

DADT Ruling Could Spur Senate to Act

Gay-rights advocates pleased, but wary of what the government might do next

Now that a federal judge in California has ruled “don’t ask, don’t tell” is unconstitutional and violates the First and Fifth Amendment rights of gays and lesbians, gay-rights advocates are thrilled but remain concerned that repeal language in the 2010 National Defense Authorization bill has yet to be voted on. The ruling puts pressure on the Pentagon and Congress to consider a swift repeal, but advocates worry that lawmakers such as Sen. John McCain will fight hard to keep it on the books.

The policy, in effect since 1993, bans service members who are gay and lesbian from serving openly, and the Pentagon estimates some 11,000 service members have been discharged under the policy since 1997, the first year for which data on discharges were recorded.

Greg Rinckey, a former Army lawyer at Fort Eustis, in Virginia, and now a managing partner at Tully Rinckey, an Albany firm that specializes in military lawsuits, says he expects the ruling to “chip away” at DADT, but that it’s “not earth-shattering.” He adds that he anticipates the Obama administration will appeal the decision but not push for a resolution until the Pentagon completes its investigation into the effects of repeal, the results of which are due to Congress by Dec. 1. “The Department of Defense won’t let it stand that “don’t ask, don’t tell” is unconstitutional, but I expect they will appeal to stay the ruling until the study is complete,” he says. If the study concludes that DADT should be repealed and if Congress moves toward doing so, says Rinckey, “then the case can be dismissed as moot.”

Activists remain extremely concerned about the timing of a Senate vote, as Kerry Eleveld wrote this week in *The Advocate*, and their focus is squarely on Washington. “Fearful that delaying action on “don’t ask, don’t tell” until after the midterms could potentially kill the measure for the year, repeal advocates are pushing Senate Majority Leader Harry Reid to schedule a Senate floor vote on the defense-funding bill in September,” she wrote.

The California court’s decision Thursday also puts pressure on the Obama administration, with gay advocates increasingly frustrated at the slow pace of repeal and what they consider the president’s lack of leadership on the issue. Gay-rights groups were planning a protest in front of the White House today to demand the Justice Department not appeal the judge’s decision.

Richard Socarides, former White House adviser to Bill Clinton on gay and lesbian issues, tells *NEWSWEEK*: “The president has said he’s against the policy, and now that it’s been declared unconstitutional he must stop enforcing it. To continue to defend the indefensible, just to please the old guard at the Pentagon, is no longer acceptable. And Congress is out of excuses.” Socarides adds: “If I were advising him [Obama], I’d tell him to direct an immediate moratorium on all “don’t ask, don’t tell” enforcement, including the upcoming trials and Justice Department appeals. This has got to stop, and it has to stop now. Politically, it would be a brilliant stroke. It would quiet Obama’s liberal critics and perhaps even energize some core supporters. And he could rightly blame the Republicans for stalling on this basic-fairness

issue, which is supported by over 70 percent of Americans.”

U.S. District Judge Virginia Phillips, who issued the ruling in the trial, which resulted from a lawsuit brought by the Log Cabin Republicans, has said she will issue a permanent injunction blocking further discharges, a move certain to please supporters of repeal even as questions remain as to whether any such action could be implemented. The government has argued that a decision on the issue should be taken by Congress, not the courts.

Even those who testified in the case and were celebrating the ruling remain anxious. Air Force Maj. Mike Almy was booted out of service in 2006 and testified about the demise of his 13-year career in the trial in July. “Despite my four tours of duty in the Middle East, the Air Force felt justified in searching my private e-mails in Iraq and using those to throw me out, even though I never once made a statement to the military that violated DADT,” he tells NEWSWEEK. “While the judicial process will move forward slowly, I hope this decision will put added pressure on the Senate to finally vote for repeal this month after they return to Washington next week.” Joseph Rocha, who was discharged in 2007 and who also testified in the trial, was ecstatic, writing in an e-mail to NEWSWEEK: “CA [California] celebrates tonight! Divine timing for a Senate vote.”

But advocates are wasting no time trying to push the case forward. Human Rights Campaign President Joe Solmonese issued a statement saying it was time for DADT “to be sent to the dustbin of history” and that “with House passage already secured, the Senate can and should vote in the next few weeks to repeal ‘Don’t Ask, Don’t Tell’ and allow every qualified man and woman the chance to serve with honor.”