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Pro Bono Spotlight

# How King & Spalding Helped LGBTQ+ Vets Win Back Benefits

By Daniel Wilson | March 21, 2025, 7:00 PM EDT · [Listen to article](#)

More than a decade after the U.S. Department of Defense repealed its "don't ask, don't tell" policy, which kept LGBTQ+ troops in the closet, veterans who were kicked out for their sexual orientation have continued to suffer the effects of a scarlet letter placed on their discharge papers.



Radha Sathe

Under the policy, most of those thousands of lesbian, gay and bisexual service members were given "less than honorable" discharge status because of their sexual orientation, denying them eligibility for veterans benefits such as healthcare, housing, education and government hiring priority, and the possibility of reenlistment.

Those veterans' DD-214 discharge papers also specifically noted their sexual orientation or perceived sexual orientation. Because this document is used in a variety of settings to prove military service, the policy effectively forced the vets to decide between protecting their privacy or taking advantage of company hiring programs and other situations that give preference to veterans.

Although those veterans have been allowed to seek to have their discharges upgraded and records amended following the repeal of don't ask, don't tell, or DADT, the correction process is one that a U.S. magistrate judge recently characterized as slow, burdensome and often traumatic.

The DOD demanded "that veterans prove discrimination occurred, even though the government has already conceded both the discriminatory nature of its policies and the pernicious effects," a group of veterans said in a lawsuit challenging the process.

A recent settlement in that suit, reached with the support of attorneys at King & Spalding LLP, Haynes Boone, Impact Fund and Legal Aid at Work and approved by a court on March 12, will finally give former service members discharged during DADT and under previous ban policies streamlined ways to upgrade their discharge status and get their records corrected.

"They can get their papers that show that they served, that they served honorably, and it doesn't disclose their sexual orientation," King & Spalding attorney Radha Sathe Manthe said. "Because there's no reason that their discharge papers should say anything about sexual orientation."



Veterans who were given "less than honorable" discharge status because of their sexual orientation have been denied eligibility for veterans benefits — offered by the U.S. Department of Veterans Affairs, pictured here — such as healthcare, housing, education and government hiring priority. (Photo by Annabelle Gordon/Sipa USA)(Sipa via AP Images)

Plaintiff Sherrill Farrell, booted from the Navy in 1986 following an admission that she was gay, said after the finalization of the settlement in January that she was "once again proud to have served my country by standing up for veterans like myself, and ensuring our honor is recognized."

"When I was discharged because of my sexual orientation, I felt that my country was telling me that my service was not valuable — that I was 'less than' because of who I loved," Farrell said.

Helping veterans seek benefits determinations or upgrades, and discharge upgrades, is a key part of King & Spalding's pro bono practice, according to Manthe.

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Cases focused on issues affecting the LGBTQ+ community are another significant part of the firm's pro bono work, and "when this case was presented to us, it was a kind of a nice meeting point of different communities that we seek to serve already," Manthe said.

### History and Consequences of Prior Policies

Before DADT, which was mandated by Congress in 1993 and went into effect in February 1994, homosexual people had been banned from serving in the armed forces under a series of policies dating back to 1949, with informal bans — including criminal punishment for same-sex sexual activities — in place going back to World War I.

DADT still barred open service, but allowed those troops to serve as long as they didn't reveal their sexual orientation, while also blocking superior officers from investigating a service member's orientation without specific, "credible information" of "homosexual activity," although troops continued to be regularly turfed out of the military based on their sexual orientation.

The policy was repealed in September 2011, finally allowing gay service members to serve openly, but the repeal did not automatically change the discharge status or characterization for those who had been discharged for violating DADT or under prior ban policies, leaving it to individual veterans to seek to have their service records upgraded.

Although the DOD said in a November 2023 court filing that military boards of correction had "reviewed more than 1,683 applications by veterans for records correction and have granted relief to more than 1,406 former service members," the vast majority of affected veterans have not sought to correct their discharges.

Responding to a related Freedom of Information Act request, the DOD identified at least 35,801 individuals discharged between 1980 — the earliest year for which it has computerized records — and the repeal of DADT in September 2011 who would potentially qualify for removal of sexual orientation markers from their DD-214, and at least 29,177 veterans who would also be eligible for discharge upgrades.

Farrell, the Navy veteran discharged in 1986, said in a declaration filed in the case that the consequences of that admission beyond ending her military career, including her other than honorable discharge, were not fully apparent until she received her DD-214.

"I thought maybe I would receive a General Discharge," she said. "As I understood it, a serious offense needs to be committed to receive an Other Than Honorable discharge. I could have never imagined that I would get an Other Than Honorable discharge just because of who I loved."

For plaintiff James Gonzales, an HIV-positive Navy veteran, the effect of his discharge has been roughly 30 years of "inconsistent medical care" because of his ineligibility for veterans benefits, "causing [his] health to suffer," according to the veterans' October 2023 amended complaint.

And plaintiff Lilly Steffanides, a veteran who has been homeless for most of the period since they were discharged from the Navy in 1989, had their request for temporary housing assistance turned down by a veterans affairs organization because of their discharge status and the sexual orientation code included on their DD-214, they said.

The stigma attached to sexual orientation indicators on a DD-214 has also prompted some veterans to avoid joining veterans groups, "an important source of social and emotional support among those with shared lived experiences," afraid of having to discuss their discharge status or the circumstances around their discharges, the veterans said.

Other former service members, if not excluded from consideration entirely because of their discharge status, have also passed up job opportunities or perks available exclusively to veterans, or advantages such as discounts typically offered to veterans at stores and restaurants, not wanting to show their DD-214 and reveal their sexual orientation to potential employers or strangers, they said.

The DD-214 is the "most important piece of documentation that the veteran can have to prove their veteran status" in the eyes of the government, and is typically required to prove veteran status, said King & Spalding attorney Rachel Yeung.

"And the DD-214s would say, in a narrative code that is publicly researchable ... the veteran's sexual orientation, and that did not happen if the veteran were not LGBTQ," she said.

### The Lawsuit and the Settlement

The veteran plaintiffs argued that their Fifth and Fourteenth Amendment rights had been violated by "the stigma and discriminatory effects of carrying indicators of sexual orientation on their DD-214s, and then [having to] navigate a broken record correction process to seek resolution."

Under that correction process, "the burden of proving that this narrative code or these reasons for discharge should not be on their paperwork was on the veteran," Yeung said.

"And this is a difficult process to navigate," she said. "Many veterans had to hire counsel to help them go through this process. It was not an easy or quick process. Sometimes they had to go and request their past records."

The DOD, which did not respond to a request for comment for this story, sought to dismiss the case in November 2023, arguing that the plaintiffs' claims were unmeritorious and untimely. For example, the military's record corrections procedures were "facially neutral" and the plaintiffs could not make due process arguments after failing to use the records correction process available to them, the DOD said.

The Pentagon also said that it had been proactively reviewing the records of veterans discharged for their sexual orientation and the plaintiffs could just "wait until the Military Services automatically review their records for potential correction and upgrade."

But U.S. Magistrate Judge Joseph C. Spero refused to dismiss the case, ruling in June 2024 that the DOD policy requiring individual applications for records corrections following the repeal of DADT "is not facially neutral and plaintiffs have adequately alleged that it was motivated by discriminatory intent."

The plaintiffs had also made a plausible due process claim regarding the correction process being "lengthy and burdensome" and trauma-inflicting due to "the approach defendants have chosen to take to handling the sexual orientation information (and sometimes associated dishonorable discharge information) reflected on their discharge paperwork," the judge said.

The government and veterans' counsel had already begun tentative settlement discussions following a hearing on that motion in February 2024, but the talks ramped up following Judge Spero's ruling, when they began meeting weekly, and the parties reached a settlement-in-principle in October that was finalized in January and approved earlier this month.

### Parallels With Transgender Ban

The approval of the settlement came shortly after the DOD reintroduced, at the direction of President Donald Trump, a policy effectively banning transgender people from military service.

The DOD estimated in February that there are 4,240 service members with gender dysphoria, the medical condition that is the formal basis for the policy — distress caused by a mismatch between perceived gender and the gender assigned to a person at birth — currently serving in the military.

The department's long-standing policy banning transgender troops had been lifted under the Obama administration, was reinstated under the first Trump administration, then lifted again under the Biden administration.

Trump's latest policy is currently subject to a preliminary injunction after a D.C. federal judge ruled on March 18 that it was "soaked in animus and dripping with pretext," and it is currently unclear whether the policy will go into effect.

But it appears the DOD may have taken at least some lessons from the post-DADT settlement and the experiences those veterans had to go through when formulating the latest transgender ban policy. Defense Secretary Pete Hegseth said in a related Feb. 7 memo that transgender troops "will be treated with dignity and respect," and the DOD indicated in a March 21 court filing in one of several challenges to the ban that transgender service members discharged under the policy will be given honorable discharges.

### The New Process to Fix Records

Two new records correction processes for veterans forced to leave the military based on their sexual orientation will be available under the recent settlement, beginning this summer.

Those given an honorable discharge or an uncharacterized discharge after being kicked from the military without being in long enough to get a formal discharge status, but who have a sexual orientation marker on their discharge paperwork, will only need to make "a very simple request," identifying themselves and asking for a reissued DD-214 without any sexual orientation indication, Manthe said.

Veterans with less than honorable or general conditions discharges will still need to go through the board of corrections for their relevant military service, but there will be a streamlined application process that allows applications to be considered in groups, rather than individually.

The process is open to any veteran discharged based on sexual orientation or "homosexual conduct" prior to the repeal of DADT, with estimates that as many as 114,000 service members were discharged on the basis of their actual or perceived sexual orientation between World War II and DADT's repeal, according to the plaintiffs' October 2023 class certification motion.

"They will need to fill out just certain portions of the application," Manthe said. "Don't need to attach any evidence, don't need to attach a copy of their current DD-214, or their full records. They don't need to include any argument for why they should be upgraded to an honorable discharge, or why they should have this correction made to their DD-214 to take off the sexual orientation [marker]."

--Editing by Michael Watanabe.