

# 'Don't ask, don't tell' ruled unconstitutional

NEW YORK (AP) — For the first time, a federal judge declared unconstitutional the Clinton administration's "don't ask, don't tell" policy on gays in the military.

The decision barred the Pentagon Thursday from discharging six homosexuals.

U.S. District Judge Eugene Nickerson said the policy is "nothing short of Orwellian" because it equates sexual orientation with misconduct.

"To presume from a person's status that he or she will commit undesirable acts is an extreme measure," he wrote. "Hitler taught the world what could happen when the government began to target people not for what they had done but because of their status."

Lawyers for the plaintiffs welcomed the ruling but cautioned that it applies only to the six people in the case and doesn't prevent the Pentagon from taking action against other gays.

"We don't want people to read the paper and think they can come out tomorrow," said Beatrice Dohrn, legal director of the Lambda Legal Defense and Education Fund, which

helped represent the plaintiffs.

Justice Department spokesman Carl Stern said the government will appeal.

"We believe the challenged policy is constitutional and we remain committed to defending it," he said.

Under the "don't ask, don't tell, don't pursue" policy, gays can serve as long as they keep their sexual orientation to themselves and do not engage in homosexual acts.

Otherwise, they can be honorably discharged. In addition, commanders may not ask a service member his or her sexual orientation.

The Clinton administration adopted the policy in 1993 as a compromise between the views of gay-rights advocates and those flatly opposed to gays in the military. Previously, the Pentagon rooted out homosexuals as a threat to morale and fighting ability.

The judge said the new policy violates the constitutional rights to free speech and equal protection. "The policy ... is not only inherently deceptive, it also offers powerful inducements to homosexuals to lie," Nickerson said.

The government, he said, failed to prove its key argument that homosexuals, by their presence, can harm a military unit's cohesion.

"Even if defendants do believe that heterosexual service members will be so upset by a co-worker's mere statement of homosexuality as not to work cooperatively in the unit, such a belief does not justify a discriminatory policy," Nickerson wrote.

None of the five men and one woman could be reached for comment. Their lawyers said they did not wish to make statements.

The military had begun discharge proceedings against three of the six, who include two Navy enlisted men on active duty and four reservists—a Navy commander, an Army captain, an Army sergeant and a Army lieutenant colonel.

"This is an important first step in the fight, but it's not over. Thousands and thousands of other lesbians and gays need to know that, at least for the time being," said Matthew Coles, an American Civil Liberties Union lawyer who argued the case for the plaintiffs earlier this month.



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