



FOR IMMEDIATE RELEASE

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

NEW STUDY: OBAMA CAN HALT GAY DISCHARGES WITH EXECUTIVE ORDER
Military Law Experts Chart Course to End 16-Year Ban

Date: May 11, 2009

Contact: Indra Lusero, Assistant Director, Palm Center, 805-893-5664, lusero@palmcenter.ucsb.edu

SANTA BARBARA, CA, May 11, 2009 – A study released by the Palm Center and written by a team of military law experts shows that the president has the legal authority to end gay discharges with a single order.

After the Palm Center first proposed the executive option, the idea of ending the ban by presidential order gained momentum. Congressman Rush Holt endorsed an executive order and National Security Adviser James Jones was then asked about it by George Stephanopoulos.

Prior to the release of Palm's study, many had argued that only Congress can lift the ban on service by openly gay troops. But according to the study, Congressional approval is not needed. Dr. Aaron Belkin, Director of the Palm Center and a study co-author, said "The administration does not want to move forward on this issue because of conservative opposition from both parties in Congress, and Congress does not want to move forward without a signal from the White House. This study provides a recipe for breaking through the political deadlock, as well as a roadmap for military leaders once the civilians give the green light."

There are three legal bases to the president's authority, the report says. First, Congress has already granted to the Commander in Chief the statutory authority to halt military separations under 10 U.S.C. § 12305, a law which Congress titled, "Authority of President to suspend certain laws relating to promotion, retirement, and separation" Under the law "the President may suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States" during a "period of national emergency." The statute specifically defines a "national emergency" as a time when "members of a reserve component are serving involuntarily on active duty."



The second and third bases of presidential authority are contained within the “don’t ask, don’t tell” legislation itself. The law grants to the Defense Department authority to determine the process by which discharges will be carried out, saying they will proceed “under regulations prescribed by the Secretary of Defense... in accordance with procedures set forth in such regulation.” Finally, the law calls for the discharge of service members “if” a finding of homosexuality is made, but it does not require that such a finding ever be made. According to the study, these provisions mean that the Pentagon, not Congress, has the “authority to devise and implement the procedures under which those findings may be made.”

Diane H. Mazur, Professor of Law at the University of Florida College of Law and another study co-author, said the presidential authority to stop firing gay troops, known as “stop-loss,” is different from the highly unpopular stop-loss policy that the Army recently announced it would phase out. “That use of stop-loss forcibly extends service by those who wish to leave the military,” she said, “whereas suspending discharges for homosexuality would do the opposite: allow ongoing service by those who wish to remain in uniform.” The study says the provisions of the stop-loss law, which are granted by Congress, are “sensible because they give the President authority to suspend laws relating to separation when a national emergency has strained personnel requirements.”

The other four authors of the study in addition to Mazur and Belkin are Dr. Nathaniel Frank, a Palm researcher and author of “Unfriendly Fire: How the Gay Ban Undermines the Military and Weakens America”; Dr. Gregory M. Herek, Professor of Psychology at the University of California, Davis; Dr. Elizabeth L. Hillman, Professor of Law at the University of California Hastings College of the Law; and Bridget J. Wilson, who practices law at Rosenstein Wilson & Dean in San Diego. The report will also be published in a forthcoming book, “Department of Defense Social Policy Perspectives 2010,” edited by James Parco, David Levy and Fred Blass.

###

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.