

October 5, 2003

The New York Times

Editorial

Many American law schools have limited the military's ability to recruit on campus because of its policy of discriminating against gays. But, faced with a threatened cutoff of federal funds, the schools have backed down. Now, a group representing law schools is challenging the government's policy of tying dollars to access. Forcing schools to choose between nondiscrimination and federal funds violates their First Amendment rights. The government's punitive policy should be struck down.

The Association of American Law Schools voted in 1990 to add gays to its list of groups that should be protected from discrimination. Today, virtually every law school prohibits discrimination on the basis of sexual orientation. Because law schools do not grant full access to recruiters from employers that discriminate, and because men and women can be discharged from the military merely for saying they are gay, the schools have denied the military full access to their students. At some schools, the inconvenience has been minor. Harvard Law School, for example, allowed recruiters on campus, but in a separate building, and did not allow its staff to help set up interviews.

The government has tried to punish schools for sticking to their principles. In 1995, Congress passed the Solomon amendment, denying federal funds to schools that block military recruiters. Over time, Congress and the Defense Department have gotten tougher, saying that even small differences in access will lead to a funding cutoff. And they have threatened the funding not only of law schools, as was once the case, but of all parts of the university. Given the money involved, as much as \$300 million in Yale's case, it is not surprising the law schools have given in.

In a lawsuit filed last month in federal court in New Jersey, groups representing law schools and law professors charge that these policies violate the First Amendment. It is well established that the government cannot put "unconstitutional conditions" on its funds, using its power of the purse to bludgeon recipients into giving up their rights. But that is precisely what Congress and the Defense Department are doing. Law schools have rights of freedom of association and academic freedom to keep those who have a policy of discriminating out of their learning environments.

The real problem is with the military. Now that the Supreme Court has held that gays have the right to engage in consensual sexual relations, it is time for the United States to join Britain, Germany, Australia, France, Israel and many other nations in allowing gay men and lesbians to serve openly. Rather than blackmailing its way onto campuses, the military should make itself truly welcome by not discriminating.