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Contact: Indra Lusero, Assistant Director, 303-902-9402, indralusero@palmcenter.ucsb.edu

LEGAL MEMO OUTLINES PENTAGON OPTIONS ON GAY BAN Shows Authority of Defense Secretary to Relax Enforcement

SANTA BARBARA, CA, July 6, 2009 – The Palm Center today released a legal memo that outlines what steps the Secretary of Defense can take to modify the enforcement of “don’t ask, don’t tell” while the President works with Congress to repeal the law. The document serves as a follow-up to the Palm Center’s heavily debated May study explaining options for executive action that could halt all discharges even without an act of Congress. Previous to its release, most analysts had assumed that only Congressional action could end the firings, which President Obama has vowed to do since early in his campaign.

The Palm Center issued its memo today in response to an announcement by Secretary of Defense, Robert Gates, last week saying he had directed his general counsel to study the flexibility contained in the law and to find “a more humane way to apply the law” while awaiting legislative repeal. The memo explains the legal authority and details several options for the Defense Secretary in modifying its enforcement. These range from retaining all service member targeted under “don’t ask, don’t tell” for a limited period of time in the interests of national security, to requiring that any investigation of a service member for homosexual conduct be conducted only with prior approval of the Defense Secretary.

The legal memo also makes clear that any steps which “fall short of ceasing all discharges under ‘don’t ask, don’t tell’ will have a negligible operational effect on gay and lesbian troops, and therefore on our national security.” Diane Mazur, Professor of Law at the University of Florida Levin College of Law and a co-author of today’s legal memo, explains that the Secretary of Defense has many options, but that until all discharges are stopped, the quality of life for gay troops will suffer. “The Palm Center wanted to describe the options that exist short of legislative repeal,” said Mazur, “but the operational effect of relaxing enforcement would be tiny compared to what will happen when the ban is actually lifted.” Dr. Nathaniel Frank, senior research fellow at the Palm Center agreed. But he also said that discussions by Secretary Gates about how to relax enforcement may spell the beginning of the end of “don’t ask, don’t tell.” “In Britian and Israel, modifying enforcement was followed by an end to their bans,” he said. “Given the research showing that openly gay service works, as well as the political climate and public support for repeal, I’d image the same might happen here.”

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The Palm Center is a research institute at the University of California, Santa Barbara. The Center uses rigorous social science to inform public discussions of controversial social issues, enabling policy outcomes to be informed more by evidence than by emotion. Its data-driven approach is premised on the notion that the public makes wise choices on social issues when high-quality information is available. For more information, visit www.palmcenter.ucsb.edu.