

Republicans Must Reject Lame Duck Repeal

by Robert Maginnis

11/22/2010

This year the liberal establishment junked objectivity in order to kill the military's homosexual exclusion policy, and now it wants the Democrat-controlled lame duck Congress to drive the final nail into the policy's coffin. But as President Obama once told Republicans, "Elections have consequences."

The mid-term elections should empower Congressional Republicans to reject Democrat attempts to jam repeal through the lame duck session, which begins this week and ends December 3. Republicans should delay further consideration of the issue until the new Congress convenes. Then the repeal issue can be abandoned, or if it is to be pushed forward, objective research must be undertaken and balanced hearings held to get to the truth of the impact that open homosexuality would have on the combat effectiveness of our troops.

Obama's gay ban repeal campaign began in earnest with his 2010 State of the Union address. "I will work with Congress and our military to finally repeal the law that denies gay Americans the right to serve," Obama said. That speech launched the administration's full-court press with a ready team—the Pentagon, Democrat-controlled Congress, select federal judges, and compliant liberal media—to attack the law.

The Pentagon took the first shot for team Obama. Defense Secretary Robert Gates testified, "We have received our orders from the Commander-in-Chief, and we are moving out accordingly."

Gates created the Pentagon's Comprehensive Review Working Group (CRWG) to "consider how best to implement repeal" of 10 U.S.C. § 654, the homosexual exclusion law, which is often confused with the Pentagon's implementing regulation known as "Don't Ask, Don't Tell."

The secretary directed the CRWG to "examine the issues associated with repeal" and to develop "an implementation plan that addresses the impacts" by December 1. This effort was never intended to consider whether lifting the ban was right for the military, which was a fatal flaw in its conception.

The secretary directed the group to “systematically engage the force” and to do so “in a professional, thorough and dispassionate manner.” But the CRWG’s narrow mission used engagement methodologies like surveys that ignored critical questions— “Should the 1993 law be retained or repealed?”—and that skewed other questions in such a way as to force favoring the repeal. These flaws may help to explain why only one in four service members polled even bothered to respond, a low return that devalues the report considerably, rendering its findings, based on such a narrow sampling, highly suspect.

On September 28 Senator John McCain (R–Ariz.) wrote to Gates to express “my concerns about the manner in which the [CRWG] is proceeding.” He warned that the group’s narrow focus “undermined the validity of the effort and the survey in particular.” He requested that Gates “identify methods to ensure that the survey provides useful information.”

That was never to be. As early as October came the release of one-sided, desperate leaks of the drafted Pentagon report, brought forward with the intent of shaping public perception on the issue. Pentagon spokesman Geoff Morrell admitted, “Anonymous sources now risk undermining the integrity of this process.”

Gates called for an investigation, but the damage was done; the report’s integrity was shot. The leakers and their complicit media outlets like *NBC News* and *The Washington Post* erroneously reported that majorities of soldiers don’t object to lifting the ban, a position not revealed from the low survey rate of response, as McCain had indicated in his letter to Gates.

The Democrat-controlled House of Representatives did its part to support team Obama’s anti-military agenda. Speaker Nancy Pelosi (D–Calif.) hosted no hearings on the matter before amending the Defense Authorization Act to include a repeal provision. Then she jammed the bill through on a party-line vote just before the Memorial Day recess.

The Senate considered similar repeal language in September, but McCain led a filibuster that sidelined the bill. Now Senate Democrats, who haven’t held hearings on the issue either, hope the importance of the Defense Authorization Act will persuade Republicans to support passage. But McCain promises to lead another filibuster if the updated bill includes the repeal language.

Obama’s gay-rights supporters also found liberal federal judges to join their anti-military team. In September, Judge Virginia Phillips of the Federal District Court for the Central District of

California declared the homosexual exclusion law unconstitutional because it infringes upon “fundamental rights.” She then issued an injunction that bans enforcement of the law.

Judge Phillips, who was appointed by President Bill Clinton, ignored six appellate court decisions that upheld the law to advance her liberal social agenda. Even the Obama Justice Department reminded the judge that her injunction was “at odds with basic principles of judicial restraint.” Judges generally defer to Congress in matters of military policy, but not Phillips, who prefers to play politics with our national defense.

The Obama Justice Department showed its true colors in the motion to stay Phillips’s injunction. The Department wrote in its motion, “The President strongly supports repeal of the statute that the district court has found unconstitutional, a position shared by the Secretary of Defense and the Chairman of the Joint Chiefs of Staff.”

This comment figuratively winks at the court. It also explains the Justice Department’s otherwise lackluster arguments in homosexual cases, a rather unprofessional performance by government attorneys.

Fortunately the 9th Circuit Court of Appeals declared that the law could remain in effect while it considers the administration’s appeal, and the Supreme Court upheld this procedural stance.

In spite of Obama’s full-court press, there continues to be high-placed support for the ban. The new Congress must hear from those who support the ban, especially our military leadership, as it considers the Pentagon’s promised report.

It is noteworthy that prior to the House’s vote on repeal, the service chiefs sent letters to Congress asking the chamber to stop repeal actions. Gen. Norton Schwartz, Air Force Chief of Staff, warned, “This is not the time to perturb the force ... without careful deliberation.” Army Chief of Staff General George Casey wrote, “I’ve got serious concerns about the impact of the repeal on a force that’s fully involved in two wars.”

Obama’s newly appointed Marine commandant, General James Amos, wasted no time explaining his views. Amos told reporters in San Diego, “There’s risk involved. I’m trying to determine how to measure that risk. This is not a social thing. This is combat effectiveness.” Amos explained how different military life is from civilian life and expressed his concerns about the possible effects of open homosexuality in the ranks.

Obama's campaign to repeal the homosexual exclusion policy is a travesty. The Pentagon's promised report is dead on arrival in part because of the liberal media's pre-emptive distortions. Congress's lopsided, no-hearings repeal effort is a legislative embarrassment as well; Obama's Justice Department's glib defense of our military is a sham.

The new Republican House majority and the stronger Republican Senate caucus must either let the current ban stand or seek objective truth by hosting hearings. The litmus test must be combat effectiveness. Those involved in any potential hearings must view the matter objectively, abandoning the liberal notion that our warriors should embrace Obama's radical-homosexual agenda without considering heretofore unexamined possible consequences to our military.

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