

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

FORUM FOR ACADEMIC AND INSTITUTIONAL
RIGHTS, a New Jersey membership corporation; SOCIETY
OF AMERICAN LAW TEACHERS, a New York corporation;
COALITION FOR EQUALITY, a Massachusetts association;
RUTGERS GAY AND LESBIAN CAUCUS, a New Jersey
association; PAM NICKISHER, a New Jersey resident;
LESLIE FISCHER, a Pennsylvania resident; MICHAEL
BLAUSCHILD, a New Jersey resident; ERWIN
CHEMERINSKY, a California resident; and SYLVIA LAW,
a New York resident,

Plaintiffs-Appellants,

v.

DONALD H. RUMSFELD, in his capacity as U.S. Secretary of
Defense; ROD PAIGE, in his capacity as U.S. Secretary of
Education; ELAINE CHAO, in her capacity as U.S. Secretary of
Labor; TOMMY THOMPSON, in his capacity as U.S. Secretary of
Health and Human Services; NORMAN Y. MINETA, in his capacity
as U.S. Secretary of Transportation; and TOM RIDGE, in his capacity
as U.S. Secretary of Homeland Security,

Defendants-Appellees.

No. 03-4433

DECLARATION OF DR. DAVID S.C. CHU

I, Dr. David S.C. Chu, hereby declare and say:

1. I am the Under Secretary of Defense for Personnel and Readiness. I have served in this position since June 1, 2001. In this position, I am the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense for Total Force management as it relates to readiness, as well as personnel requirements and management for the Department. "Total Force" is a term encompassing the organizations, units, and individuals that comprise the Defense

Department's resources for implementing the national security strategy, and includes DoD Active and Reserve military personnel. In this capacity, among other duties I am responsible for developing policies, plans, and programs for Total Force personnel and their allocation among DoD Components and between the Active and Reserve components to ensure efficient and effective support of wartime and peacetime operations, contingency planning, and preparedness. These duties involve recruitment and training, equal opportunity, compensation, recognition, discipline, and separation of all DoD personnel, to include both military (Active, Reserve, and retired) and civilian. I serve as the Office of the Secretary of Defense focal point for readiness issues; and develop policies, management structures, and administrative processes to ensure forces have sufficient readiness to execute the National Military Strategy. These responsibilities also include the analysis of the Total Force structure as related to quantitative and qualitative military and civilian personnel requirements, utilization, readiness and support. I administer and implement controls on military personnel and civilian personnel strengths for Military Departments, Defense Agencies, and other DoD Components.

2. I am submitting this declaration, pursuant to 28 U.S.C. 1746, in support of the government's motion to stay the mandate in this case. I make the following statements based on my personal knowledge and information made available to me in my official capacity.

3. As Under Secretary of Defense for Personnel and Readiness, my responsibilities include matters relating to military preparedness. One of the most vital elements of military preparedness is our ability to recruit highly qualified men and women to serve in the Nation's armed forces. Our recruiting needs are particularly critical now, when we are engaged in an ongoing global war against terrorism. At the same time, the heightened demands that are faced by members of the military during wartime make it more challenging to recruit the personnel on

whom we must rely for our defense. In short, our need to recruit qualified personnel is increasing while our capacity to do so is facing growing challenges.

4. Military recruiting, including the recruiting of lawyers for the JAG Corps, is more than a matter of merely filling a prescribed number of positions. The ability of the military services to perform their missions depends not only on the quantity of personnel at their disposal, but also – and in some respects, even more so – on the quality of the personnel. The technical skills of all sorts that are required by the services in the Twenty-First Century are higher than ever before, and it is imperative that we reach and recruit the most talented and best-trained individuals that we can. Even if impairments in our ability to conduct military recruiting do not lead to a reduction in the absolute number of accessions, they can produce a damaging reduction in the collective skills and capabilities of the persons whom we recruit – and on whom other service members depend.

5. The Department of Defense depends heavily on campus recruiting activities to communicate with young men and women who can contribute to our national defense. As explained in the service declarations that are being submitted along with this declaration, unimpaired campus access is vital to recruiting for the JAG Corps. That is likewise true of recruiting for other military manpower needs. Campus recruiting is by no means the only method that the Department uses to attract potential applicants, but it is an exceptionally effective one. If the Department's recruiters are denied access to campuses, or are subject to discriminatory restrictions on access that place them at a competitive disadvantage with respect to other employers, our ability to reach the people whose skills we need, including people who may be otherwise unfamiliar with the opportunities presented by military careers, will be directly impaired.

6. Other recruiting methods may serve as complements to campus recruiting, but they cannot serve as a replacement. As explained in the service declarations, there simply is no substitute for face-to-face contact between military recruiters and persons who are interested in exploring military careers such as those available in the JAG Corps. And unimpaired access to campuses is the most effective way to bring about that kind of face-to-face interaction. If we cannot reach students on campus, where they study and often live, and we cannot avail ourselves of the same services that are provided to other employers by career service offices, the resulting loss of opportunity for on-campus contact cannot be made up simply by the expedients of running more television and radio ads or offering new scholarships.

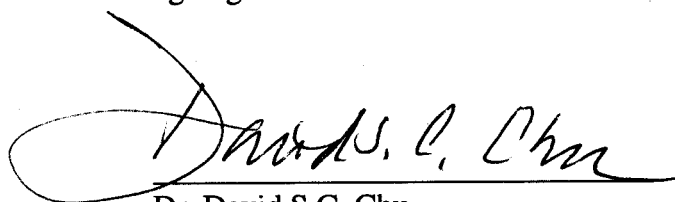
7. Even if alternative recruiting methods could, in theory, produce the same pool of applicants that we now reach by virtue of campus recruiting, simply relying on other methods is not a realistic alternative. Increasing the money and manpower devoted to other methods of recruiting would necessarily mean diverting those resources from other demands that they are currently meeting. The growing demands of the current global military environment and our domestic budgetary process are placing increasing constraints on the Department's financial resources and personnel. The resources that would be needed to expand alternative recruiting methods are not lying idly by, waiting to be used; they are already in use. Thus, even if a court-ordered disruption in our campus recruiting efforts could somehow be overcome by other recruiting efforts, we would pay a price in the diversion of resources required for other parts of the military mission.

8. Moreover, even if other recruiting alternatives could make up for restrictions on campus access in the long run (which I do not believe to be the case), they cannot do so in the short run. Developing, funding, and implementing alternative methods of recruiting would

unavoidably take time, and we do not have the luxury of living with impaired recruiting capabilities while that process plays out. The recruiting needs of the JAG Corps, like those of the military services more generally, are continuous and ongoing. If the Department's ability to enforce the Solomon Amendment is restricted while we are pursuing Supreme Court review, the adverse impact on our recruiting efforts will be felt sooner rather than later.

9. Finally, because this case focuses specifically on the application of the Solomon Amendment to law schools, I would like to speak to the importance of the work that is performed by the attorneys whom we recruit for the JAG Corps. The work of the JAG Corps is critical not only to the activities of the Department of Defense in general, but to our active military missions in particular. While judge advocates perform a wide variety of functions, one of their most important tasks is to provide support for commanders and troops who are actively engaged in combat activities. As explained in detail in the service declarations, judge advocates go wherever this Nation's other fighting men and women go, and they provide critical advice relating to actual combat operations. Thus, recruiting the most talented lawyers that we can attract is not simply a luxury – it is a necessity for our military mission. Under these circumstances, we cannot afford to have our law school recruiting abilities compromised by limits on our enforcement of the Solomon Amendment.

I declare under penalty of perjury that the foregoing is true and correct.



Dr. David S.C. Chu

Executed this 12th day of January, 2005