel to fulfill their mission should be prohibited," said Tony Perkins, president of the Family Research Council and a Marine veteran.

A Quinnipiac University poll conducted in late April indicates a majority of American voters believe the law should be overturned. The poll found that 56 percent of 2,041 registered voters who were surveyed nationwide said that "don't ask, don't tell" should no longer be Pentagon policy.

Among voters who have relatives in the military, the number dipped slightly: Half believed the law should be overturned, while 43 percent said it should remain in place. The remaining 7 percent were undecided or did not answer, according to the poll, which had a margin of sampling error of plus or minus 2.2 percentage points.

Suits against Iraq

In a separate ruling yesterday, the court said Iraq's current government cannot be sued for the actions of Saddam Hussein's regime, throwing out lawsuits filed by Americans who were held by the government of the now-deceased dictator.

Foreign nations usually are immune from lawsuits in U.S. courts, but federal law strips that protection from countries that support terrorism. Under Saddam, Iraq was considered a state sponsor of terrorism.

But the Iraqi government says the U.S.-led invasion that deposed Saddam and a federal law enacted in 2003 restored Iraq's immunity. The Supreme Court agreed.

"Iraq's sovereign immunity was restored when the president exercised his authority to make inapplicable with respect to Iraq any provision of law that applies to countries that have supported terrorism," said Justice Antonin Scalia, who wrote the opinion for the court.

Americans who were held in Iraq during and following the 1991 Persian Gulf War argued that the law passed by Congress did not give the new regime blanket immunity from lawsuits in U.S. courts even though it removed Iraq's designation as a terrorist state.
