

Federal Judge Orders Immediate Halt to 'Don't ask, Don't tell' Ban on Openly Gay Troops

A federal judge ordered the Pentagon Tuesday to immediately quit firing gay and lesbian soldiers, striking down the military's controversial "Don't Ask, Don't Tell" policy.

California District Court Judge Virginia Phillips ordered the military to stop all investigations and discharges of gay soldiers.

The Obama Justice Department has 60 days to appeal the order. It was not immediately clear if they would.

Justice spokeswoman Tracey Schmalzer said the department is "reviewing the ruling" and had no other comment.

The administration faces considerable political pressure from its base not to appeal, and kill the 17-year-old policy by letting the matter rest.

Polls have shown dramatic increases in public support for allowing gays to serve openly, from 40% in 1994, when President Clinton unveiled the policy, to 70% and 75% in recent national surveys.

Gay activists cheered the ruling as a huge step - but sounded a note of caution.

"The bottom line is, we're telling our members it's still not safe to come out yet," said Aaron Tax, legal director of the Servicemembers Legal Defense Network, which represents troops booted for being gay. "It's hard to predict where this case will go. This is most likely not the end of the road."

Gay rights opponents denounced the ruling, saying it will destroy military morale.

"Judge Phillips is playing politics with our national defense," said Tony Perkins, president of the Family Research Council. "Once again, an activist federal judge is using the military to advance a liberal social agenda."

Tax said the court's directive to stop all pending disciplinary actions against gay service members will have immediate consequences for soldiers currently facing the boot.

"We have clients under investigation and facing discharge right now," Tax said.

Pentagon officials wouldn't say how the order would affect current cases. "We've just learned of the ruling. We're now studying it," said a Defense Department spokeswoman. The landmark case was filed in 2004 by the pro-gay Log Cabin Republicans.

After a two-week trial, Phillips ruled last month that "Don't Ask, Don't Tell" - under which gay soldiers can serve as long as they stay in the closet - was unconstitutional on first and fifth amendment grounds.

She said the evidence showed the policy "irreparably injures servicemembers by infringing

their fundamental rights."

Phillips' injunction ordering the military to scrap all enforcement of the policy was issued Tuesday. Government lawyers had asked her to limit the ruling, saying such an abrupt change might harm military operations in a time of war.

Phillips said the law doesn't help military readiness and instead hurts it by hampering recruiting and ousting service members with vital skills and training.

The plaintiffs issued a statement saying, "the United States is stronger because of this injunction, and Log Cabin Republicans is proud to have brought the case that made it possible."

Alexander Nicholson, Executive Director of Servicemembers United and another plaintiff in the case, called the decision "another historic and courageous step in the right direction."

Many analysts see the final end of the policy as most likely to come through a congressional repeal, and said the ruling boosts efforts to get a repeal passed.

"It's not going to change anything immediately but it's another nail in the coffin of DADT," said former Army captain and military lawyer Greg Rinckey.

Rinckey said he expected the Justice Department will file a quick appeal and be granted a stay while the case goes to the 9th Circuit Court of Appeals in California.

But he said he expects that by the time the 9th Circuit takes the case, "DADT is going to be gone," either by congressional repeal or a Defense Department mandate that openly gay members can serve.

Since President Clinton issued the policy in 1994, the military has kicked out 13,389 soldiers, sailors and airmen who were discovered to be gay or lesbian.

A substantial number of retired generals and admirals have urged Congress to repeal the policy, citing estimates that 65,000 gay men and women currently serve and that there are over a million gay veterans.