

SERVICEMEMBERS

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**Securing Legislative Repeal of
“Don’t Ask, Don’t Tell”
in 2010**

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"The question before us is not whether the military prepares to make this change but how we best prepare for it." – Secretary of Defense Robert Gates

"I also believe that the great young men and women of our military can and would accommodate such a change. I never underestimate their ability to adapt." – JCS Chairman Michael Mullen

Introduction

In early 2009, Servicemembers United began proposing Set End-date / Delayed Implementation (SEDI) models for "Don't Ask, Don't Tell" (DADT) repeal based on the understanding that public Pentagon support for repeal would be an absolute requirement for a DADT repeal plan's political viability, and the prediction that a robust repeal implementation management planning process with a generous time allotment would be an absolute requirement for obtaining that support. In light of recent announcements and developments, the DADT repeal community and the progressive political community appear to be coming to terms with this reality and coalescing around an understanding that a Set End-date / Delayed Implementation (SEDI) repeal plan is the best way to lock in full legislative repeal in 2010, and thereby avoid the high risks associated with a legislative delay. In this memorandum, a viable plan for locking in full legislative repeal in 2010 is laid out according to Servicemembers United's Set End-date / Delayed Implementation (SEDI) model.

Background

Despite the historic testimony of Chairman Mullen and Secretary Gates regarding the DADT law before the Senate Armed Services Committee, there remains a deep-rooted fear among progressives and even moderates that failure to secure a set end-date for full legislative repeal of DADT will be a grave political mistake. Particularly concerning is the protracted time frame for repeal implementation planning that was laid out by the Secretary of Defense, as was the resemblance of this plan to the 1993 narrative on this issue (i.e., let the Pentagon take time to look at the issue, then tackle the legislative portion later). There is also a strong fear of the outcome of this process among DADT repeal supporters. Even if all parties involved have the best of intentions, the DADT issue does not exist in a vacuum. Many other forces can intervene between now and the future point at which the Pentagon finishes its planning and study that can derail the intended trajectory, including a year's worth of time for reactionary opposition to organize and wage a serious campaign, the mid-term elections, and the outcomes of other volatile political issues.

The support of the Pentagon leadership for ending DADT was a necessary but not a sufficient condition for ensuring full legislative repeal and minimizing political and practical risks. The sufficient condition will be a locked-in end-date for DADT to guarantee the law's repeal now, even if full repeal does not take effect until after the Pentagon Working Group finishes its study of how to successfully manage repeal implementation.

The Set End-date / Delayed Implementation (SEDI) Repeal Plan

In light of the recent testimony by Chairman Mullen and Secretary Gates that the time and ability to do a thorough repeal implementation management study will be a necessary precondition of DOD support for full legislative repeal, there is now a growing realization that demands for the immediate full-repeal plans and stop-loss / executive order plans may not be achievable. Instead, the Set End-date / Delayed Implementation (SEDI) repeal plan offers a more realistic method to guarantee the passage of full legislative repeal now and avoid the risks of delayed legislative action.

Several Senators have already expressed interest in immediate legislative options to lock in a guarantee of full repeal as the final outcome of the process announced at the hearing. This option would be fully consistent with the stated intentions of the President, the Secretary of Defense, and the Chairman of the Joint Chiefs, as all have clearly indicated support for full repeal as long as the Pentagon has an opportunity to study how the policy change might affect the force and decide how to mitigate any potential disruption.

Given the intended outcome that has now been publicly supported by the senior military leadership, legislative action should be taken immediately to lock in that desired outcome and insulate it from the changing political winds. As long as sufficient time is allowed for the Department of Defense to do its studies, work through its issues, and plan for successful implementation, there should be no logical objection to locking in full legislative repeal of DADT as soon as possible.

A Set End-date / Delayed Implementation (SEDI) model is ideal for achieving the goals of all parties involved, and reporting benchmarks are reasonable to ensure that sufficient progress is being made toward the ultimate goal of developing the most effective implementation plan. Most importantly, the process of working to lock in full legislative repeal of DADT and the Pentagon's development of the most effective repeal implementation plan can occur simultaneously.

18-Month Set End-date / Delayed Implementation (SEDI) Model

Immediately – Pentagon Working Group begins work; Legislation introduced to lock in repeal

After 3 months – Deadline for interim changes to policy enforcement; First report to Congress

After 6 months – Second report to Congress on progress of repeal implementation planning

After 9 months – Third report to Congress on progress of repeal implementation panning

After 12 months - Repeal implementation begins according to plan established by Pentagon

After 18 months – Full repeal completed; Final report to Congress

The Secretary of Defense has announced that a Pentagon Working Group has already been appointed to study repeal implementation management. This is certainly a positive signal that both the Pentagon and the administration are serious about tackling DADT repeal now and that Congress should act swiftly and decisively to do its part to ensure that the issue is brought to successful fruition. This includes introducing legislative language now to lock in repeal according to the Set End-date / Delayed Implementation (SEDI) model, preferably by incorporating that language into the Chairman's mark of the FY2011 National Defense Authorization Bill. The initial work of the Pentagon Working Group can proceed while a Set End-date / Delayed Implementation (SEDI) repeal plan works its way through the legislative process.

The Secretary of Defense has also announced that a series of interim changes to enforcement of the existing law would be explored and that findings and intended actions would be reported back to Congress after 45 days. Although it is not necessary to include a reporting requirement on this extra interim effort within the repeal legislation, such a step does fit within the spirit of regular reporting benchmarks outlined in the above model. However, the building of reporting requirements and/or benchmarks along regular intervals into the full repeal legislation is both reasonable and recommended to ensure proper congressional oversight of the Pentagon Working Group.

Despite the unpredictable time frame for the legislative vehicle into which the repeal plan would be incorporated, the approximate start time for the Pentagon Working Group has already been established and, therefore, a reasonable end-date for that work can be anticipated and incorporated into the repeal legislation's timeline. If the Pentagon expects the work to take approximately 12 months, then a firm 12-month timeline should be incorporated into repeal legislation, with the beginning of that timeline being when the Pentagon Working Group began its work and not when the legislative process is complete. Furthermore, it is reasonable to build in an additional brief transition period (e.g., six months) during which time repeal implementation must begin in earnest. Within a total of 18 months from the announced start date of the Pentagon Working Group, it is reasonable to expect full repeal to be completed and to require the Secretary of Defense and the Chairman of the Joint Chiefs of Staff to give a final report to Congress.

Implementation Management and Oversight Task Force

Those within DOD should not have to bear the full burden of implementation management, nor be given full license for transition and post-repeal oversight. We know from past experience that the successful implementation of personnel policy changes that concern formerly stigmatized minority groups requires the meaningful inclusion and active participation of a diverse group of civilian advocates for those groups (e.g., DACOWITS). Therefore, the President should follow up by appointing an external Implementation Management and Oversight Task Force comprised of representatives from among the active duty force, civilian DOD personnel, and the gay military advocacy community, but reportable directly to the President. Successful precedent for such a structural model can be found with the Presidential Special Oversight Board for Department of Defense Investigations of Gulf-War Chemical and Biological Incidents. This will be a crucial final step to ensuring a smooth transition to a post-DADT military.

About the Authors:

Alexander Nicholson is the founder and Executive Director of Servicemembers United. A former Army human intelligence collector who speaks multiple foreign languages, including Arabic, Alex was himself discharged under DADT just six months after September 11th, 2001. Today, Alex is one of the most active national leaders within the DADT repeal movement and an expert on DADT as law and policy. He has appeared on the cover of *The Advocate* magazine, *The Situation Room*, *AC360*, *CNN American Morning* and in hundreds of other media segments nationwide representing the gay military, veteran, and defense community. Nicholson was also prominently featured in the recent PBS documentary, *Ask Not*, which profiled the contemporary DADT repeal movement. Nicholson earned a Bachelors degree in international relations and a Masters degree in public administration, and completed his coursework for a Ph.D. in political science with a focus on interest groups and social movements.

RADM Alan Steinman served for over 25 years in the U.S. Coast Guard and U.S. Public Health Service, retiring in 1997 with the rank of Rear Admiral as the Coast Guard's Director of Health and Safety (equivalent to the Surgeon General of the other branches). Following his retirement, Admiral Steinman was appointed to the Presidential Special Oversight Board for Department of Defense Investigations of Gulf-War Chemical and Biological Incidents, on which he served until 2001. In 2003, Admiral Steinman became the highest ranking person to ever come out as gay when he publicly disclosed his sexual orientation to the New York Times. Since then, Admiral Steinman has been actively engaged in the DADT repeal movement. He has appeared in numerous media segments about DADT and was also featured in the recent PBS documentary *Ask Not*. Admiral Steinman holds a Bachelor of Science degree from MIT, a Master of Public Health degree from the University of Washington, and a Doctor of Medicine degree from from Stanford University.

About Servicemembers United:

Based in Washington, D.C., Servicemembers United is the nation's largest organization of gay and lesbian troops and veterans, their allies, and their supporters. With a particular focus on Iraq and Afghanistan-era troops and veterans, Servicemembers United actively engages in advocacy, education, and lobbying on the issues that affect the gay military, veteran, and defense community.