

**NEW YORK
CITY BAR**

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**TESTIMONY OF CHRISTA M. BOSCH, MEMBER OF THE
COMMITTEE ON LESBIAN, GAY, BISEXUAL & TRANSGENDER RIGHTS
IN SUPPORT OF RESOLUTION NO. 169-A,
CALLING ON THE UNITED STATES CONGRESS TO PASS LANGUAGE IN THE
2011 DEFENSE AUTHORIZATION ACT THAT WOULD
REPEAL "DON'T ASK, DON'T TELL"**

**NEW YORK CITY COUNCIL
CIVIL RIGHTS COMMITTEE HEARING
JUNE 8, 2010**

My name is Christa Bosch, and I am a member of the Lesbian, Gay, Bisexual and Transgender Rights Committee (the "Committee") of the Association of the Bar of the City of New York (the "City Bar"). On behalf of the City Bar, the Committee voices its support for the City Council's resolution urging Congress to pass language in the 2011 Defense Authorization Act that would repeal the United States military's ban on open service by lesbian, gay, or bisexual ("LGB") individuals, known colloquially as "Don't Ask, Don't Tell" ("DADT"). This discriminatory policy has denied numerous LGB individuals the opportunity to serve their country, while denying the military the benefit of their talents and skills. DADT is both legally unsupportable and unsound as a matter of policy.

Attached to my testimony is the full report sent by the Committee, as well as the City Bar's Committee on Military Affairs & Justice and Committee on Civil Rights, to the Senate Armed Services Committee, which I will now summarize, that details our support of the repeal. I will discuss three points: first, that LGB service members are subjected to harsh penalties not faced by their heterosexual counterparts; second, that the arguments supporting DADT are not supported by the facts; and third, that DADT is incompatible with constitutional values.

Despite the popular name given to the policy, in fact there is nothing in the statute itself that prohibits the military from questioning service members about their sexual orientation. Limitations are found in the Department of Defense's implementing regulations, but, in accordance with the statute, those regulations provide for inquiry into what would otherwise be lawful, private conduct allowed for heterosexual service members. Accordingly, although the public may perceive DADT as a policy that permits LGB individuals to serve so long as they are "discreet" as to their sexuality, as a matter of practice, DADT imposes restrictions on the private lives of homosexual service members beyond those imposed on all other service members.

Because DADT applies at all times, whether on base or off, the estimated 66,000 LGB people serving in the U.S. military are subject to restrictive limitations in their civilian life. For example, a service member who turns to the civilian police in situations of domestic violence or bias attacks risks discharge if he or she has to admit to legal homosexual conduct to make the

report. Entering into same-sex marriage, civil or domestic partnership, or simply obtaining domestic partner benefits under private insurance puts a service member at risk of discharge. Same-sex partners cannot be listed as primary next of kin to be notified if the service member is killed, missing, or wounded in action. Nor will the military provide benefits for same-sex partners.

Defenders of DADT argue that allowing LGB service members to serve openly would wreak havoc on unit cohesion, recruitment and retention, and battle readiness. However, recent studies demonstrate that these fears are unfounded. Whatever arguments might have been made in 1993 regarding the necessity for DADT, the sea change in public perceptions and military culture regarding homosexuality that has taken place in the intervening seventeen years has largely negated the perceived basis for a ban on open military service by LGB individuals. In 2008, 104 retired generals and admirals called for the repeal of DADT, including some of those who supported the policy at the time it was initially adopted. On June 2, 2010, Joint Chiefs of Staff Adm. Mike Mullen stated that the services will adapt to open service. Referring to "Don't Ask, Don't Tell," he added, "I'm hard-pressed to support a policy and a law that forces people to come and lie every day." A 2006 survey by Zogby International of current and recent military personnel serving in Afghanistan and Iraq found that the two-thirds of service members who knew that a member of their unit was gay did not believe the presence of an LGB individual adversely impacted their unit's morale. Moreover, 78% of those polled stated they would join the military regardless of whether gay and lesbian service members could serve openly.

The experiences of foreign militaries that have lifted bans on open service by LGB individuals also rebut the contention that integration would decrease military effectiveness. Twenty-four nations allow LGB individuals to openly serve in the military, including 22 nations with troops serving alongside our military in Iraq and Afghanistan. Studies examining the impact of integration on these militaries show that open service does not undermine military performance, unit cohesion and military readiness, nor has it increased difficulties in recruitment and retention.

The constitutionality of DADT has also been called into question by the seminal Supreme Court case of *Lawrence v. Texas*, in which the Supreme Court recognized a fundamental constitutional right, guaranteed by Due Process Clause of the Fourteenth Amendment, for adults to engage in private, consensual homosexual conduct. DADT's codified discrimination against service members who engage in "homosexual conduct" represents a direct abridgement of LGB service members' protected liberty interest in pursuing private, intimate relationships with consenting adults of their choice. While the military setting undoubtedly often dictates a need for less privacy than in civilian life, because DADT operates where there is no similar restriction on private, intimate relationships for non-LGB service members, DADT cannot be justified by military need. The conflict between DADT and the holding of *Lawrence* has been recognized in recent court decisions, including a recent Ninth Circuit decision.

Moreover, DADT is not compatible with our constitutional guarantee of equal protection under the law. DADT singles out one group – LGB service members – for statutory strictures not imposed on any other group. The Supreme Court has explained that laws singling out LGB individuals for stricter legal treatment "raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected."

Furthermore, though the amendment to the 2011 Defense Authorization Act does not contain a nondiscrimination mandate, the Committee urges Congress to adopt a policy of nondiscrimination, so that LGB individuals can serve openly without fear of discrimination. Without the incorporation of a nondiscrimination mandate, LGB service members' open service could be undermined by unproscribed acts of discrimination.

To conclude, the Committee supports the City Council's resolution that the Pentagon, Congress and President Obama heed the call of Members of Congress, military leaders, active and discharged service members, and a growing chorus of the public, to repeal DADT and to replace it with a policy of non-discrimination. This is not only critical to the lives and dignity of LGB individuals in the Armed Forces and their families, but also, imperative to returning our Armed Forces to their fullest and most able capacity.

Respectfully submitted,

Christa M. Bosch
Member
Lesbian, Gay, Bisexual and Transgender Rights Committee
The Association of the Bar of the City of New York

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**COMMITTEE ON LESBIAN, GAY, BISEXUAL & TRANSGENDER RIGHTS
COMMITTEE ON CIVIL RIGHTS
COMMITTEE ON MILITARY AFFAIRS AND JUSTICE**

**REPORT TO THE UNITED STATES SENATE ARMED SERVICES COMMITTEE
IN SUPPORT OF THE REPEAL OF THE "DON'T ASK, DON'T TELL" POLICY**

The Association of the Bar of the City of New York (the "City Bar") calls for the immediate repeal of the United States military's ban on open service by lesbian, gay, or bisexual ("LGB") individuals, known colloquially as "Don't Ask, Don't Tell" ("DADT"). This discriminatory policy has denied numerous LGB individuals the opportunity to serve their country, while denying the military the benefit of their talents and skills. DADT is both legally unsupportable and unsound as a matter of policy.

President Obama's recent promise to work for the repeal of DADT during his January 27, 2010 State of the Union address and the Senate Armed Services Committee hearing that followed on February 2, 2010, are important first steps to repealing this discriminatory policy. During that hearing, Defense Secretary Robert M. Gates and Admiral Mike Mullen, chairman of the Joint Chiefs of Staff, added their support to the growing mass of proponents calling for DADT's repeal, and announced the creation of a working group to study the implementation of any repeal. The City Bar urges the Pentagon and Congress to act swiftly to determine an effective implementation plan and include repeal language in the next Defense Authorization bill, and urges President Obama to follow through on his promise to end this discriminatory policy.

A. Introduction

In 1993, as part of the National Defense Authorization Act for 1994, Congress passed into law the "Policy Concerning Homosexuality in the Armed Forces." The statute provides that a member of the armed forces shall be separated from the military if a finding is made that the member "has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless," *inter alia*, the member can affirmatively demonstrate that "such conduct is a departure from the member's usual and customary behavior" and "the member does not have a propensity or intent to engage in homosexual acts."¹

Although touted at the time as a compromise policy that would shield the privacy interests of LGB service members while protecting the military's interest in unit cohesion, good order, discipline and the morale of the troops, fifteen years of experience under DADT has demonstrated that it did not accomplish its stated objectives. Far from achieving the goal of avoiding the waste of military resources on needless investigations and discharges – a goal that is

¹ 10 U.S.C. § 654(b)(1).

even more critical given the significant demands on today's militaries - DADT has resulted in the discharge of more than 13,000 service men and women since its enactment in 1993.²

Despite the popular name given to the policy, in fact there is nothing in the statute itself that prohibits the military from questioning service members about their sexual orientation.³ Limitations are found in the Department of Defense's implementing regulations, but, in accordance with the statute, those regulations provide for inquiry into what would otherwise be lawful, private conduct allowed for heterosexual service members. DOD Directive 1304.2 provides that applicants shall not be questioned about their sexual orientation at the time of their enlistment or induction – yet this prohibition is suspended where the military has independent evidence that the applicant has engaged in “homosexual conduct.”⁴ Similarly, although DOD Directive 1332.14 prohibits a commander or inquiry official from asking about sexual orientation during a fact-finding inquiry or administrative separation procedure, the investigating official is authorized to ask members whether they engaged in “homosexual conduct” where credible information exists to support such charges.⁵ Indeed, that directive does not “preclude[] questioning a member about any information provided by the member in the course of the fact-finding inquiry or any related proceeding.”⁶ Moreover, to oppose separation from the service in administrative proceedings, it is the service member who bears the burden of proving, by a preponderance of the evidence, that he or she is not a person who engages in, or has a propensity to engage in, or intends to engage in homosexual acts.⁷ Accordingly, although the public may perceive DADT as a policy that permits LGB individuals to serve so long as they are “discreet” as to their sexuality, as a matter of practice, DADT imposes restrictions on the private lives of homosexual service members beyond those imposed on all other service members.⁸

B. Lesbian, Gay and Bisexual Service Members Are Subjected to Harsh Penalties Not Faced by Their Heterosexual Counterparts

Because DADT applies at all times, whether on base or off, the estimated 66,000 LGB people serving in the U.S. military⁹ are subject to restrictive limitations in their civilian life, which are not imposed on their heterosexual colleagues. A service member who turns to the civilian police in situations of domestic violence or bias attacks risks discharge if he or she has to admit to legal homosexual conduct to make the report. Entering into same-sex marriage, civil or domestic partnership, or simply obtaining domestic partner benefits under private insurance puts a service member at risk of discharge. Same-sex partners cannot be listed as primary next of kin to be notified if the service member is killed, missing, or wounded in action. Nor will the

² David F. Burrelli, “Don’t Ask, Don’t Tell:” The Law and Military Policy on Same-Sex Behavior (Congressional Research Service 2009) at 10.

³ See 10 U.S.C. § 654

⁴ DOD Directive 1304.26, E2.2.8.1.

⁵ DOD Directive 1332.14, E5.3.c. (Aug. 28, 2008).

⁶ *Id.*

⁷ *Id.* E5.3.f.

⁸ See Don't Ask, Don't Tell: Debating the Gay Ban in the Military 53-60 & 139-50 (Aaron Belkin & Geoffrey Bateman, eds., 2003).

⁹ http://www.law.ucla.edu/williamsinstitute/pdf/GaysintheMilitary2008_PressRelease.pdf.

military provide benefits for same-sex partners. Failure to report the adoption of a child with their same-sex partner can lead to criminal conviction.¹⁰

Discharge under DADT can seriously impact the benefits the service member receives following discharge. The discharge characterization the service member is awarded if discharged under DADT may be improperly lowered, putting at risk certain benefits, including the Montgomery G.I. Bill education benefits, and he or she may no longer be eligible for separation pay.¹¹

C. Arguments Supporting DADT Are Not Supported by the Facts

Defenders of DADT argue that allowing LGB service members to serve openly would wreak havoc on unit cohesion, recruitment and retention, and battle readiness. In other words, the discriminatory effects of DADT are justified by the sexual anxiety, fears and bigotry of heterosexual service members, who would not be able to tolerate serving with identifiable sexual minorities. However, recent studies, as well as the experiences of foreign militaries which allow open service by LGB individuals, demonstrate that these fears are unfounded.¹²

Whatever arguments might have been made in 1993 regarding the necessity for DADT, the sea change in public perceptions and military culture regarding homosexuality that has taken place in the intervening fifteen years has largely negated the perceived basis for a ban on open military service by LGB individuals. In 2008, 104 retired generals and admirals called for the repeal of DADT, including some of those who supported the policy at the time it was initially adopted.¹³ A 2006 survey by Zogby International of current and recent military personnel serving in Afghanistan and Iraq found that the majority of service members know or suspect that there are LGB service members in their units. Two-thirds of service members who were certain that a member of their unit was gay did not believe the presence of an LGB individual adversely impacted the morale of their unit.¹⁴ Moreover, 78% of those polled stated they would join the military regardless of whether gay and lesbian service members could serve openly.¹⁵ Even the military's own studies and reports have found no link between sexual orientation and military performance.¹⁶

The successful experiences of foreign militaries that have lifted bans on open service by LGB individuals also rebut the contention that integration would decrease military effectiveness.

¹⁰ Servicemembers Legal Defense Network, "The Survival Guide: A Comprehensive Guide to 'Don't Ask, Don't Tell' and Related Military Policies," Fifth Ed., 2007, pp. 32-36, available at <http://www.sldn.org/pages/survival-guide>.

¹¹ *Id.*, pp. 47-52.

¹² Zogby International, "Opinions of Military Personnel on Sexual Minorities in the Military," December 2006, p. 6. Kyle Dropp and Jon Cohen, "Acceptance of Gay People in the Military Grows Dramatically," *The Washington Post*, July 19, 2008, A3, available at www.washingtonpost.com/wp-dyn/content/article/2008/07/18/AR2008071802561.html.

¹³ <http://www.palmcenter.org/press/dadt/releases/104Generals%2526Admirals-GayBanMustEnd>.

¹⁴ Sam Rodgers, "Opinions of Military Personnel on Sexual Minorities in the Military," Zogby International, December 2006.

¹⁵ *Id.*

¹⁶ *See, e.g.*, RAND's National Defense Research Institute Report; U.S. Gen. Accounting Office, *Homosexuals in the Military: Policies and Practices of Foreign Countries* (1993); U.S. Army Research Institute for the Behavioral and Social Sciences Report (Pinch 1994); F.C. Pinch, *Perspectives on Organizational Change in the Canadian Forces* (U.S. Army Research Institute for the Behavioral and Social Sciences, 1994).

In total, twenty-four nations allow LGB individuals to openly serve in the military, including twenty-two allied nations with troops serving alongside American service member in Iraq and Afghanistan. Great Britain, Australia, Canada and Israel, to name a few, have successfully integrated their militaries. Numerous studies examining the impact of integration on these foreign militaries have found that open service by LGB individuals has not undermined military performance, unit cohesion, military readiness, nor has it increased difficulties in recruitment and retention.¹⁷ The successful integration of foreign militaries confirms that the continuation of the United States' official ban is not necessary to fulfill military objectives.

D. DADT Is Incompatible with Constitutional Values

In the area of military affairs more than in other areas of civic life, courts look to Congress to set the standard in granting constitutional rights to the men and women who serve their country.¹⁸ For that reason, Congress is under a particularly heavy obligation to act.

The constitutionality of DADT has been called into question by the seminal Supreme Court case of *Lawrence v. Texas*, in which the Supreme Court recognized a fundamental constitutional right, guaranteed by Due Process Clause of the Fourteenth Amendment, for adults to engage in private, consensual homosexual conduct.¹⁹ DADT's codified discrimination against service members who engage in "homosexual conduct" as defined in 10 U.S.C. § 654 represents a direct abridgement of LGB service members' protected liberty interest in pursuing private, intimate relationships with consenting adults of their choice. While the military setting undoubtedly often dictates a need for less privacy than in civilian life, because DADT operates where there is no similar restriction on private, intimate relationships for non-LGB service members, DADT cannot be justified by military need.

The conflict between DADT and the holding of *Lawrence* has been recognized in recent court decisions.²⁰ In the face of a substantive due process challenge, the Ninth Circuit overruled its prior precedent upholding DADT.²¹ The Ninth Circuit reasoned that DADT's intrusion "upon the personal and private lives of homosexuals" must be subjected to heightened scrutiny. Applying this standard, the Ninth Circuit concluded that DADT's constitutionality must be

¹⁷ See, e.g., Aaron Belkin and Jason McNichol, Effects of the 1992 Lifting of Restrictions on Gay and Lesbian Service in the Canadian Forces: Appraising the Evidence (The Center for the Study of Sexual Minorities in the Military [CSSMM] 2000); Aaron Belkin & Melissa Levitt, The Effects of Including Gay and Lesbian Soldiers in the Israeli Defense Forces: Appraising the Evidence (CSSMM 2000); Aaron Belkin & Jason McNichol, The Effects of Including Gay and Lesbian Soldiers in the Australian Defence Forces: Appraising the Evidence (CSSMM 2000); Aaron Belkin & R. L. Evans, The Effects of Including Gay and Lesbian Soldiers in the British Armed Forces: Appraising the Evidence (CSSMM 2000) (all of these studies are available at <http://www.palmcenter.org/publications/dadt>). See also RAND's National Defense Research Institute Report; U.S. Gen. Accounting Office, Homosexuals in the Military: Policies and Practices of Foreign Countries (1993); U.S. Army Research Institute for the Behavioral and Social Sciences Report (Pinch 1994); F.C. Pinch, Perspectives on Organizational Change in the Canadian Forces (U.S. Army Research Institute for the Behavioral and Social Sciences, 1994); Aaron Belkin, Don't Ask, Don't Tell: Is the Gay Ban Based on Military Necessity? 33 Parameters 111 (2003).

¹⁸ While "[t]he military has not been exempted from constitutional provisions that protect the rights of individuals," *Emory v. Secretary of Navy*, 819 F.2d 291, 294 (D.C. Cir. 1987), courts hesitate to disturb Congressional judgments. See *Cook v. Gates*, 528 F.3d 42, 57 (1st Cir. 2008) (upholding DADT against due process and equal protection challenge because of the "unique context" of the strong deference due when "reviewing an exercise of Congressional judgment in the area of military affairs.").

¹⁹ 539 U.S. 558 (2003).

²⁰ See, e.g., *United States v. Marcum*, 60 M.J. 198 (C.A.A.F. 2004).

²¹ *Witt v. Department of Air Force*, 527 F.3d 806, 819 (9th Cir. 2008).

analyzed on a case-by-case basis, and that its application to any particular service member must be specifically shown to further an important government interest in the least intrusive way possible.²² As the factual underpinnings of DADT have not withstood scrutiny, it is highly doubtful that the military could ever meet this standard.

Moreover, while lower courts upheld the constitutionality of DADT against Equal Protection challenges pre-*Lawrence*,²³ DADT is not compatible with our constitutional guarantee of equal protection under the law.²⁴ DADT singles out one group – LGB service members – for statutory strictures not imposed on any other group. The Supreme Court has explained that laws singling out LGB individuals for stricter legal treatment "raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected."²⁵ As discussed above, there is no factual basis for any interest other than such animosity, an interest that, of course, is not a legitimate governmental interest.²⁶

E. Conclusion

DADT has resulted in the discharge of thousands of qualified individuals who identify as LGB. Since its inception, over 13,000 men and women have been discharged from the armed services, including over 300 language experts, more than 50 of whom were fluent in Arabic.²⁷ Discharging highly qualified individuals with specialized skills – particularly those skills needed by a military engaged in wars on multiple fronts – based on nothing more than their sexual orientation runs counter to military effectiveness and to the principles of liberty and equality that the military is sworn to uphold.

The City Bar urges that the Pentagon, Congress and President Obama heed the call of Members of Congress, military leaders, active and discharged service members, and a growing chorus of the public, to repeal DADT and to replace it with a policy of non-discrimination. This is not only critical to the lives and dignity of LGB individuals in the Armed Forces and their families, but also, imperative to returning our Armed Forces to their fullest and most able capacity.

Carmelyn P. Malalis
Chair, Committee on
Lesbian, Gay, Bisexual & Transgender Rights

Peter T. Barbur
Chair, Committee on
Civil Rights

Myles K. Bartley
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Military Affairs & Justice

February 2010

²² *Id.*

²³ See, e.g., *Richenberg v. Perry*, 97 F.3d 256 (8th Cir. 1996) (split panel defers to Congressional judgment on necessity of DADT to maintain unit cohesion).

²⁴ See *Lawrence*, 539 U.S. at 579-585 (Justice O'Connor concurring in the judgment on Equal Protection grounds).

²⁵ *Romer v. Evans*, 517 U.S. 620, 634 (1996).

²⁶ *Id.* See also *United States v. Virginia*, 518 U.S. 515, 532 (1996) (sex classifications may not be used "for denigration of the members of either sex or for artificial constraints on an individual's opportunity"); *Loving v. Virginia*, 388 U.S. 1, 8 (1967) (rejecting "equal application" defense to prohibited classification).

²⁷ David F. Burrelli, "Don't Ask, Don't Tell:" The Law and Military Policy on Same-Sex Behavior (Congressional Research Service 2009) at 10.



AMERICAN VETERANS FOR EQUAL RIGHTS NEW YORK

AMERICAN VETERANS FOR EQUAL RIGHTS

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Joint Committee Hearing re: Prop. Res. No. 169-A : Resolution calling on the United States Congress to pass language in the 2011 Defense Authorization Act that would repeal "Don't Ask, Don't Tell, Don't Harass, Don't Pursue" and allow lesbian, gay, bisexual and transgendered persons to serve openly in the military

June 8, 2010

testimony by Denny Meyer
President of AVERR NY, Public Affairs Officer - AVERR
to the New York City Council Committees on Civil Rights and Veterans

I would like to thank Council Members Van Bramer, Brewer, Chin, Dromm, Ferreras, Koppell, Koslowitz, Lander, Rodriguez and Rose for introducing this resolution to continue New York City's advocacy to end discrimination in our American armed forces, so that patriotic Americans may choose to volunteer to serve our nation regardless of sexual orientation.

This resolution will be the third such by the New York City Council. In 2005, at the urging of the New York Chapter of American Veterans For Equal Rights (AVERN) over a 15 month grass roots effort, and thanks to the efforts of Council Member Alan Gerson and then Council Speaker Giff Miller, the full council voted overwhelmingly to pass the nation's first such resolution, urging Congress to repeal the Don't Ask Don't Tell law. That resolution was copied in cities across America and by the State of California. A similar resolution, introduced in Albany several years ago by State Senator Duane, was never acted on.

The second NYC Council resolution on this matter, introduced in 2008 by Speaker Quinn, directly urged the NYC Congressional delegation to support the Military Readiness Enhancement Act first introduced in the US House of Representatives by Congressman Marty Meehan of Massachusetts. The Military Readiness Enhancement Act would not only have repealed the 1994 Don't Ask Don't Tell law, but also directed the Pentagon to end discrimination against sexual minorities in our armed forces by allowing open service by Lesbian, Gay, and Bisexual volunteers.

It should be noted that despite the inclusiveness of this and previous NYC Council resolutions on this matter, Transgender American patriots have never been included in any congressional legislation regarding service in our armed forces. The 1994 DADT law did not mention

Transgender service, the Military Readiness Enhancement Act does not include their service, and the amendment to the 2011 Defense Authorization legislation under consideration currently does not make any mention of gender identity nor Transgender service. Transgender service members continue to be considered medically unfit for service before, during, and after DADT; and are medically discharged with prejudice. This is despite the fact that many of our allied countries have included allowance of transgender service since 1993.

It is most important to note that although this resolution refers to the current Amendment to the 2011 Defense Authorization as repealing DADT and allowing open service by LGBT persons; the amendment does not do that. Unlike the Military Readiness Enhancement Act, the Amendment under consideration in Congress would only repeal DADT, but NOT require an end to discrimination in our armed forces; it does not require an end to discharging gay service members, it does not require allowing open service. The amendment, approved in the votes on May 27th 2010, in the House and in the Senate Armed Services Committee, states that sixty days after the Pentagon Study, regarding gay service, is completed, the President, Secretary of Defense and the Chairman of the Joint Chiefs may sign off certifying that that study concludes that open gay service would not harm our military readiness. Those signatures would, according to the amendment, repeal the 1994 Congressional DADT law. But, that repeal in accordance with this amendment would not require the Pentagon to allow open gay service. It would simply allow the Pentagon to decide at any future time, to change its own policy to allow open gay service. The current Pentagon policy remains in effect currently and after the signatures: homosexuality is incompatible with military service and known homosexuals will be discharged.

The amendment was a compromise because not enough votes could be gotten to fully repeal DADT with the requirement that the Pentagon policy be changed to a non discrimination policy and actually allow open gay service.

American Veterans for Equal Rights endorses the Congressional amendment to the National Defense Authorization Act because it is a step in the right direction. The repeal of the 1994 DADT law would remove the Congressional legal requirement that known homosexuals must be discharged. However, it should be clear that it is far from certain that the Pentagon, again on its own, would decide to change its policy and implement a policy of non discrimination allowing open service by lesbian and gay patriotic volunteers. Hence, continued advocacy is urged. AVER endorses this City Council resolution particularly because of its inclusiveness and implied demand for a complete policy change.

Testimony of Daniel Hendrick
RE: Res 0169-2010
Joint Hearing – Committees on Veterans and Civil Rights
June 8, 2010

Good afternoon, members of the Veterans and Civil Rights Committees. Thank you for allowing me to speak today.

Other speakers today have or will shortly address the legal arguments and the statistical data relevant to the legislation you are hearing today.

I'd like to put a human face on this issue.

To be candid, I had some reservations about testifying before you all today, partly because there are a number of close colleagues and friends on the other side of the dais. The fact I am especially well acquainted with the prime sponsor of this legislation also gives me some pause. But the importance of this issue, of this fundamental question of human rights and dignity, and especially the desire to make our military as strong and effective as it can be, help me to set any awkwardness aside.

I was discharged honorably from the Navy in 1992. I was a linguist, a cryptologist, and learned other languages to aid in our national defense.

I am no saint, and I certainly no kind of military hero. But that's not what our nation needs. We need the best and brightest service members who can perform their jobs, day in and day out, with excellence, commitment and attention to detail. That's the bottom line.

My military records will show that I was exactly that kind of sailor. I was consistently ranked number one or two in my unit in my specialty. I trained hard, went on complicated assignments, worked long shifts, volunteered in the communities where I was stationed. I earned many awards for excellence – even for PT for a little guy like me.

But none of that mattered when I was reported to my command for being gay.

There are many arguments to make for ending the military's ban on openly gay and lesbian service members. But if our national interest is making the military as strong as it can be, there can be no doubt that we need the most qualified people taking part. This truth underscores the absurdity of "Don't Ask, Don't Tell."

If you are gay or lesbian and out, it does not matter how well you work with everyone in your unit. If there is just one person, one person, who is not comfortable with your status, they can set in motion an irreversible chain of events that can destroy lives.

If you are gay or lesbian and out, it does not matter how many hours and taxpayer dollars were invested in your training.

It does not matter how well you can shoot, or interpret, or fight for hearts and minds on the streets of Kandahar or Baghdad.

It does not matter how many awards you have for combat bravery.

It does not matter if you vote Republican or Democrat, or if you're a Muslim, Jew, Christian Conservative or atheist.

It does not matter how much you love your country.

If you are gay or lesbian, and have integrity about who you are, you are not welcome.

"Don't Ask Don't Tell" benefits no one – least of all, our country's military readiness.

I am grateful and proud that you all are examining this policy with an eye toward improving our military.

And I am very proud that the man I have shared my life with for the past 11 years, who has made fighting injustice and helping the little guy his life's work, will be doing something about it tomorrow.



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08JUN10

Testimony of Jennifer Hogg

Good afternoon members of the Committees. My name is Jennifer Hogg. I am a former New York Army National Guard Sergeant and a co-founder of Service Women's Action Network (SWAN), an advocacy and direct services organization for service women and women veterans. I am also a student at the City University of New York (CUNY) School of Law and a graduate of Hunter College.

I wish to express my gratitude to the Committee on Veterans and the Committee on Civil Rights for inviting SWAN to comment on Resolution 0169, supporting passage of H.R.1283, the first step to repealing the law known as "Don't Ask, Don't Tell" (DADT).

SWAN is on the forefront of examining the impact of "Don't Ask, Don't Tell" (DADT) and preparing for a post-repeal military. SWAN has created and implemented an LGBT military peer counseling helpline, an important step especially when you consider the disproportionate impact the DADT policy has on women and specifically women of color. I have been fortunate to be a part of an organization such as SWAN and to be surrounded by people who understand the real impact of DADT is however not in numbers, but in people. While over 13,000 people have been discharged under DADT, hundreds of thousands more have never been accounted for. We suffered in silence. I am one of the uncounted.

Countless LGBT people join the military for nearly as many reasons. One thing we all have in common, no matter what our sexuality, is the recognition that we are willing to put our lives at risk for the country. What is harder to imagine is that when we sign our names to the dotted line, a policy known as "Don't Ask, Don't Tell" will ask us to pretend we do not have a life to risk.

Recently on a website for soldiers, a lesbian in the 10th Mountain Division bravely commented: "Could you heterosexuals imagine not being able to say anything about your partner? What if the policy said no one discusses their relationships, period? I bet the suicide rate would skyrocket. Don't discuss your wife's new attitude or husband's infidelity. Don't talk about your girlfriend getting pregnant or boyfriend proposing. Imagine going throughout your entire career not being able to discuss your relationships and not being able to bring your loved one to any military function. I bet you couldn't."

This statement instantly resonated with me. The 5 years I served in the National Guard it was like I had two lives, the real Jen and military Jen. While I knew about DADT when I enlisted, I could never have predicted how it would feel standing on the steps of my armory on 9/11. I stood watching everyone else say goodbye to their families before we were to spend the night in the armory and drive from Buffalo to New York City the next morning. I was willing on a moment's notice, no questions asked, to serve my country. My country however, asked that I not hug my partner as tightly or as long other soldiers. It asked that I say "you too" rather than "I love you" anytime I was on the phone. It asked that I keep all my fellow soldiers at a distance never allowing us the full benefits of military camaraderie. It asked that I lie when asked about my personal life. Some people seem to think "not telling" is easy. These are usually the same people who talk about wives or

husbands, wear wedding rings and expect benefits for their partners. One can only realize how many ways we “tell” our sexuality when you make the conscious effort not to, and when that effort is coupled with the palpable fear that you could lose everything you have worked for, because of one kiss or instance of hand holding. LGBT servicemembers are only seeking to “tell” the same things their straight counter parts are allowed to.

We all make sacrifices when we join the military. The ability to make those sacrifices is predicated on the shared experience of that sacrifice. DADT singles out LGBT servicemembers to sacrifice without the benefit of the bonding it usually elicits. We compare the length of the runs we did in basic training, how hard our drill’s punished us and how bad the chow was. We *all* have these experiences and they bond us together. No one eats food that bad without the expectation of some benefit. The policy turns a potential bonding experience into one that strips you of your sense of self-identity and self worth.

For myself the most frustrating aspect of the policy are the lies used to create and perpetrate DADT. There is the idea that discriminating against LGBT servicemembers who are physically able to serve is exactly like discriminating against people physically unable to serve. If this were true LGBT people would not be able to serve even while closeted. There is also the idea that open service will directly relate to an increase in sexual assault. Some claim DADT is “working” without ever explaining what exactly forcing people to lie has to do with military service. And, as I said above, the idea that it is easy to just “not tell”. Most people can see though these lies, but statements that are lies don’t hurt any less when they are about you, your integrity and your willingness to die for a country and in a military that openly treats you like a second-class citizen.

Beyond personal insults, these lies also have dangerous consequences. Shortly after repeal language was attached to the Defense Appropriations bill there was a flurry of accusations that open service will directly result in sexual assaults. Sexual assault is already a problem in the military. SWAN is an organization on the forefront of providing direct services to heal survivors as well as informing national policy addressing sexual assault and harassment in the military. The organizations making these claims are not experts on sexual assault within or outside the military. They have not expressed concern that DADT is used to blackmail LGBT servicemembers into silence. Perpetrators use the sexuality of their victims as a bargaining chip to blackmail victims into not reporting the crime. DADT shames straight people into not reporting same-sex assaults for fear that they may be accused of being gay. Rather than increasing sexual assault, lifting DADT will increase reporting of the estimated 80% of unreported sexual assaults.

DADT seems a dying relic of a bygone era of open discrimination against LGBT people. We are seeing executive statements, laws and opinions change. But DADT is discrimination enshrined in law in 2010. Repeal of 10 U.S.C. §654 is a first step in reminding our LGBT servicemembers that they are worthwhile. Taking this policy away will give back a voice to those who serve and served. Having that voiced affirmed by people such as you, representing New York City- one of the greatest cities in the world, reaffirms that worth.

I’d like to close with a quote from Rob Smith, an Iraq war vet who, even after he left the military, spent years being silent. He has found a very beautiful voice:

“For every gay veteran's story you do hear, there are hundreds if not thousands of soldiers' stories you won't. Stories of isolation and fear, mental distress, sexual assault, and all of the other poisons bred by the "don't ask, don't tell" policy. But maybe now, the next generation of gay soldiers will have stories different from mine: stories of open and honest service, where they can feel free to be themselves, love in any way they desire, and trust that they have the backing of the people and the leaders that they're sworn to protect. Ask any of the gay veterans in this movement and they'll tell you: That's worth fighting for.”

Thank you all for your leadership.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1069

in favor in opposition

Date: 08 JUN 10

(PLEASE PRINT)

Name: Jen Hogg

Address: 11 Cambridge Ave

I represent: _____

Address: _____

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