

March 21, 2006

Dear FAIR members (I am sending this to the named representatives of each FAIR member):

Two weeks ago, we suffered a setback when the Supreme Court upheld the Solomon Amendment in *Rumsfeld v FAIR*. The judgment and opinion were disappointing in a number of ways. The Court's reasoning was superficial, failing to grapple honestly with our best arguments. The level of deference offered to the military was disturbing. The opinion's tone and language was purposefully glib, even belittling. Perhaps worst was the failure on the part of the Court to confront the real harm suffered by our students when their government discriminates against them and forces their schools to help.

The Court did go out of its way to acknowledge the right to protest against military recruiters. This acknowledgement is important to all of us, and especially for those institutions whose protests in the past were met with threats of funding cutoffs from the Defense Department.

I recognize that many law schools around the country have chosen not to protest military recruiters as this case has been pending. But now the Court has held that universities can be forced into being collaborators in discrimination against their own students. In such a legal and political context, I believe that we, as educators, cannot go along silently. The Court now insists that our remedy is protest, and the protests that will follow this opinion should not be from students only, or professors only. Institutions can be protestors as well, and they should be. These protests will take various forms, of course. I believe it is our responsibility to think as carefully and creatively about this next phase as we did about the earlier stages of the fight against the Solomon Amendment.

As a part of their protest and amelioration, I encourage law schools to join in the growing opposition to the underlying evil we have been fighting against: the military's discrimination against gay, lesbian, and bisexual servicemembers. One of our amici, the Servicemember Legal Defense Network (sldn.org), is taking the lead in lobbying Congress to end "Don't Ask, Don't Tell." A House bill to end DADT, authored by Rep. Martin Meehan (D-MA), already has over 100 co-sponsors. FAIR's members could be an important part of SLDN's lobbying efforts. You will be hearing more on that front soon.

This litigation gained national attention because of the broad coalition of courageous law schools and law faculties that came together to fight for the civil rights of their students. Many law schools became members of FAIR only after individual faculty members, administrators, or students faced significant professional or personal risks. You all deserve thanks and recognition. Your joining FAIR is a very important act, one that will long be remembered as an act of principle taken on behalf of our students who are victims of discrimination.

FAIR has been blessed with a stellar board of directors, each of whom has given time, advice, and – perhaps most importantly – their good name: Sylvia Law, Erwin Chemerinsky, William Eskridge, Chai Feldblum, George Fisher, Nicholas Georgakopoulos, and Michael Seidman. We have been the beneficiaries of superb legal counsel from Josh Rosenkranz and his

team at Heller Ehrman LLP. We worked with an amazing and collegial group of co-plaintiffs: the Society of American Law Teachers, the Boston College Coalition for Equality, the Rutgers Gay and Lesbian Caucus, Pam Nickisher, Leslie Fisher, and Michael Blauschild.

I could not be prouder of the team we built and the work we have done as a team. Thank you for the opportunity to be a part of this coalition. It has truly been an honor.

It is perhaps trite to say, but the fight is not over. This was but a skirmish in a larger civil rights battle for the rights of our students to be full members of our community, and full members of society, regardless of their sexual orientation. I am confident that eventually all of our students will be able to serve their country regardless of whom they love. When that day comes, we will know that our actions in this case made that day more possible.

Please pass this letter along to others, as you see fit.

Yours sincerely,  
Kent Greenfield  
President, FAIR  
Professor of Law, Boston College