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Military's Policy on Gays Shouldn't Be Enforced During Appeal, Group Says

By Karen Gullo - Oct 26, 2010

The U.S. military shouldn't be allowed to enforce its "Don't Ask, Don't Tell" policy while it appeals a court decision that the rule is unconstitutional, the group that won the order told a federal appeals court.

The Log Cabin Republicans, the group promoting equal rights for gays and lesbians that sued to block the "Don't Ask, Don't Tell" policy, said in a court filing yesterday that the government is unlikely to win its appeal seeking to overturn the ruling and won't be irreparably harmed if enforcement of the judge's order begins while the appeals case moves ahead.

Postponing the repeal of "Don't Ask, Don't Tell" will lead to more investigations and discharges of service members in violation of their constitutional rights, the group said in the filing to the U.S. Court of Appeals in San Francisco.

"Every day the government remains free to implement Don't Ask, Don't tell, American citizens' constitutional rights are violated," the group said.

The appeals court on Oct. 20 temporarily blocked enforcement of a judge's ruling requiring the government to end its policy barring gays and lesbians from serving openly in the military. U.S. District Judge Virginia Phillips in Riverside, California, ruled Sept. 9 that the policy violates constitutionally protected due process and free speech rights.

President Barack Obama supports repeal of the ban, the government has said in court papers. The Defense Department's findings on how the ban should be ended are scheduled to be completed in December. Government lawyers have said in court filings that the policy should be terminated only after advance planning and training.

The case is Log Cabin Republicans v. United States, 10-56634, U.S. Court of Appeals for the Ninth Circuit (San Francisco). The lower court case is Log Cabin Republicans v. U.S., 04-08425, U.S. District Court, Central District of California Riverside).

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