

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

ALLIANCE OF LESBIAN, GAY, BISEXUAL,)
TRANSGENDERED, AND STRAIGHT STUDENTS ;)
THE WOMEN’S LAW GROUP and THE EQUAL)
JUSTICE FOUNDATION,)

Plaintiffs,)

v.)

WILLIAM S. COHEN, as Secretary of Defense;)
UNITED STATES DEPARTMENT OF DEFENSE;)
and the UNITED STATES OF AMERICA,)

Defendants.

CIVIL ACTION
DOCKET NO. _____

COMPLAINT

NOW COME the plaintiffs, the Alliance of Lesbian, Gay, Bisexual, Transgendered and Straight Students, the Women’s Law Group and the Equal Justice Foundation, by and through their attorneys, Blackwood Associates, P.C., and hereby complain against the defendants, William S. Cohen, as Secretary of Defense, the United States Department of Defense, and the United States of America, as follows:

1. The Plaintiffs are organizations of students, faculty and staff at Vermont Law School (VLS). They bring this civil rights action to enjoin defendants from subjecting their student members to unlawful discrimination. The federal Defendants have coerced VLS into acting as their agent in an unlawful effort to extend their discriminatory employment policies into Vermont schools, violating the rights of all Vermonters to be free from discrimination based on sexual orientation or sex.

JURISDICTION AND VENUE

2. The Plaintiffs' claims arise under the Fifth and Tenth Amendments to the Constitution of the United States; this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, and to issue judgment against federal defendants, 5 U.S.C. § 702.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) in that the Plaintiffs' claims arose and all parties are present in the District of Vermont.

PARTIES

4. Plaintiff Alliance of Lesbian, Gay, Bisexual, Transgendered and Straight Students ("the Alliance") is an unincorporated association of students, faculty and staff at Vermont Law School, whose purpose is to educate the community concerning issues of importance to its members, especially the civil rights of lesbian, gay, bisexual and transgendered persons, and to defend those civil rights when threatened.

5. Plaintiff Women's Law Group ("WLG") is an unincorporated association of students, faculty and staff at Vermont Law School, whose purposes include educating the community concerning discrimination based on sex and gender, and defending the civil rights of women.

6. Plaintiff Equal Justice Foundation ("EJF") is an unincorporated association of students at Vermont Law School, whose purposes include education concerning civil rights and inequities within the legal system..

7. Defendant William S. Cohen is the United States Secretary of Defense; his office address is 1000 Defense Pentagon, Washington D.C. 20301-1000. Defendant William S. Cohen is sued in his official capacity.

8. Defendant United States of America is named in order to obtain relief against the federal government and all of its departments and agents.

FACTUAL ALLEGATIONS

9. Vermont Law School (“VLS”) is a not-for-profit corporation organized under the laws of Vermont, whose address is Chelsea Street, South Royalton, Vermont 05068.

10. VLS is an independent law school, with no significant endowment, which relies on student tuition for its operating expenses.

11. More than ninety percent of VLS students receive some form of federal financial aid, and approximately sixty percent, including many members of the Plaintiff organizations, rely in whole or in part on federal Work-Study and Perkins Loan Program assistance to pay their tuition.

12. For at least ten years preceding the occurrence of the events in 1998 recited below, VLS was in continuous operation as a law school.

13. On information and belief, federal defendants for at least ten years preceding the events of 1998 have not requested access to or been present on the VLS campus to interview students, but numerous VLS students applied at other locations and were accepted for positions as attorneys in the armed forces.

14. Pursuant to Vermont and federal law, American Association of Law Schools’ policy and its own educational requirements, VLS at all relevant times has had in effect a “nondiscrimination” policy which among other things forbids discrimination in education and employment based on sexual orientation or sex.

15. Under Vermont law, VLS is a “public accommodation” and is forbidden to discriminate on the basis of sexual orientation or sex. 9 V.S.A. §§ 4501(1), 4502(a).

16. On-campus job interviews are among the services, benefits and accommodations offered by law schools as places of public accommodation, and under Vermont law VLS may not discriminate in the provision of these services and benefits on the basis of sexual orientation or

sex.

17. Under Vermont law, when VLS provides facilities for employment interviews, posts schedules, and notifies students of job interviews, it acts as an employment agency governed by the Vermont Fair Employment Practices Law, which forbids employment agencies to discriminate on the basis of sexual orientation or sex. 21 V.S.A. § 495(a).

18. An employment agency discriminates unlawfully if it announces the availability of positions, indicating a preference or limitation as to sexual orientation or sex, or otherwise discriminates against an individual because of sexual orientation or sex. 21 V.S.A. § 495(a)(2), (3).

19. The United States armed services discriminate in employment on the basis of sexual orientation.

(a) After a prolonged political struggle with the President, Congress in 1993 authorized regulations that have come to be known as the “Don’t Ask, Don’t Tell” policy, 10 U.S.C. § 654(b), which subjects to mandatory discharge persons having a “propensity or intent” to engage in homosexual acts.

(b) The armed services have enforced this policy vigorously, discharging thousands of personnel between 1993 and 1998 for statements such as “I am gay” and other behavior that is presumed to disclose a propensity to violate military regulations.

(c) There are no comparable statutes or regulations providing for the mandatory discharge of persons suspected of a “propensity” for heterosexual sexual acts.

20. The United States armed services discriminate on the basis of sex. The “Don’t Ask,

Don't Tell" policy has been disproportionately applied to women. While only thirteen percent of Army personnel are women, forty-one percent of those discharged by the Army for displaying homosexual propensities are women.

21. Other schools with policies like VLS's having barred military recruiters because of their discriminatory employment and personnel policies, Congress provided in the National Defense Authorization Act of 1995, 108 Stat. 2776, 10 U.S.C. § 503 (note), that Defense Department grants and contracts could not be awarded to schools that barred ROTC or military recruiters.

22. Most colleges and universities thereupon suspended non-discrimination policies with regard to military recruiters.

23. A relatively small number of schools, primarily law schools like VLS that did not hold significant Defense Department grants or contracts, continued to enforce their nondiscrimination policies with regard to all employers, including military recruiters.

24. In response to this continued resistance to discriminatory federal policy, Congress included in the Omnibus Appropriations Act of 1997 a provision, now commonly known as the "Solomon-Pombo Amendment" ("SPA"), which provides that none of the funds appropriated to the Department of Education and other federal departments may be provided by grant or contract to an institution of higher education that prohibits military recruiting on its campus. Omnibus Consolidated Appropriations Act of 1997, Act of Oct. 19, 1996, 110 Stat. 3009-270, codified at 10 U.S.C.S. § 503 (note).

25. The purpose of this provision is not to meet military needs, but to carry out a political program:

(a) As stated by its chief sponsor, Rep. Gerald Solomon the purpose of SPA was

“to pick up the stragglers” (schools with no significant defense-supported programs) who continued to object to discrimination on the basis sexual orientation. 141 Cong. Rec. E13 (Wednesday, January 4, 1995).

(b) Federal aid to education, including student aid, was to be used to coerce such schools into acquiescence. Rep. Solomon stated that the purpose of his amendment was to alter university policies to end their supposed “discrimination” against students who wished to enlist in the armed services, and thus to “put an end to the hypocrisy that is running rampant on our Nation’s college campuses.” 141 Cong. Rec. H5937-02, H5963.

(c) SPA’s primary purpose plainly was not military recruitment, since on information and belief there were and are ample volunteers from the principal “stragglers,” independent law schools, and the military services in recent years have become steadily more selective in hiring lawyers.

(d) SPA does not in any case require that military recruiters be granted access to campuses, but only requires that federal defendants be exempted from non-discrimination policies that apply to other on-campus interviewers. 32 CFR § 216.4(c)(3) (1998).

26. SPA sanctions apply to student aid provided through Department of Education programs administered by colleges and universities, including the Perkins Loan Program and the Federal Work-Study Program. 32 CFR § 216.4(a) (1998); 63 Fed. Reg. 56819, 56821 (Oct. 23, 1998).

27. On information and belief, VLS students will receive about \$420,000 in the current academic year through Perkins Loan and Work-Study programs administered by VLS which would be cut off under the provisions of SPA and defendants’ regulations. Many students would be unable to attend law school without such aid.

28. On information and belief, VLS is unable to replace the threatened aid.

29. In 1997, shortly after the effective date of SPA, on information and belief the United States Army, Judge Advocate General Corps (“JAG”), a subordinate unit of defendant Secretary of Defense William S. Cohen, notified VLS of its intention to send a recruiter to the VLS campus.

30. On January 30, 1998, VLS Dean L. Kinvin Wroth announced a suspension of the VLS nondiscrimination policy as it applied to military recruitment and discrimination based on sexual orientation. Dean Wroth stated that this suspension was in response to SPA, was undertaken to avoid the hardship its sanctions would impose on VLS students, and would remain in effect only so long as VLS was subject to such sanctions.

31. VLS thereupon announced the availability of positions in the military and the opportunity to be interviewed on campus, while at the same time making clear in classes and public statements that the military services discriminate in employment on the basis of sexual orientation.

32. In February, 1998, JAG recruited on campus for the first time in at least a decade.

33. JAG recruiters returned to the VLS campus in October, 1998 and JAG has notified VLS that it intends to recruit on campus again January 28, 1999.

34. These three visits in less than a year, although federal defendants had not requested access to the VLS campus in at least the preceding ten years and, on information and belief, were suffering no lack of applicants from VLS, were plainly intended to enforce the policy of SPA, which is to compel acquiescence in the military’s policy regarding homosexual propensities, rather than to recruit personnel for the armed forces.

35. Plaintiffs’ members have been deprived of their civil rights and otherwise injured by

VLS's involuntary suspension of its nondiscrimination policy, under the compulsion of threats to cut off necessary financial assistance to its students.

36. Among the injuries suffered by members of the Plaintiff organizations are the following:

(a) Individual students who relied on VLS's nondiscrimination policy when they chose to attend VLS felt betrayed and bewildered, and suffered emotional distress, when the Dean announced that the policy had been suspended.

(b) For lesbian, gay, bisexual and transgendered students, and for other women, the climate for learning at VLS which had been positive with regard to sexual orientation and sex for the first time had elements of hostility with regard to these characteristics.

(c) Resources and energy that should have been devoted to the purposes of the law school and law study were diverted into dealing with and responding to the JAG interviews and VLS' suspension of its nondiscrimination policy.

37. Plaintiffs lack any effective remedy for these injuries: complaints aimed at VLS's discrimination, if effective, would only bring down upon it the sanctions of SPA, cutting off financial aid to students, including Plaintiff organizations' student members, and threatening the existence of the law school on which they depend. This indeed is part of the coercive effect that SPA intends.

Cause of Action

38. Vermont law recognizes the right of all people to be free from discrimination based on sexual orientation or sex in employment, in employment recruiting, and in places of public accomodation. 21 V.S.A. § 495; 9 V.S.A. § 4502.

39. Although federal law has been interpreted to allow the U.S. military to discriminate

against homosexuals and other women in its ranks, the SPA unconstitutionally seeks to extend that policy by requiring a private party, VLS, to participate in that discrimination, in violation of state law, or forfeit federal education aid funds for many of its students.

40. Because a large but uncertain number of VLS students would be unable to attend VLS if the threatened aid were cut off, SPA coerces VLS into violating state law.

41. This coercion is particularly invidious because there is no military need for VLS assistance in recruiting Vermont law students, and there is no rational connection between military recruiting and federal aid to students in non-military programs.

42. The coercion applied by SPA accordingly violates the rights of the people of Vermont, including the members of the plaintiff organizations, to be free from discrimination in employment, in employment recruiting, and places of public accommodation; these rights are protected against arbitrary federal intrusions by the Tenth Amendment, and the Due Process and Equal Protection Clauses of the Fifth Amendment to the Constitution of the United States.

Relief Sought

WHEREFORE, plaintiffs pray this Court to grant the following relief:

A declaration that SPA is void and without effect, as applied to Vermont Law School, because contrary to the Fifth and Tenth Amendments to the Constitution;

In the alternative, to the extent that federal defendants' regulations implementing SPA require the withholding of non-Defense Department funds, a declaration that those regulations are beyond the scope of SPA and void;

A permanent injunction against defendants from implementing or enforcing any of the provisions of SPA or its implementing regulations in Vermont;

An award attorneys' fees and costs;

And such other or additional relief as this Court may determine.

Dated at Burlington, Vermont, this 28th day of January 1999.

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By: BLACKWOOD ASSOCIATES, P.C.

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