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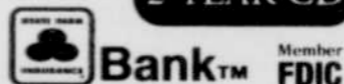
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NATIONAL news

THE BEGINNING OF THE END

Lawsuit challenges "don't ask, don't tell"

by Bob Roehr

Servicemembers Legal Defense Network launched its promised challenge to the anti-gay military policy known as "don't ask, don't tell" Dec. 6 with a lawsuit filed in federal court in Boston and a news conference in Washington, D.C.

The dozen plaintiffs are from around the country and served anywhere from several months to more than 14 years before being kicked out for being gay. The lawsuit charges that "don't ask, don't tell" violates their rights under the First, Fourth, Fifth and Ninth Amendments to the Constitution. All are seeking to be reinstated in the military.

"They have all served during the war on terrorism, three in direct support of operations in the Middle East," said C. Dixon Osburn, Servicemembers Legal Defense Network executive director. "Together, they have served more than 65 years in the armed forces. Among them, they have earned more than five dozen commendations, medals and awards."

They represent more than 65,000 gay and lesbian servicemembers on active duty and more than a million queer veterans. "We hope to end, once and for all, the ban on gays in the military," Osburn said. "It is unconstitutional and contrary to our national security interests."

Osburn bases his optimism for success on the U.S. Supreme Court's Lawrence vs. Texas decision, which threw out state sodomy laws. The 2003 opinion "declared that gays and lesbians have a fundamental right to privacy, free from interference from our government."

Several of the earlier adverse decisions affirming the constitutionality of "don't ask, don't tell" were based in part on the court's 1986 Bowers vs. Hardwick decision, which upheld state sodomy laws.

But the Lawrence decision explicitly reversed that earlier precedent, stating: "Bowers was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. Bowers vs. Hardwick should be and now is overruled."

This lawsuit, known as Cook vs. Rumsfeld, is one of the first to revisit the issue of "don't ask, don't tell" in light of that legal underpinning being knocked down.

"There is no other law quite like ['don't ask, don't tell']. It is the only law in the history of our nation that requires the firing of an employee—

from our nation's largest employer—simply because they are lesbian, gay or bisexual," said Sharra E. Greer, Servicemembers Legal Defense Network legal and policy director.

"Servicemembers are muzzled in violation of their First Amendment rights. They are denied due process. They are denied equal protection of the law. They are forced to serve as second-class citizens and denied the opportunity to serve their country for no good reason at all.

"It is this law—and not the lesbians, gay men and bisexuals who serve their country—that undermines good order, discipline, unit cohesion and morale. There can be no doubt that 'don't ask, don't tell' is blatantly unconstitutional," she said.

Two of the plaintiffs participated in the news conference.

Lt. j.g. Jen Kopfstein joined the Navy in 1995, winning honors as a midshipman at the U.S. Naval Academy in Annapolis, Md., and as a weapons officer aboard ship. She told the story of her grandfather who fought in the Battle of the Bulge during World War II and of being on a warship that left port on 9/11 not knowing if the country would be under further attack. "I am his blood, and I was ready and willing to fight for my country in time of crisis."

Her commander fought for her retention when Kopfstein was under investigation for being a lesbian, but the investigators paid little heed.

Monica Hill was "forced to choose between serving my country as an Air Force physician and caring for my terminally ill partner, Terri Cason." She requested a delay in reporting for duty in order to care for Cason.

"I watched Terri die in her hospital room as the World Trade Center towers fell and the Pentagon burned, and I never felt more helpless. I could not stop the cancer from taking Terri, nor was I at Andrews [Air Force Base near Washington, D.C.] helping with the casualties from the attacks."

Hill's request resulted in "a long and humiliating interrogation" and eventual termination from the Air Force. The military later sought recoupment, or repayment of the money it had paid toward her medical education. That process is ongoing.

"Last month, 135 servicemen and women were killed in Iraq. No one can ever know how my presence as a physician could have altered

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