

## Judge Orders Injunction Barring 'Don't Ask, Don't Tell' Enforcement

A federal judge issued a worldwide injunction Tuesday stopping enforcement of the "don't ask, don't tell" policy, ending the military's 17-year-old ban on openly gay troops. U.S. District Judge Virginia Phillips' landmark ruling was widely cheered by gay rights organizations that credited her with getting accomplished what President Obama and Washington politics could not.

"This order from Judge Phillips is another historic and courageous step in the right direction, a step that Congress has been noticeably slow in taking," said Alexander Nicholson, executive director of the gay advocacy veterans group Servicemembers United and the sole named veteran plaintiff in the case along with the Log Cabin Republicans.

U.S. Department of Justice attorneys have 60 days to appeal. Legal experts who oppose the law say the department is under no legal obligation to do so and could let Phillips' ruling stand. But in the past the White House has directed the Justice Department to appeal such decisions – even while speaking out against the “don't ask, don't tell” law – to ensure that federal laws are enforced. On Tuesday White House Spokesman Robert Gibbs said he did not know if any decisions had been made on an appeal.

Greg Rinckey, a Virginia attorney whose practice focuses on military law and federal employment issues, said troops who come out now, before the legal issues are completely settled, could still face dismissal from the service if the law is later upheld by a higher court. He expected the Department of Justice to appeal the ruling “in days, if not hours.”

Because of that, gay rights groups warned closeted troops not to make any dramatic life changes until after the legal process is complete.

“We're advising them not to change anything,” Nicholson said. “This is an encouraging step, but it's just another step in the process.”

Phillips declared the law unconstitutional after a two-week nonjury trial in federal court in Riverside. She said the Log Cabin Republicans “established at trial that the Don't Ask, Don't Tell Act irreparably injures servicemembers by infringing their fundamental rights.”

She said the policy violates due process rights, freedom of speech and the right to petition the government for redress of grievances guaranteed by the First Amendment.

“Furthermore, there is no adequate remedy at law to prevent the continued violation of servicemembers' rights or to compensate them for violation of their rights,” Phillips said. She said Department of Justice attorneys did not address these issues in their objection to her expected injunction.

Before issuing her order, Phillips had asked for input from Department of Justice attorneys and the Log Cabin Republicans, the gay rights group that filed the lawsuit in 2004 to stop the

ban's enforcement. The Log Cabin Republicans asked her for an immediate injunction so the policy can no longer be used against any U.S. military personnel anywhere in the world.

"The order represents a complete and total victory for the Log Cabin Republicans and reaffirms the constitutional rights of gays and lesbians in the military who are fighting and dying for our country," said Dan Woods, an attorney for the Log Cabin group.

Government attorneys objected, saying such an abrupt change might harm military operations in a time of war. They had asked Phillips to limit her ruling to the members of the Log Cabin

Republicans, a 19,000-member group that includes current and former military service members. The Department of Justice attorneys also said Congress should decide the issue - not her court. Phillips disagreed, saying the law doesn't help military readiness and instead has a "direct and deleterious effect" on the armed services by hurting recruiting during wartime and requiring the discharge of service members with critical skills and training.

Legal experts say the Obama administration could choose to not appeal her ruling to end the ban - but Department of Justice attorneys are not likely to stay mum since Obama has made it clear he wants Congress to repeal the policy.

"The president has taken a very consistent position here, and that is: 'Look, I will not use my discretion in any way that will step on Congress' ability to be the sole decider about this policy here," said Diane H. Mazur, legal co-director of the Palm Center, a think tank at the University of California at Santa Barbara that supports a repeal.

Tracy Schmalzer, spokeswoman for the Department of Justice, said the government was reviewing Phillips' ruling Tuesday and had no immediate comment.

Gay rights advocates say they worry they lost a crucial opportunity to change the law when Senate Republicans opposed the defense bill earlier this month because of a "don't ask, don't tell" repeal provision.

If Democrats lose seats in the upcoming elections, repealing the ban could prove even more difficult - if not impossible - next year.

Woods said the administration should be seizing the opportunity to let a judge do what politics has been unable to do.

The "don't ask, don't tell" policy prohibits the military from asking about the sexual orientation of service members but bans those who are openly gay. Under the 1993 policy, service men and women who acknowledge being gay or are discovered engaging in homosexual activity, even in the privacy of their own homes off base, are subject to discharge.

Stars and Stripes reporter Leo Shane III contributed to this story.