

National Defense Authorization Act for Fiscal Year 1994 (Senate - September 9, 1993)

[S11168]

The Senator from California is recognized.

AMENDMENT NO. 783.

Mrs. BOXER. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The bill clerk read as follows:

The Senator from California [Mrs. Boxer] proposes an amendment numbered 783.

Strike out section 546 (page 139, line 20, through page 148, line 8) and insert in lieu thereof the following:

SEC. 546. SENSE OF CONGRESS CONCERNING HOMOSEXUALITY IN THE ARMED FORCES.

It is the sense of Congress that the policy of the Government concerning the service of homosexuals in the Armed Forces is a matter that should be determined by the President, as chief executive officer of the Government and commander-in-chief of the Armed Forces, based upon advice provided to the President by the Secretary of Defense and the military advisors to the President and Secretary.

Mrs. BOXER. Mr. President, as you listened to my amendment, you can see that it is very brief and to the point. That is why I allowed it to be read in its entirety.

It strikes out the language in the bill that deals with gays and lesbians serving in the military, and it replaces that language found in section 546 with a simple resolution allowing the President to resolve this matter with the advice of the Secretary of Defense and other military advisers.

Mr. President, I object to the policy contained in the bill for a number of reasons. I am going to cite four.

First, on the question of codification, there is no historic precedent for the codification of the military personnel policy that prevents a whole class of Americans from serving their country in the Armed Forces. There is simply no compelling reason to believe that we should break with history and codify such a policy. Over the past four decades, Congress has declined to impose restrictive personnel policies on the military.

In fact, even when the Tailhook scandal occurred, Congress stepped back and allowed the military to exercise its professional judgment.

In his report on the Tailhook scandal, the inspector general found that 83 women were sexually assaulted during the course of the 3-day Navy convention in Las Vegas. In total, 117 officers were implicated in one or more incidents of indecent assault, indecent exposure, conduct unbecoming an officer, or failure to act in a proper leadership capacity. And these acts were all committed by heterosexuals.

The report is graphic in its description of the alcohol abuse and sexual abuse within the military. Assaults varied, from female victims being grabbed, groped, pinched, and fondled. Some victims were bitten. Others were knocked to the ground, and some had their clothing removed or ripped.

The report rejects the claim that Tailhook was isolated. The abuses were not significantly different from those of earlier Tailhook meetings and were accepted by too many of the Navy's civilian and military leadership.

The report cites an overall failure of Naval leadership. And yet, in light of that scandal, Congress was content to allow the military to deal with this issue. Yes, we exerted leadership, and much of that came from Chairman Sam Nunn. Senator Sam Nunn of Georgia exerted tremendous leadership in making sure the military got to the bottom of the Tailhook scandal.

Much leadership came from Congresswoman Pat Schroeder, and from the chairman of the Armed Services Committee at that time, Les Aspin, who is now the Secretary of Defense. They pushed and they prodded, and the military is responding.

But nobody at that time, nobody in this Chamber or on the other side, suggested a law that would kick all of the heterosexual men out of the military. Of course not. We did not even move to codify sexual harassment policy, although arguably such a policy would affect far more people than the policy this bill would codify concerning homosexuals.

So we in the Congress said after Tailhook, of those who behaved badly, who betrayed the honor of the military, we said it was behavior, not orientation. We did not condemn a whole class of heterosexual men because of that terrible behavior. Of course not.

We said that the Tailhook scandal was a matter of bad behavior, terrible behavior, on the part of heterosexual individuals and that the military should act to enforce strict behavioral rules. I bring that up, Mr. President, because I truly believe that the Tailhook scandal taught us a lesson, and the issue here is behavior, not sexual orientation.

My second principal reason for moving to strike the bill's provisions on homosexuality is that the policy in this bill before us is not the policy developed by the Pentagon and supported by General Powell, the Joint Chiefs of Staff, and the President. Most Americans saw the don't ask, don't tell, don't pursue compromise produced by the administration as a step forward on this issue. I feel I must correct the misimpression that the bill codifies this compromise. The don't tell provision is codified, but not the don't ask provision. Nor does the bill codify the Pentagon's call for an end to investigations based on mere rumor.

So what the bill codifies are only the most restrictive portions of the administration's compromise, leaving the cornerstones of the President's policy out. So the don't ask, don't tell, don't pursue compromise that most Americans, in polls, thought was a good step forward and a fair step forward--56 percent of the country thought it was a good step forward--that is not what is being codified in the bill before us.

My third reason for moving to strike section 546 relates to my feelings on the policy itself, whether codified or not. As former Senate Armed Services Committee Chairman Barry Goldwater has stated, banning loyal Americans from the Armed Forces because of their sexual orientation is just plain un-American.

I believe Senator Goldwater is correct. The issue is not whether gays and lesbians should be allowed to serve their country in uniform; they do, and they have done so with honor and distinction throughout the history of the U.S. military.

I remember, Mr. President, seeing a cartoon in one of the newspapers during the time that this issue was first raised, and if I remember it correctly--and I do remember the spirit of it--it was a cartoon of the Vietnam Memorial Wall, on which the names of 50,000 dead Americans are listed. And there was a little bit of a cartoon over a few of the names and it said, 'Don't ask me now.' I think that makes the point, Mr. President, that gays and lesbians have served in the military with honor and distinction. Indeed, many were awarded medals of distinction and, certainly, many have died for their country.

So we know that gays and lesbians have served in the military with distinction. The question is whether we will codify a policy of deceit that forces honest men and women to lie in order to serve their country. The policy contained in the bill is a policy of outright discrimination, which flies in the face of the very American values that the military is sworn to defend.

As I have already stated, Mr. President, military service should be judged on behavior and performance, not on a person's sexual orientation, whether the person is homosexual or heterosexual; the issue is behavior. No one disputes, even the proponents of this legislation, that gays and lesbians have served their country with honor and distinction.

Over the past few months, I have been struck by the courage of those military personnel who have been willing to come forward to testify before the Congress, notwithstanding the personal risks involved, in the hope that others would no longer be the victims of an unjust, discriminatory policy.

Once more, I want to be clear on my view. No behavior that is inconsistent with military life should be tolerated, be it heterosexual behavior or homosexual behavior; and I support the strictest rules of conduct that would apply equally to all persons in the military, regardless of their sexual orientation.

What better place is there, Mr. President, to control behavior than in the military? All of military life is discipline. Tailhook serves as a glaring example of what is important in evaluating military service. It is behavior, it is performance, it is not sexual orientation.

This view is supported by the findings of the Rand Corp., a conservative defense industry think tank that the Pentagon commissioned to study this issue.

And that leads me to my fourth and final reason for objecting to codification. The policy contained in the bill was formulated without the benefit of the Rand Corp.'s study. This study cost American taxpayers \$1.3 million, and its conclusions are being ignored in the bill that is before us today. I want to make that point to all of the taxpayers of this country: You paid, fellow taxpayers, \$1.3 million for a study, an objective study, the Rand study, and its conclusions are being ignored.

At this point, I want to officially thank Chairman Sam Nunn, because when I went to him and I said to him, 'Senator Nunn, I hope we will not bring up this military bill until I have had a chance to see this Rand study,' he agreed, in all fairness--although he does not agree with me on this particular issue--that I had a right and other Senators had a right to see this report. I want to thank him for making sure we could get it.

The Rand experts visited seven foreign countries and the police and fire departments in six American cities seeking insights and lessons from similar experiences of other organizations and institutions. The Rand team considered the historical record, focusing on the military's integration of African-Americans and on the development of the current policy that prohibits homosexuals from serving. The team also reviewed public opinion, including the views of current active duty military personnel.

(Mr. CAMPBELL assumed the chair.)

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Mrs. BOXER. Finally, the experts reviewed the scientific literature on group cohesion, sexuality, and related health issues, as well as the literature on implementing change in large organizations. The Rand report states that only one policy option is consistent with its research.

So I say again to the taxpayers of this great country: The Rand study, for which you spent \$1.3 million, states that sexual orientation is not relevant to who may serve in the military. Let me repeat that. The

findings of a taxpayer-funded study by the Rand Corp. concludes that sexual orientation is not relevant to who may serve in the military.

Without the benefit of the Rand report, the committee found that the mere presence of gays and lesbians is sufficiently disruptive of military order to justify their exclusion from service. The Rand experts did not agree, finding 'ample reason to believe that heterosexual and homosexual military personnel can work together effectively.'

The bill requires the discharge of people who simply say that they are gay, with nothing more. The Rand Corp. study reveals that such a policy is unfair and unnecessary. The study found that the policy on lesbians and gays in the military should not be based on sexual orientation but should be built around strict and equal rules governing sexual conduct.

In other words, it is clear that behavior is the issue, not sexual orientation.

The DOD authorization bill that is before us requires the discharge of gay people for private conduct and public displays of affection but does not do so for heterosexual service members. The Rand policy, on the other hand, would establish clear standards of conduct for all military personnel, equally and strictly enforced.

Now I ask you, Mr. President: Is that not the American way? Equal standards, equally enforced, based on performance, based on patriotism, based on behavior, not based on sexual orientation.

Contrary to what is in this bill, the Rand report's findings indicate that gays and lesbians can serve the military, with no damage to unit cohesion.

The study makes the significant point that task cohesion in a unit, the ability to work together to accomplish a mission, is a more important factor in mission success than social cohesion, which relates to personal association.

Unfortunately, the bill ignores the distinction, and that is why I am moving to strike that language.

Section 546, which I hope we strike, states that the--

* * * presence in the Armed Forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

Let me read that again. The bill states: 'The presence in the Armed Forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk,' and it goes on.

Talk about opening the door to litigation--a propensity. Who is going to make that decision if someone has a propensity to act in a certain fashion?

And this finding that the committee makes in section 546 is not supported by the Rand study.

Let me read what the Rand researchers found about 'unit cohesion.' And I am quoting from the Rand report, and I remind everyone it is a taxpayer funded report:

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Concern about the effect that an acknowledged homosexual would have on 'combat effectiveness and unit cohesion' has dominated the debate. It also provides the basic rationale for the current policy that 'homosexuality is incompatible with military service.'

But the Rand experts reached a commonsense conclusion that contradicts that basic rationale. They say:

It is not necessary to like people in order to work with them, so long as members share a commitment to the group's objectives.

First, research suggests that leaders play an important role in promoting and maintaining unit cohesion.

That is the Rand study. Research suggests, they say, that 'leaders play an important role in promoting and maintaining unit cohesion.'

Second, military roles, regulations, and norms all enhance the likelihood that heterosexuals will work cooperatively with homosexuals.

Third, external threats enhance cohesion, provided that the group members are mutually threatened and there is the possibility that cooperative group action can eliminate the danger.

The task brings people together, and that is a very long way of explaining what I was told quite succinctly by an old friend of mine who served in World War II. I asked him, as we were debating this subject, whether they knew of gays in the military way back then. He said, 'Of course we did.' So I asked him whether it made a difference. And he turned to me and he said, 'Barbara, when you are down there in the foxhole and bullets are flying and you're counting on that guy next to you to save your life, you do not care whether he's gay or straight. You just care if he shoots straight.'

The bottom line is they did not care if the person next to them was straight as long as they could shoot straight. And what does that say? And that is from a veteran who served with distinction, who put his life on the line. He is now a physician. It says that behavior, performance, and qualifications are what count. And that is why it is important to strike this language, Mr. President.

The Rand Corp. findings with regard to the experience of other countries is also highly relevant information that was not available to the committee when the bill was drafted. Researchers visited Canada, France, Germany, Israel, the Netherlands, Norway and the United Kingdom, and taxpayers paid their way so that we could find out what was the right thing to do. And what did they find out?

With the exception of the U.K. all of these countries permit known homosexuals to serve in some capacity in their armed forces. According to Rand, and I quote:

Several broad themes emerged from these visits, with potential implications for the situation facing the U.S. In countries that allow homosexuals to serve, the number of openly homosexual service members is small and believed to represent only a minority of homosexuals actually serving.

So the number of homosexuals that were open was small in these countries.

Second, this is Rand:

Service members who acknowledged their homosexuality were appropriately circumspect in their behavior while in military situations; they did not call attention to themselves in ways that could make their service less pleasant or impede their careers.

Third:

Few problems caused by the presence of homosexual service members were reported. Problems that did arise were generally resolved satisfactorily on a case-by-case basis. If a problem developed action was taken to remove the individual, homosexual or heterosexual, from the unit.

Rand researchers also looked at the experience of American police and fire departments with nondiscrimination policies. As with foreign militaries, it was found that the key to successful integration of gays and lesbians was training that emphasized behavior.

Behavior must be the focus of our military personnel policy because behavior forms the basis of the qualifications of those who are asked to make the ultimate commitment, those who we ask to risk their lives. We look for competence, we look for strength, we look for courage, we look for patriotism, we look for people who are willing to put their lives on the line.

What is interesting, as Randy Shilts reported in his book, 'Conduct Unbecoming,' during wartime we have not seen the military make any moves against homosexuals. In other words, in wartime if people are willing to put their lives on the line, we allow them to do that. It is behavior, it is performance, it is willingness to serve, it is patriotism, and that has to be the yardstick.

An individual's sexual orientation, just like hair color, religion, just like their ethnicity, and just like their gender is no measure of their qualifications.

The Senate should not codify a policy that is just plain un-American. But that is what this policy is. It is a policy of discrimination based on status instead of behavior.

The Supreme Court has stated that 'the fear and prejudice of others' does not provide a rational basis for a Government-sponsored discrimination. And in my opinion, in my humble opinion, and with great respect to the chairman of the Armed Services Committee, I say that this policy is based on discrimination. It is based on the proposition that, in the military at least, the fear and prejudice of others is all that is necessary to justify blatant discrimination based on status, not conduct.

Our Nation is built on the belief that people have the right to live and work in a world without discrimination. It is built on the belief that individuals, regardless of race, color, or creed, should be able to reach beyond their grasp, serve their country and live the American dream.

Let us not codify what Coretta Scott King has called 'this un-American ban, which makes a mockery of civil and human rights in our country.'

Finally, it is easy to lose sight of the impact that policies have on people's lives. It is easy to label people that are different from us as 'those people.' We might be able to temporarily fool ourselves into thinking that those people are not really part of our social fabric--and I am reminded, Mr. President, of a German philosopher who wrote about World War II.

When the Nazis came for the Jews, I did not speak up because I wasn't a Jew. And when the Nazis came for the gypsies, I did not speak up because I wasn't a gypsy. And when the Nazis came for the mentally defective, I did not speak up because I was not mentally defective. When the Nazis came for me, there was no one left to speak up.

So let us not do this to gay and lesbian people. Let us have a code of behavior that affects us all and does not divide us.

We fool ourselves when we say that those people are not really part of our social fabric, and those people they are not really human, and those people do not really have an effect on our lives. That is not right. We are all God's children and those people are our sons and our daughters.

I have listened to the stories of my constituents whose lives and careers have been damaged by this policy. Take for example Benjamin Dillingham, a San Diegan, who served honorably for 8 years as an officer in the U.S. Marine Corps. He was even decorated by another branch of the military and given the Army Commendation Medal. And, for his service in Vietnam, he was presented with the Bronze Star Medal.

On the citation, they noted that Ben had `repeatedly distinguished himself by his courage and composure during critical situations.' Courage. Composure. That is what the military said about Ben. Are these not the qualities that we hope all of our servicemen and women possess? Ben served with distinction. And, during these heroic battles, he witnessed and later told of combat situations where members of his platoon accepted and trusted peers of theirs whose sexual orientation was known.

Sure, it was known. It has always been known that there have been gays and lesbians in the military. But, Frankly, it just was not an issue.

Or look at the story of Ruth, one of those interviewed for Randy Shilts' book, `Conduct Unbecoming.' A midshipman at the U.S. Naval Academy, she was suspected of being a lesbian. So, what did her peers do? Did they confront her? Did they ignore it? Did they leave her alone? No. Instead, the male shipmen were assigned to ask her out and see if they could seduce her.

And, under the cruel guise of showing her `what it's like,' one of these future officers physically attacked her. She escaped from the room, but was unable to file charges of rape. Why? Her career in the Navy depended not upon her skills, but rather upon her not being labeled as a `lesbian.'

We need to listen to these human voices. We need to put a face on this issue. Because for these people, gays in the military is a reality, not a question.

We are all God's children. Codifying this restrictive policy on gays and lesbians in the military would simply perpetuate the injustice done to courageous Americans.

I, therefore, urge my colleagues to support this amendment to strike the section that would codify this discriminatory policy.

And I would sum up in 15 seconds the four reasons: First, there is no precedent or reason to codify; Second, it contradicts the Rand study; Third, it is not the compromise most Americans thought it was; and, fourth, in my humble opinion, it is un-American.

Thank you, Mr. President.

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Mr. WELLSTONE. Madam President, leadership is inspiring people to be their own best selves. I support the Boxer amendment because I believe that our approval of the policy in this bill would not meet that definition of leadership.

I am an American Jew, and I know that I would be deeply offended if there was a policy adopted that essentially said that if I was to say to a friend of mine that I was a Jew, I could lose my job, my place of employment. I think what we are trying to codify is the functional equivalent of that, and I think it is truly appalling.

I heard my colleague from Nebraska, whom I respect very much, talk about the deliberations of the Armed Services Committee. I am not here to attack the committee, but I am here to say that there was only one independent outside study. The Department of Defense spent \$1.3 million on a Rand Corp. multidisciplinary study: A whole array of experts, focus groups, a study in our country, a study of other countries' policies as well. And after very careful deliberation--and I think it is interesting that not until very late in the game did we really have the opportunity to view this study, despite repeated requests to the Pentagon. The Rand Corp. concluded that 'There is no empirical research that supports the contention that homosexuality is incompatible with military service.'

Madam President, I ask unanimous consent to have printed in the Record at the end of my statement the executive summary of this study.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. WELLSTONE. I hope my colleagues will carefully read this, maybe not under the light of the cameras, in a calmer atmosphere free of the fear of the 30-second attack ads, and take this analysis to heart.

Rather than adopting a policy which is historically informed and forward looking, we choose to know what we want to know and we completely ignore the one independent study commissioned by the Pentagon that says we should end the ban and that this could be done without harm to military discipline or morale.

We are today about to codify a policy based on fear and based on prejudice. It is a policy that does not look forward, it looks backward. And it fails to ensure equal protection of the law. It does not meet the most basic standards of justice, or of nondiscrimination. And it does not meet the standard of equal protection under the law.

Let us be clear. After all the debate points are made and all the fine legal distinctions are drawn out, when all is said and done, the bottom line remains: This codification is a major step backward in our march toward nondiscrimination and equal protection for each and every American. And let there be no mistake: This codification is in fact more restrictive than the Executive order. It seriously weakens the don't ask prohibition in the President's Executive order for those entering the service by giving additional discretion to the Secretary to make changes in the policy as he sees fit.

It removes the requirement in the President's proposal for equal and evenhanded application of the Uniform Code of Military Justice, essentially ensuring that this code will continue to be selectively enforced against gay and lesbian persons.

It leaves effectively unchanged the language which suggests that homosexual orientation is incompatible with military service, by saying that those with a propensity to engage in homosexual conduct, defined by this policy to include even a simple public acknowledgment of one's sexual orientation, represents an unacceptable risk to military effectiveness.

This policy reduces a group of citizens, men and women, to categories, to stereotypes, and it relegates them to lesser treatment under the law. I am disappointed and saddened by this, because when any among us are so diminished, we are all diminished.

I do not think you can compromise on extending basic civil rights to all our citizens. I do not think you can split the difference on a matter of principle. The only standard that ought to be set is the standard of conduct, and we should have the strictest standard of conduct.