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Clinton won't enforce new law on HIV

By Nick Adde
Times staff writer

WASHINGTON — The Clinton administration and Congress are heading for a showdown on the president's decision to not defend the new law that requires the dismissal of HIV-positive service members.

But high noon probably won't come until the end of August, when the Defense Department will be required to begin dismissing troops.

When Clinton signed the 1996 Defense Authorization Act Feb. 10, he expressed his distaste for the provision that calls for the discharge of anyone who tests positive for human immunodeficiency virus-1 — the virus that causes AIDS.

Although the disease has no known cure, past military policy allowed HIV-positive service members to remain on duty as long as they were healthy enough to serve.

The new law offers HIV-positive service members honorable discharges, and allows infected people with 18 or more years of service to remain on duty until they qualify for retirement pay.

Clinton called the new provision "discriminatory," and ordered the Justice Department not to defend it in federal courts. Instead, he advised Attorney General Janet Reno to defer the government's responsibility to defend the law to Congress.

The president also called for the departments of Defense, Veterans Affairs and Transportation to provide "full benefits" to HIV-positive service members and their families.

Sympathetic lawmakers in both the House and Senate say they will attempt to repeal the policy.

"There is strong bipartisan support in the Senate for repealing the provision, and we intend to do all we can to see that its days on the statute books are numbered," said Sen. Edward M. Kennedy, D-Mass.

In the House, Rep. Peter G. Torkildsen, R-Mass., introduced a bill to repeal the provision before the National Security Committee on Feb. 1. Citing the support of Defense Secretary William Perry and Joint Chiefs of Staff Chairman Gen. John Shalikashvili, Torkildsen said, "When our nation's top military officials state clearly that HIV-positive men and women are capable of performing their duty, Congress should not be micromanaging military personnel policy."

Supporters of the discharge policy call it a readiness issue, and dismiss suggestions that banning otherwise healthy carriers of HIV from active duty is unfair. A spokesman for the measure's sponsor, Rep. Robert K. Dornan, R-Calif., accused the administration of "ignoring the Constitution."

Congress is not likely to stand still and accept the administration's position, Fallon said. He could not specify what action lawmakers will take, adding "We will have to wait and see."

Mine crews to

By Ernest Blazar
Times staff writer

WASHINGTON — Sailors manning forward-deployed mine countermeasures ships are in for a shake-up.

The two ships in the Western Pacific, Guardian and Patriot, will now be permanently stationed in Japan, bringing an end to the rotation of 83-man crews from Ingleside, Texas.

The ships will now receive permanent crews. Families and crew members began moving to Sasebo, Japan, Jan. 1.

But the Navy's decision to forward deploy — rather than homeport — two other mine countermeasure ships to the Persian Gulf will resurrect the rotational crewing policy there.

The same crews that used to trade off ownership of Patriot and Guardian in the Western Pacific will now be pointed to the Persian Gulf to man the Ardent and Dextrous in six-month shifts.

There are four crews per ship, each serving a six-month deployment in a standard 24-month deployment cycle.

The Pentagon announced Feb. 14, the move of the Ardent and Dextrous to the Persian Gulf, under the control of the Fifth Fleet, headquartered in Manama, Bahrain.

It's part of the Navy's new push to get

mine warfare essential theaters now sortie 1 1 — a hostilities begin.

Ardent and Dextrous, S.C., preparing are due to leave heavy-lift vessels and arrive in the Persian Gulf from the Pentagon.

The Mine Warfare Center owns the ships, Ingleside, Texas.

No increased threat

Col. John Smith, Central Command spokesman for U.S. operations in the Persian Gulf, said the decision to forward deploy "not as a result of increased threat from mi-

Iran is known to have sophisticated mine warfare capabilities," a Pentagon statement said. "The move will help ensure U.S. points in the region."

Capt. Bruce Van Fleet, a Navy mine warfare policy expert, said the move "cuts down our time to respond to a mining incident."

Mine countermeasures

Dalton on the 'state of the Navy'

By Ernest Blazar
Times staff writer

WASHINGTON — The Navy has made some mistakes in its effort to smoothly integrate women throughout the service, admitted Navy Secretary John Dalton.

"And we'll make more," he told reporters at a press conference Feb. 14.

"There are some in our service that still don't get it," Dalton said. "And that, unfortunately, includes some of our flag and general officers and senior enlisted personnel."

But he said such missteps are a natural offshoot in trying to make cultural and social changes in the Navy.

"My expectation is that this change caused by moving forward will create friction — throwing off sparks, and introducing heat and light to some of the dark corners of the organization."

Dalton's speech was billed as a report on the "State of the Navy." The first three-fourths of his speech focused on readiness, technology and efficiency. The last quarter addressed topics that have attracted the most recent headlines.

Dalton was contrite, but firm, saying the Navy was right in quickly making public the errors of its people, a strategy still questioned by some flag officers who complain they've seen no payoff yet.

But Dalton argued that quickly getting word out to the public on scandals will result in a better Navy in the long term, he said.

"The more open the forum, the better the environment for organizational and public feedback," he said.

He called it a "process of public renewal."

The reaction from some quarters was supportive.

"Well at least Dalton gets it," said John Byron, a retired Navy submarine captain who argues in the February Naval Institute Proceedings that embedded sexism, not

Touching

Following a press conference Feb. 14, Dalton touched on some highlights:

■ **Readiness.** Readiness problems no longer does the Navy return from the Persian Gulf. Navy has managed to get it. "It is no longer a problem," he said.

■ **Technology.** A "good enough" philosophy when it comes to technology. Dalton said: "Tom has been improved. Rates in the Persian Gulf today."

■ **Navy-Marine Corps leadership.** Navy Annex will be a "marine team, Da is a cohesive team and well."

■ **Women.** On examine future service members. But Dalton said: "We have experience as a young woman."

rule-breaking, is a "SecNav put his finger on the Navy culture and behavior and rules."

Though recent headlines have been the focus, Dalton reminded reporters that the Navy is a stranger to such problems.

We have "hit the headlines" now and then through the media. "We have at the scrutiny of insider it has attracted the

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☐ Action
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COMMENTS:

National News

President declares HIV ban unconstitutional

Calling measure 'discriminatory,' president promises his administration will not defend it

by Lou Chibbaro Jr.

President Clinton last week took the step of declaring as unconstitutional a clause in a defense budget bill that requires the military to discharge all servicemembers who test positive for HIV antibodies.

Clinton's decision to refuse to defend a law passed by Congress against a court challenge marked the first time a U.S. president has taken such an action since President Franklin D. Roosevelt did more than 50 years ago.

Clinton, while signing the National Defense Authorization Act of 1996 into law on Feb. 10, said he has directed the Justice Department not to defend the HIV discharge clause in court against a lawsuit.

AIDS advocacy groups have said they will file suit to overturn the clause if Congress does not take steps to repeal it through a separate bill.

The president called the discharge provision "discriminatory and highly punitive" and promised to support efforts in Congress to repeal the provision "before a single servicemember is discharged from the armed forces."

"I have concluded that this discriminatory provision is unconstitutional," Clinton said in his Feb. 10 statement. "In accordance with my constitutional determination, the Attorney General will decline to defend this provision. Instead, the Attorney General will inform the House and Senate of this determination so that they may, if they wish, present to the courts their argument that the provision should be sustained."

Gay civil rights attorneys said they were pleased that Clinton decided not to defend the provision in court but cautioned that the outcome of a lawsuit to challenge the provision is uncertain.

"It's neither a dead bang loser nor a sure winner," said Matt Coles, executive director of the ACLU's National Lesbian and Gay Rights Project. "It's somewhere in between."

Coles and other attorneys who are likely to represent servicemembers who challenge the discharge provision said the best bet for fighting the provision is to persuade Congress to repeal it.

"Litigation should be viewed as the

fall-back, not the fix," said Michelle Bennecke, an attorney with the Servicemembers Legal Defense Network, which provides legal assistance for Gays in the military.

Catherine Hanssens, an attorney with the New York-based Lambda Legal Defense and Education Fund, said attorneys representing affected servicemembers would seek a temporary injunction to prevent the military from discharging servicemembers if Congress or the courts do not strike down the provision before it takes effect. She said a motion for an injunction, just like the final outcome of a lawsuit, is uncertain.

The HIV discharge clause requires the military to discharge, within a six-month period, servicemembers found to be HIV antibody positive under the military's mandatory testing program.

A bill introduced in the House earlier this month by Rep. Peter Torkildson (R-Mass.) seeks to repeal the HIV discharge provision and has garnered the support of 82 co-sponsors as of late this week. A similar repeal bill has yet to be introduced in the Senate.

Gay civil rights and AIDS advocacy groups, while praising Clinton for vowing to fight the HIV discharge provision, continued to express concern that the president decided to sign the provision into law.

"We are disappointed that President Clinton has not used his veto power to strike down this horrible law," said Melinda Pares, executive director of the National Gay and Lesbian Task Force.

"Today marks a sad day in the history of the AIDS epidemic," said Mark Barnes, executive director of the AIDS Action Council, a national group that lobbies the federal government on AIDS-related issues. Barnes said the HIV discharge provision establishes a "dangerous precedent by legalizing AIDS discrimination."

"Now that the president has signed the bill, he is responsible for this measure," said Elizabeth Birch, executive director of the Human Rights Campaign, a national gay civil rights group. "We will hold him accountable for keeping the promise he has made to see this odious measure repealed."



"I have concluded that this discriminatory provision is unconstitutional," President Clinton said in a statement.

Clinton vetoed an earlier version of the bill, which reauthorizes the programs of the Department of Defense, in December. He cited the HIV discharge provision and several other provisions as reasons for objecting to the legislation.

A House-Senate conference committee responded in January by removing several of the provisions to which Clinton objected. However, at the insistence of anti-gay Rep. Robert Dornan (R-Calif.), author of the HIV discharge provision, and Sen. Trent Lott (R-Miss.), the conference committee refused to remove the HIV provision. Congress then passed the revised bill by a lopsided margin without a direct vote on the discharge provision.

Clinton, through White House spokespersons, said last month he was angered over the conference committee's action but decided the bill included too many important defense provisions, including a long overdue pay rise for members of the military, to justify a presidential veto. It was at that time that the president said he would push efforts on Capitol Hill to repeal the HIV discharge provision.

Momentum on Capitol Hill for repealing the provision appeared to be growing

in the last two weeks as conservative political commentators, public officials, and sports figures, including basketball star Earvin "Magic" Johnson, expressed outrage over the discharge provision and called on Congress to repeal it.

Secretary of Defense William J. Perry and the chair of the U.S. Joint Chiefs of Staff, Gen. John M. Shalikashvili, issued a joint statement calling the provision unnecessary and disruptive to military personnel policy.

"Discharging service members deemed fit for duty would waste the government's investment in the training of these individuals and be disruptive to the military programs in which they play an integral role," the two said.

On Feb. 9, one day before he signed the defense bill, Clinton issued a directive to the DOD and other federal agencies calling on them to "take all necessary steps, consistent with applicable law," to ensure that servicemembers who may eventually be discharged on the HIV provision, along with their families, be given full medical and retirement benefits.

The discharge provision, as passed by Congress, would deny servicemembers who have HIV infection the same medical benefits routinely given to servicemembers who are discharged on other medical grounds. According to DOD officials, 1,049 servicemembers have tested positive for HIV antibodies but are currently still capable of performing their duties.

Bennecke, of the Servicemembers Legal Defense Network, said it is uncertain whether legal grounds exist to allow the DOD to carry out Clinton's request for providing full medical benefits for servicemembers discharged under the Dornan-sponsored HIV discharge provision.

"If the president and members of Congress are looking for a lawsuit to get off the hook, they are wrong," said ACLU attorney Coles. "We do not expect to start court action right away. This is an uncharted area," he said, referring to the legal and constitutional theory that must be employed to fight the discharge provision in court.

"Yes, we will go to court if we must," he said. "But the best way to remove this law is to repeal it."

Gingrich goes one-on-one with Magic

by Lou Chibbaro Jr.

House Speaker Newt Gingrich may have angered both basketball fans and Gay activists this week when he criticized basketball star Earvin "Magic" Johnson for urging Congress to repeal a law that requires the military to discharge service members who test positive for HIV antibodies.

Gingrich told reporters in his home district in Georgia on Wednesday that the HIV discharge provision, which Congress attached to a defense authorization bill, is necessary to protect soldiers in combat and should not be repealed.

"What Magic Johnson doesn't understand is the nature of being in the military

and the danger of being in combat and what happens in a field hospital," Gingrich said. "If you have people bleeding, people wounded, and you don't have a clue who has HIV."

Gingrich's comments drew immediate criticism from the Human Rights Campaign, a national gay political group, which noted that current military policy does not allow servicemembers with HIV to go into combat.

"Clearly, it is Speaker Gingrich who does not understand the realities of the U.S. military," said HRC political director Daniel Zingale. "Servicemembers who test positive for the AIDS virus are not engaging in warfare or spending time

in military field hospitals, contrary to Gingrich's statements," Zingale said.

The Department of Defense has said the policy for dealing with servicemembers with HIV, prior to the recently passed discharge provision, required such servicemembers with HIV to be stationed only in the United States, where they remained on active duty as long as their illness did not prevent them from doing their jobs.

Last week, Johnson released copies of letters he sent to Gingrich and Dole which urged them to support legislation to repeal the HIV discharge provision.

"As I'm sure you know, I left the career I love four years ago in large part be-

cause of fear and ignorance about HIV and AIDS," Johnson said in his letter to Gingrich and Dole. "I'm writing to you on behalf of a group of people that I've never met but for whom I have the greatest respect and empathy," he said. "The 1,049 members of the U.S. military [with HIV] who, like me, just want to do their jobs and provide for their families."

Added Johnson, "I hope you will do right by those 1,049 service members and stop ignorance, fear, and prejudice from forcing them to 'retire' from the jobs they love and their important service to our country."

Gingrich on Wednesday rejected Johnson's request, saying those who are calling for repealing the discharge provision, including Clinton, are taking a "totally irresponsible position."

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COMMENTS:

THE NEW REPUBLIC

FEBRUARY 19, 1996

CROSSING THE LINE

Bad timing, Bill. This was the week that Magic Johnson, four and a half years after announcing he was HIV-positive, returned to play for the Los Angeles Lakers. It was the week that the latest anti-HIV drugs, protease inhibitors, in combination with other drugs, were shown in trials to have unprecedented strength against the virus. It was a week when the hundreds of thousands of people struggling with the AIDS epidemic, and the millions who comprise their families and friends, could begin to have some real hope for the future. It was also the week that the president agreed to sign a bill that would discharge over 1,000 healthy, asymptomatic people with HIV from the military he commands.

Even by Clinton's standards, this was a new low in political expediency. Sure, he didn't come up with this proposal by himself; he was cornered into it. The proposal to discharge all HIV-positive military personnel was cynically attached to the vast defense authorization bill by Republican congressman and presidential candidate Robert Dornan. The military, which has an exemplary record in dealing with HIV-positive personnel, didn't want it; even Senator Sam Nunn, whose discomfort with homosexuality is palpable, opposed it. The president had vetoed the entire bill once; and there would have been a political price to pay if he vetoed it again, delaying, once more, a pay raise for military personnel.

Yes, we know, politics is politics. Compromises are sometimes necessary. But there are some things that decent people will not do, some lines they will not cross, some convictions they simply will not abandon. One of those convictions, surely, is that people who serve their country well, while battling a deadly disease, should not be thrown out of work for no good reason. Do you hold up the entire Pentagon to stand by such a conviction? Yes, you do. If that means a military pay raise is rejected, it's Dornan's fault, not Clinton's. The president has vetoed twelve bills in this Congress because they didn't "reflect our values." If being fair to the sick does not reflect our values, then what does?

Dornan defends his proposal by arguing that HIV-positive personnel are a drag on the military. Treated differently than other service-members—they are restricted from combat and from duty overseas—they

allegedly impair military effectiveness. But the same rules that apply to HIV-positive troops apply to anyone in the military with a disabling condition, including asthma, cancer, diabetes, heart disease and pregnancy; and Dornan is proposing no discharge for anybody else. Besides, Pentagon officials in a recent memo to Congress argued that "we see no prudent reason to separate and replace" HIV-positive troops.

The ironies are particularly rich. Republicans who wanted to keep the gay ban because the military should have complete freedom in its own affairs now want to countermand the military to impose their own "moral" agenda. Firing an HIV-positive employee in the private sector for no good reason is illegal thanks to the Americans with Disabilities Act. The military is now obliged to do so by law. The economic cost is also prohibitive. Over 1,000 expensively trained people will be thrown out of the military: doctors, mechanics, lawyers, intelligence officers, computer specialists—many of the people that make our military the best in the world.

The administration has let it be known that it will try to reverse the decision by new legislation (to be introduced by Senators Nunn and Ted Kennedy) and to ease the disruption to disability and medical insurance for those discharged. But it's by no means clear whether what has already been accepted can now be undone—either by the Congress or the president. The ultimate responsibility belongs, of course, to Dornan, and those Republicans who tolerate him. But Bill Clinton has also shown something it will be hard to forget: he is truly capable of anything. His hypocrisy is as chilling as Dornan's bigotry. How many times have we heard the president "feel people's pain," empathize with their plight, express his compassion? A mere two months ago, Clinton offered these blandishments: "AIDS-related discrimination, unfortunately, remains a problem that offends America's conscience.... I say this with clear knowledge, experience and conviction—every person with HIV or AIDS is somebody's son or daughter, somebody's brother or sister, somebody's parent, somebody's grandparent." We now know those words were and are meaningless. We only hope he has the decency never to speak them again. •



The Washington Times, 2/4/96

Clinton to ensure GIs with HIV get benefits

Readies order to aid discharged soldiers

ASSOCIATED PRESS

An executive order ready for President Clinton's signature would provide family health care, disability pay and other benefits for people facing ouster from the armed forces because they have the AIDS virus.

Mr. Clinton is expected to issue the order this week at the same time he signs a \$265-billion defense bill that contains a provision requiring the military to discharge service members with HIV, the virus that causes AIDS. Mr. Clinton opposes that provision but supports the overall bill.

"When the president signs the bill, we will have in place ready to announce a set of actions ready to guarantee a full set of benefits for these individuals and their families," said a White House aide, speaking on the condition of anonymity.

On Capitol Hill, meanwhile, lawmakers are beginning a bipartisan repeal effort aimed at striking out the HIV discharge requirement.

They have six months to act before the military discharges more than 1,000 uniformed enlistees and officers who carry HIV.

Rep. Peter Torkildsen, Massachusetts Republican, said Friday he has filed legislation to repeal the provision in the 1996 defense authorization bill.

"If Magic Johnson can play professional basketball after five years with HIV, then a dedicated American should be able to serve his or her country in a noncombat role," Mr. Torkildsen said.

The White House aide said the executive order is designed as a stopgap, in case the legislative repeal effort fails. The order would establish full medical benefits for the discharged service members and their families, partial or full disability pay, education benefits and job training.

Rep. Bob Dornan, California Republican, wrote the AIDS discharge provision into the bill. Current rules forbid those with the

virus from being deployed overseas or sent into combat, and Mr. Dornan argued that places an undue burden on others in uniform.

HIV afflicts mainly intravenous drug users and male homosexuals.

Mr. Dornan said Friday that homosexual-rights advocates are leading opposition to his provision, and as many as half the service members with HIV are former drug addicts who got the infection from dirty needles.

"Nobody gets the special treatment that these people get," even as the military is discharging healthy service members to reduce its ranks, Mr. Dornan said.

Opponents argued that thousands of service members with other serious ailments also are not allowed to be sent to foreign duty but are not covered by the Dornan amendment. Also, they said, people can become infected with the AIDS virus through no fault of their own.

Sen. Sam Nunn of Georgia, ranking Democrat on the Senate Armed Services Committee, is working with fellow committee members Edward Kennedy, Massachusetts Democrat, and William Cohen, Maine Republican, on legislation to repeal the Dornan measure.

Mr. Nunn recently recounted a letter from a sergeant with 16 years of service who contracted HIV from a blood transfusion and whose wife and two children would lose dependent health benefits with his discharge.

"The service is my life," the sergeant wrote. "I've given everything I have to it. When this bill passes, I'll be out of the service and out of a job. How am I supposed to support my family?"

"We need to put a human face on these statistics," Mr. Nunn said.

The HIV provision gives the military six months to discharge the 1,049 military men and women who have tested positive for the virus.

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REP. BOB DORNAN --- DC OFFICE

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Congress N isses the 'Magic' Show

■ **Military:** A bill ousting the HIV-positive has nothing to do with readiness; it's simply discrimination.

By BARBARA BOXER

Americans cheered last week as Earvin "Magic" Johnson triumphantly returned to the Los Angeles Lakers. In just 27 minutes, he scored 19 points and dispelled any remaining doubt about his ability to compete at the highest level.

To their credit, Magic's fans, coaches, teammates and even his NBA opponents welcomed him back with open arms. Imagine how absurd it would be if Congress, just as Magic demonstrated his Hall of Fame talent, passed a law requiring the NBA to fire all basketball players who have the HIV virus.

This past week, Congress did something just that absurd.

A little-noticed provision of the annual military spending bill requires the Pentagon to fire all soldiers, sailors and Marines who test positive for the HIV virus, even if they perform their duties as skillfully as Magic Johnson makes a no-look pass. The military strongly objected to this provision, but Congress did not care. The president has called the new policy unfair, but because it is part of a larger bill that includes urgently needed funding for our troops in Bosnia, he will sign it into law.

Under current policy, military personnel with the HIV virus are permitted to remain

in the services as long as they are able to perform their duties. If their health deteriorates, the military initiates separation procedures and provides disability benefits and continued health insurance coverage for them and their dependents. So they can remain near health care providers, military personnel with HIV are placed on "world-wide nondeployable status," which means that they cannot be sent on overseas missions. Soldiers with other serious chronic illnesses, such as severe asthma, cancer and diabetes are also nondeployable. In fact, only about 20% of the more than 5,000 nondeployable personnel are infected with HIV.

The congressional authors of the new policy, led by Rep. Robert K. Dornan of Orange County, argue that nondeployable personnel degrade military readiness because they cannot be sent overseas. However, their true motive appears to be less lofty than protecting the readiness of our forces. The new policy irrationally singles out military personnel with HIV. If backers truly believe that nondeployable personnel harmed readiness, why wouldn't they seek to cut soldiers with diabetes and asthma? The only conceivable answer is that readiness is not their real motivation. Their motivation is discrimination, pure and simple.

Can anyone seriously contend that 1,059 HIV-positive soldiers—less than 0.1% of the total force—can meaningfully affect readiness? The Pentagon doesn't think so. Its top personnel policy expert, Assistant Defense Secretary Fred Pang, recently wrote that "as long as these members can

perform their required duties, we see no prudent reason to separate and replace them . . . The proposed provision would not improve military readiness or the personnel policies of the department."

If Magic Johnson can run and leap with the best of them, why can't a military clerk file with the best of them, or a military driver drive with the best of them?

Perhaps the worst aspect of the new policy is its total rejection of the compassion and camaraderie for which the armed forces are rightfully praised. The United States of America does not kick its soldiers when they are down. We have a proud tradition of standing by those courageous enough to dedicate their careers to the defense of our nation. That tradition will end the day this new policy is enacted.

Military personnel discharged under the new policy will lose their jobs even if they exhibit no signs of illness. They will lose their right to disability benefits and their spouse and children will lose their health care coverage. This policy is worse than wrong, it is un-American.

The same day that President Clinton signs the bill that includes this new policy, a bipartisan group of senators will introduce legislation to repeal it. The president and our senior military leaders support repeal. Despite their strong support, the odds are unclear. But I am certain about one thing: Those who vote "no" should take a good look in the mirror.

Barbara Boxer is a Democrat representing California in the U.S. Senate.

L.A. TIMES:
2-6-96

JOHN

APC

FYI

Not much coverage
at all on this;

(But a lot on
same-sex marriage)

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National News

President declares HIV ban unconstitutional

Calling measure 'discriminatory,' president promises his administration will not defend it

by Lou Chibbaro Jr.

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Clinton's decision to refuse to defend a passed by Congress against a court challenge marked the first time a U.S. president has taken such an action since President Franklin Delano Roosevelt did more than 50 years ago.

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Clinton vetoed an earlier version of the bill, which reauthorizes the programs of the Department of Defense, in December. He cited the HIV discharge provision and several other provisions as reasons for objecting to the legislation.

A House-Senate conference committee responded in January by removing several of the provisions to which Clinton objected. However, at the insistence of anti-Gay Rep. Robert Dornan (R-Calif.), author of the HIV discharge provision, and Sen. Trent Lott (R-Miss.), the conference committee refused to remove the HIV provision. Congress then passed the revised bill by a lopsided margin without a direct vote on the discharge provision.

Clinton, through White House spokespersons, said last month he was angered over the conference committee's action but decided the bill included too many important defense provisions, including a long overdue pay rise for members of the military, to justify a presidential veto. It was at that time that the president said he would push efforts on Capitol Hill to repeal the HIV discharge provision.

Momentum on Capitol Hill for repealing the provision appeared to be growing

in the last two weeks as conservative political commentators, public officials, and sports figures, including basketball star Earvin "Magic" Johnson, expressed outrage over the discharge provision and called on Congress to repeal it.

Secretary of Defense William J. Perry and the chair of the U.S. Joint Chiefs of Staff, Gen. John M. Shalikashvili, issued a joint statement calling the provision unnecessary and disruptive to military personnel policy.

"Discharging service members deemed fit for duty would waste the government's investment in the training of these individuals and be disruptive to the military programs in which they play an integral role," the two said.

On Feb. 9, one day before he signed the defense bill, Clinton issued a directive to the DOD and other federal agencies calling on them to "take all necessary steps, consistent with applicable law," to ensure that servicemembers who may eventually be discharged on the HIV provision, along with their families, be given full medical and retirement benefits.

The discharge provision, as passed by Congress, would deny servicemembers who have HIV infection the same medical benefits routinely given to servicemembers who are discharged on other medical grounds. According to DOD officials, 1,049 servicemembers have tested positive for HIV antibodies but are currently still capable of performing their duties.

Bencke, of the Servicemembers Legal Defense Network, said it is uncertain whether legal grounds exist to allow the DOD to carry out Clinton's request for providing full medical benefits for servicemembers discharged under the Dornan-sponsored HIV discharge provision.

"If the president and members of Congress are looking for a lawsuit to get off the hook, they are wrong," said ACLU attorney Coles. "We do not expect to start court action right away. This is an uncharted area," he said, referring to the legal and constitutional theory that must be employed to fight the discharge provision in court.

"Yes, we will go to court if we must," he said. "But the best way to remove this law is to repeal it." ▼

Gingrich goes one-on-one with Magic

by Lou Chibbaro Jr.

Speaker Newt Gingrich may have angered both basketball fans and Gay activists this week when he criticized basketball star Earvin "Magic" Johnson for urging Congress to repeal a law that requires the military to discharge service members who test positive for HIV antibodies.

Gingrich told reporters in his home district in Georgia on Wednesday that the HIV discharge provision, which Congress attached to a defense authorization bill, is necessary to protect soldiers in combat and should not be repealed.

"What Magic Johnson doesn't understand is the nature of being in the military

and the danger of being in combat and what happens in a field hospital," Gingrich said. "if you have people bleeding, people wounded, and you don't have a clue who has HIV."

Gingrich's comments drew immediate criticism from the Human Rights Campaign, a national Gay political group, which noted that current military policy does not allow servicemembers with HIV to go into combat.

"Clearly, it is Speaker Gingrich who does not understand the realities of the U.S. military," said HRC political director Daniel Zingale. "Servicemembers who test positive for the AIDS virus are not engaging in warfare or spending time

in military field hospitals, contrary to Gingrich's statements," Zingale said.

The Department of Defense has said the policy for dealing with servicemembers with HIV, prior to the recently passed discharge provision, required such servicemembers with HIV to be stationed only in the United States, where they remained on active duty as long as their illness did not prevent them from doing their jobs.

Last week, Johnson released copies of letters he sent to Gingrich and Dole which urged them to support legislation to repeal the HIV discharge provision.

"As I'm sure you know, I left the career I love four years ago in large part be-

cause of fear and ignorance about HIV and AIDS," Johnson said in his letter to Gingrich and Dole. "I'm writing to you on behalf of a group of people that I've never met but for whom I have the greatest respect and empathy," he said, "the 1,049 members of the U.S. military [with HIV] who, like me, just want to do their jobs and provide for their families."

Added Johnson, "I hope you will do right by those 1,049 service members and stop ignorance, fear, and prejudice from forcing them to 'retire' from the jobs they love and their important service to our country."

Gingrich on Wednesday rejected Johnson's request, saying those who are calling for repealing the discharge provision, including Clinton, are taking a "totally irresponsible position." ▼

HARRY SUMMERS

HIV ... and service in the military

Reportedly the "Defense Department" is opposed to the recent congressional legislation mandating the discharge of 1,049 service men and women now on active duty who have tested positive for the AIDS virus. One can only wonder who those "defense" officials might be, for surely they would not include anyone physically involved in defending this nation.

The reason has nothing to do with homophobia, although those opposed to the ban such as ACT-UP and other activist groups have fastened on the remarks of the bill's sponsor, Rep. Robert K. Dornan, California Republican, who called the HIV-infected personnel "drug users, people who visit whorehouses or homosexuals" as evidence to the contrary. The media also joined the chorus. A Washington Post editorial called the policy change "vindictive," the New York Times labeled it an "atrocious," and USA Today awarded the bill its "Disgraceful Play of the Week" award. Not surprisingly, the New Republic went into a snit.

But their concern for homosexual rights have blinded them to the medical and military realities. It has been said, given today's climate, if "Typhoid Mary" had been a lesbian we'd still be in the midst of a typhoid epidemic. Be that as it may, there are valid reasons why Mr. Dornan's bill makes sense. As he himself said, service members with

HIV are a personal burden on their fellow service members because, among other things, they cannot be deployed overseas and are excluded from combat.

Admittedly, those with the AIDS virus are not alone. "About 20 percent of the 'undeployable' military personnel are HIV-positive," noted The Washington Post. "The rest suf-

Their concern for homosexual rights has blinded them to the medical and military realities.

fer from other diseases [including] chronic but not debilitating illness such as asthma, cancer or heart disease." Prior to the new legislation, Defense Department policy was to retain all such "undeployables" on active duty, and to separate or retire them only "when they can no longer perform their job."

What should be done is not to repeal the law mandating separation or retirement of HIV-positive service members, but instead to expand that law to apply to all other nondeployables as well. Although his remarks were made in an entirely different context, Gen.

John Shalikavili, the chairman of the Joint Chiefs of Staff, recently gave the real reason why such personnel should not be retained on active duty when he reemphasized a fundamental military principle. "Our main purpose," he said, "is to fight and win our nation's wars."

The hard fact, as Capt. Russell Moriarity, adjutant of the 2nd Battle Group, 60th Infantry, used to impress on us new second lieutenants almost four decades ago when we came to him with our tales of woe, is that the Army is not an eleemosynary society. Forced to our dictionaries, as he intended, to figure out what in the world he was talking about, we learned that the Army was not intended to be involved in pity, mercy, charity or alms. The armed forces existed to fight. "We're warriors," said then JCS Chairman Gen. Colin Powell in 1993. "We never want to lose sight of this basic underlying principle. That's why you have armed forces within the United States structure."

As a combat infantry veteran, I speak with some prejudice, not against those with HIV but against those who for whatever reason cannot perform their battlefield duties. In Vietnam, our infantry battalion was plagued by a number of sergeants who had "sick slips" excusing them from wearing a helmet, from marching or even from exposure to loud noises. As a result they had to be left behind in the base camps while junior enlisted

men commanded their squads and platoons in combat. The effect on morale was devastating. It was a travesty that should not be repeated in the name of either political correctness or misguided compassion.

Evidently critics think war is some kind of a game. The New York Times editorialized that "the anti-AID bigots ... could learn a lot about AIDS and humanity and common sense by following the saga of Magic Johnson ... who has just returned to the National Basketball Association." But it was the "common sense" of the editorial that was strained, for it failed to note that, unlike HIV-positive service members, Magic Johnson is not restricted to home games only. If that were so, it's doubtful the NBA would have agreed to his return.

As Karl von Clausewitz wrote a century and a half before the AIDS virus was discovered, "The end for which a soldier is recruited, clothed, armed and trained, the whole object of his sleeping, eating, drinking and marching, is simply that he should fight at the right place and the right time." If today's soldiers cannot do that, they have no business in our armed forces.

Harry G. Summers Jr., a retired U.S. Army colonel, is a distinguished fellow of the Army War College and a nationally syndicated columnist.

★ THURSDAY, FEBRUARY 8, 1996

The Washington Times

To Martin Kravitz

K Wellman

The Washington Times

★ THURSDAY, FEBRUARY 8, 1996

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Go with the governors

Just about everybody is excited about the bipartisan solutions to the welfare and Medicaid messes that have been proposed by the nation's governors. Speaker of the House Newt Gingrich is said to be "thrilled." Senate Majority Leader Bob Dole says the compromise plan "holds great promise." Even President Clinton is happy about it—sort of. Calling the governors' Medicaid plan a step in the right direction, Mr. Clinton suggested that it could be the grounds for a new round of budget negotiations—that is, as long as the president could be guaranteed that Medicaid remained a federal entitlement.

Aside from the fact that the whole idea behind Medicaid reform is that it takes the program out of the ossified category of entitlements, the president's reaction suggests that all Mr. Clinton is interested in is resuming negotiations on budget issues, as opposed to actually achieving agreement on budget issues. The endless talks between the White House and Capitol Hill were a public relations bonanza for Mr. Clinton, with the president's poll numbers bubbling up on the strength of his ability to frighten people with his caricature of the Republican agenda. Now that the talks have broken off, the scare tactics have lost their immediacy. Instead, the underlying dissatisfaction with federal red ink is bubbling back up. How Mr. Clinton would love to go back to the status quo ante, locking Republicans into another several months of fruitless closed-door negotiations.

The Republicans should not take the president's

bait. This is not to say that the GOP shouldn't run with the opportunity the governors have presented. In fact, Republicans should seize upon the new bipartisan proposals drawn up by the governors and present them to the president as a *fait accompli*. If Mr. Clinton wishes to sign such legislation, all the better. If he chooses to veto it, the very bipartisan origin of the ideas could prove to be the glue with which a coalition of Republicans and moderate Democrats could be joined, and a veto overridden.

There are those who have been advising the Republican party to go into November with no budget agreement whatsoever. This advice is based upon the inescapable fact that the president has shown no willingness or intention to negotiate in good faith. Thus the only solution is to stop negotiating and wait to see if the new year brings a new president. The error in the advice is the assumption that not negotiating means not legislating. Bringing up a new budget, or large parts of a new budget, drawn along the governors' outlines, requires no consultation with the president whatsoever. Indeed, any such tete-a-tete could only end up scuttling the very workable compromise crafted by the governors. Republican leaders should follow through on their pledge to work the governors' plan up into legislation. Let Mr. Clinton veto it if he wants. But he will have a much harder time trying to pin the "extremist" tag on a budget that has the support of the nation's governors of both parties.

Military Has No Room For the H.I.V. Positive

To the Editor:

Re "Magic Shows the Way" (editorial, Feb. 1). The only thing proved by the return of the basketball player Magic Johnson, who is H.I.V. positive, to the National Basketball Association is that team owners love money more than people. Like it or not, Johnson's colleagues will always treat him differently — and not because of a "phobia."

This is the reality that faces H.I.V.-infected military personnel. Their illness is unlike that of other nondeployable colleagues whose status must be handled on a case-by-case basis. H.I.V. does not go away. What is "punitive" about telling these nonmilitary military personnel they are no longer of service to the United States military?

You ignore that 99.9 percent of H.I.V.-infected personnel have broken the Uniform Code of Military Justice in activities that led to acquiring the disease. Other categories of nondeployment limitation are not the result of breaking military law.

Contrary to your assertion, the discharges are supported by the uniformed military. The military has a military agenda, not a political one.

ROBERT K. DORNAN
Member of Congress, 46th Dist., Calif.
Washington, Feb. 5, 1996

Reluctantly, Clinton Signs Defense Bill

He Calls for Repeal Of H.I.V. Measure

By PHILIP SHENON

WASHINGTON, Feb. 10 — President Clinton signed a \$265 billion defense authorization bill today while promising he would not enforce a "blatantly discriminatory" provision of the bill requiring the Pentagon to discharge troops who have the virus that causes AIDS.

White House officials said the President felt that he had no choice but to sign the authorization bill because it contained a variety of other provisions that he considered vital to national defense and troop morale, including a 2.4 percent military pay raise.

Under the bill, the Defense Department is compelled to begin ousting infected service members within six months regardless of their ability to perform their jobs. The Pentagon has estimated that slightly more than 1,000 service members are infected with H.I.V., the AIDS virus.

Mr. Clinton vowed today to work with Congress to repeal this provision before a single service member is discharged from the service.

White House lawyers said the discharge provision was unconstitutional and would almost immediately draw a court challenge from advocacy groups. They said they were hopeful that Federal courts would block the provision from taking effect. The President has ordered the Justice Department not to defend the provision in court.

If the courts do not act, however, the military careers of H.I.V.-infected service members would come to an end later this year — soldiers and other military employees receive regular blood tests, making it impossible to hide the condition — even though the Pentagon holds that virtually all of them are fit for duty.

Mr. Clinton vetoed an earlier version of the bill largely because it required the deployment of a multi-billion-dollar missile defense system by 2003. The White House believes the provision was a violation of the 1972 antiballistic missile treaty, and it was deleted in its entirety from the bill signed today.

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The new bill contained several other appropriations not requested by the White House, including \$493 million originally earmarked by lawmakers to build new B-2 stealth bombers beyond the fleet of 20 requested by the Air Force. The White House has said that it would use the money not to build new bombers, but to upgrade the existing fleet of B-2's.

Over the President's objections, the bill also placed a ban on abortions at American military hospitals abroad. Abortions have long been banned at military hospitals in the United States, but they were permitted at military installations abroad out of concern that safe, private abortion services were not always available overseas.

The provision requiring the ouster of service members infected with H.I.V. was placed in the appropriations bill by Representative Bob Dornan, a California Republican who is seeking his party's Presidential nomination.

Mr. Dornan argued that the combat readiness of the military is harmed by the presence of troops with H.I.V., and he said Friday that President Clinton was "deferring to the wishes of a vocal minority who donate heavily to his Presidential campaign" by seeking to overturn the provision.

Until now, service members infected with H.I.V. have been allowed to stay on active duty in the United States so long as they remained healthy and able to do their jobs. They are not allowed to serve over-

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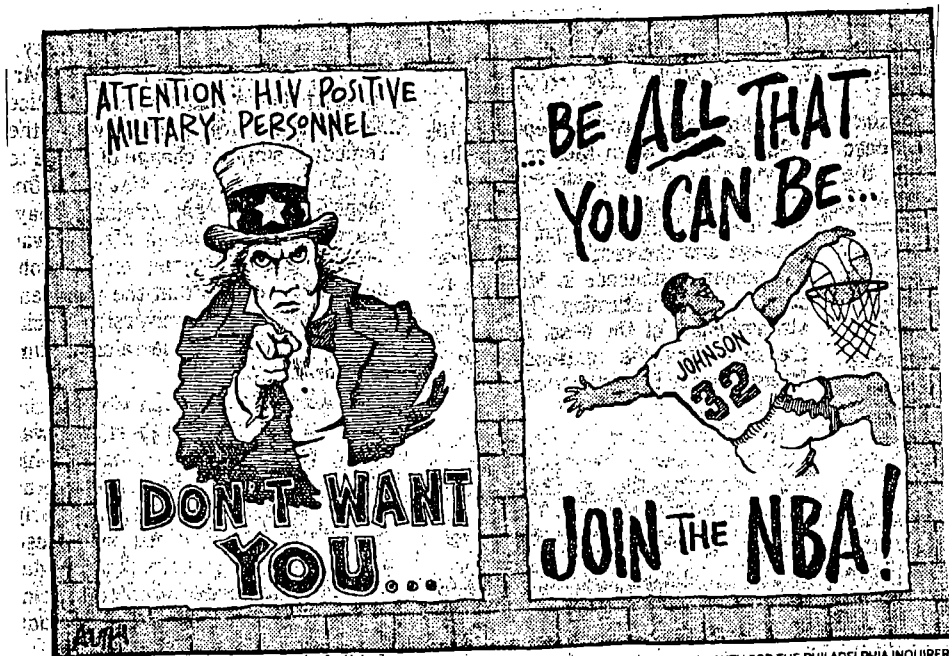
Until now, service members infected with H.I.V. have been allowed to stay on active duty in the United States so long as they remained healthy and able to do their jobs. They are not allowed to serve overseas. Because of regular blood tests in the military, the virus is usually detected early, years before the onset of full-blown AIDS.

Mr. Clinton has endorsed legislation sponsored by Senators Edward M. Kennedy, Democrat of Massachusetts, and William S. Cohen, Republican of Maine, to repeal the ouster provision, and there is strong bipartisan support in the Senate for such a move. The repeal faces an uphill struggle in the House.

"The men and women affected by this provision are ready, willing and able to serve their country with honor and should be allowed to continue to do so," the President said today. "People living with H.I.V. can and do lead full and productive lives, provide for their families, and contribute to the well being of our nation."

Under the bill, troops with H.I.V. who are discharged would qualify for full medical benefits, but they would not receive disability pay, and their spouses and children would not receive military medical benefits. The bill exempts service members infected with the virus who are within two years of their retirement, allowing them to leave the military with full benefits.

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White House to Challenge Ban on HIV in Military

President Still Plans to Sign Defense Bill

By Dana Priest

Washington Post Staff Writer

The Clinton administration said yesterday it would try to repeal a defense bill provision requiring discharge of service members who have the AIDS virus, and added it is also considering a legal challenge to the measure.

"These people are being tossed out without a job, without any security," said Patricia Fleming, director of the White House AIDS policy office. "It's a travesty of their rights and we're going to pursue a repeal as vigorously as we possibly can."

The White House announced Thursday that Clinton would sign the \$265 billion defense bill despite his opposition to the provision regarding service members with HIV, the virus that causes AIDS. The new bill, approved by the Senate yesterday after previously passing the House, would force people with HIV out of the service six months after it is signed.

Yesterday, responding to a barrage of criticism by AIDS activist groups and its own AIDS policy office, White House officials met with experts from the Defense Department and the Veterans Administration to map out a strategy. It could include a Justice Department lawsuit challenging the constitutionality of the prospective law, White House officials said.

Several national AIDS advocacy groups also said yesterday they would pursue class-action suits to challenge the bill, which they said is inherently discriminatory.

The Defense Department said there are 1,049 male and female service members who are known to be HIV-positive and would be forced out by the bill.

Under current law, people with the HIV virus are allowed to remain in the military as long as they can perform their jobs, just like people with other chronic illnesses such as cancer, diabetes, heart disease and asthma. They are prohibited from holding certain jobs, however. For example, they cannot serve aboard

House and the department had come to an agreement on what it meant, officials said.

Under the new law, service members who tested positive for HIV would have a complete package of medical benefits for themselves when they were discharged, but their dependents' coverage would be permanently dropped. That is in contrast with service personnel discharged for having other disabling diseases, whose dependents retain medical coverage.

The law also would affect disability and retirement pay for HIV-positive personnel. Under the current policy, because service people are not "medically retired" until they become sick, they are usually immediately eligible upon discharge for disability and retirement pay.

Under the new law, however, because most of those with HIV would be forced to leave long before they became disabled or eligible for retirement, they would lose disability

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— Patricia Fleming,
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Under current law, people with the HIV virus are allowed to remain in the military as long as they can perform their jobs, just like people with other chronic illnesses such as cancer, diabetes, heart disease and asthma. They are prohibited from holding certain jobs, however. For example, they cannot serve aboard ships or on overseas assignments.

Although the provision was one of the reasons Clinton vetoed the first version of the defense authorization bill, White House press secretary Michael McCurry said yesterday that Clinton's major objections to the earlier bill had been satisfactorily revised.

"There are times when we have to, on balance, accept some things that otherwise we wouldn't want to do but are necessary if we're going to have a strong defense authorization act, which is what we did in this case," he said.

McCurry said the White House is working with House and Senate members, which other officials said included Democrats and Republicans, "to reverse this policy and do so, we hope, within the six-month period before it takes effect."

On Thursday and even late yesterday afternoon, Defense Department officials were at a loss to explain in detail the financial and medical ramifications of the bill for those who are forced out. By yesterday evening, however, the White

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White House AIDS policy office

or retirement benefits when they were discharged, Defense Department and White House officials said. However, if they became disabled sometime after they left the service, they would then qualify for disability pay.

Carl Brown, 36, is a 1st class petty officer who works at the war games department at the Navy War College in Newport, R.I., and "is feeling perfect" although he has known for 10 years that he has HIV, he said yesterday. He has served in the Navy for 16 years. During the past 10 years, he has managed several offices and gave up a chance to retire when the Navy was downsizing because he enjoys his job.

"It just seems so silly," he said yesterday. "I'm still fine."

Petty Officer 1st Class Tim Nichols, 32, who is HIV-positive and was named Sailor of the Year in 1994, retired this month with substantial disability benefits not because he was sick, but because he feared the pending legislation would hurt him financially if he waited. With two children, ages 11 and 9, "I just couldn't chance it," he said yesterday from Norfolk. "I had to provide for my kids."

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2/10/96 NYT

Clinton Decides U.S. Won't Fight Suits on H.I.V. Troop Dismissals

By ALISON MITCHELL

WASHINGTON, Feb. 9 — On the eve of signing a \$265 billion military budget bill, President Clinton today directed the Attorney General not to defend in court a provision requiring the Pentagon to discharge troops who have the virus that causes AIDS. The White House said the President viewed the provision as "abhorrent" and unconstitutional.

Mr. Clinton also instructed his Administration to provide full disability retirement pay, health care coverage and transitional benefits like vocational education to those forced out of the service because they are infected with the AIDS virus, H.I.V. In addition, aides said he would campaign for a bipartisan Senate bill that would repeal the discharge provision.

The White House announcement capped a 10-day period in which the Administration struggled to find a way to sign the major military bill, a version of which Mr. Clinton vetoed in December for a number of reasons, while keeping the support of AIDS advocacy groups and gay

rights proponents in an election year.

White House officials said the President planned to sign the overall military measure, including the AIDS provision, into law on Saturday. Michael D. McCurry, the White House press secretary, called the full legislation, which authorizes Pentagon programs for the 1996 fiscal year and includes pay raises for military personnel, "very critical to the national security of the United States."

But Jack Quinn, the White House counsel, said Mr. Clinton had decided that the Administration, which expects a court challenge to the discharge provision from advocacy groups, would not defend it in court. He said the President considered the requirement unconstitutional as well as "completely abhorrent and offensive."

Under current Pentagon regulations, members of the armed services who are infected with H.I.V. may remain on active duty in the United States as long as they are fit. But they are barred from serving in combat or anywhere abroad, where

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Continued on Page 11, Column 1

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U.S. Won't Fight Challenges to H.I.V. Ousters

Continued From Page 1

periodic medical monitoring of their condition might prove infeasible.

In sponsoring the discharge provision, conservatives led by Representative Robert K. Dornan of California, a long-shot contender for the Republican Presidential nomination, argued that given the restrictions on the duties of these service members, they constitute a threat to military readiness.

The AIDS provision directs that any service man or woman infected with H.I.V. be honorably discharged within six months. The Pentagon estimates that more than 1,000 members of the armed forces would be affected.

In a joint statement today, Secretary of Defense William J. Perry and Gen. John M. Shalikashvili, the Chairman of the Joint Chiefs of Staff, said, "Discharging service members deemed fit for duty would waste the Government's investment in the training of these individuals and be disruptive to the military programs in which they play an integral role." They noted that there was already a physical evaluation system in place to determine the fitness for duty of troops infected with H.I.V.

Mr. Quinn said that Mr. Clinton considered the military leaders' opinion when he decided that the discharge provision "arbitrarily discriminates and violates all notions of equal protection."

In explaining its decision not to defend the provision in court, the Administration cited a precedent established by President Franklin D. Roosevelt, who signed into law an urgent spending bill needed for the war effort in 1943 but refused to defend the constitutionality of a pro-

vision that stripped three Government workers of their salaries because Congress considered them subversives. Roosevelt's stand was ultimately upheld.

Mr. Quinn said the Congress itself could choose to defend the measure in court. Congress is out of session, and neither Speaker Newt Gingrich nor the Senate majority leader, Bob Dole, had an immediate reaction.

Mr. Dornan predicted that Mr. Clinton would lose both in court and in Congress. "These personnel cannot go to Bosnia, cannot go to Haiti and cannot go to Korea, and if overseas they must come home," he said. He accused the President of ignoring the military's needs "while deferring to the wishes of a vocal minority who donate heavily to his Presidential campaign."

White House officials held out hope that either a Congressional repeal or a court stay would keep the Administration from having to dismiss any H.I.V.-infected military personnel by the end of the six-month period. Mr. Quinn said the Pentagon would wait "until the last possible moment" before removing anyone.

But he said Mr. Clinton, once signing the overall legislation, would have no choice but to enforce the law in the absence of a court ruling against it.

Mr. Clinton's action on the military measure was particularly sensitive politically because one of the first controversies he faced in office was over his campaign pledge to end the ban on homosexuals' serving in the military. Ultimately, faced with resistance from military leaders and members of Congress, he settled on a compromise that left in place a prohibition on homosexual activity but that directed commanders not to ask troops about sexual orientation or

pursue inquiries in the absence of compelling evidence of homosexual conduct.

But largely because the compromise required gay service members to keep their sexual orientation private, many gay rights advocates, active in Democratic politics, were left feeling betrayed. And moderate Democrats complained that Mr. Clinton, who had run as a "new Democrat," had now left the impression that he was a traditional liberal.

Homosexual rights groups and advocates for AIDS victims had mixed reactions today. Melinda Paras, the executive director of the National Gay and Lesbian Task Force, commended the President for calling the discharge provision unconstitutional but said "the more principled action would have been to not allow this provision to become law in the first place."

Matt Coles, the director of the American Civil Liberties Union's AIDS Project, said his group would give Congress a chance to repeal the law. But he said the civil liberties union and a number of other groups were ready to sue the moment a member of the military was discharged.

And Magic Johnson, the basketball star infected with H.I.V., urged Congressional leaders in a letter to support repeal of the measure on behalf of 1,049 service members with the virus, "and stop ignorance, fear and prejudice from forcing them to 'retire' from the jobs they love and their important service to their country."

Repeal measures are already pending in both houses of Congress, and there is strong bipartisan support for such a move in the Senate. But repeal faces an uphill struggle in the more conservative House.

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Clinton Administration Won't Defend HIV Law

By Ann Devroy

Washington Post Staff Writer

President Clinton yesterday said he believes legislation requiring discharge of members of the military with the AIDS virus is unconstitutional, and he ordered the Justice Department not to defend the provision in court.

The Clinton order was part of a three-pronged effort by the administration to protect slightly more than 1,000 servicemen and women affected by a provision of the \$245 billion defense authorization bill. Clinton also ordered that full military disability benefits be provided anyone discharged under the provision, and he vowed to work with Congress to repeal the law.

The provision requires that members of the military who test positive for HIV, the virus that causes AIDS, be discharged within six months regardless of their ability to perform their jobs. After a person is infected with HIV, it takes an average of 10 years to develop AIDS.

Clinton believes the provision is "completely abhorrent and offensive," White House Counsel Jack Quinn said. Until the law is ruled unconstitutional or court action blocks its implementation, however, the law will be enforced, Quinn said.

"If the Congress chooses to defend this treatment of men and women in the military, it may do so; but this administration will not," Quinn said.

He said a legal test of the provision was "as sure as the sun will come up tomorrow," and predicted the courts would overturn it.

The provision, sponsored by Rep. Robert K. Dornan (R-Calif.), a conservative Republican presidential aspirant, was attached to the defense bill that the president is scheduled to sign this morning. Because the legislation includes a military pay raise and dozens of other key provisions, White House officials said, it is too important to the national defense to veto as several civil rights and gay rights groups asked.

The White House opposed the provision when it emerged in Congress, but Clinton never threatened to veto the overall bill because of it. Many in the administration thought it would

was not fulfilled. Quinn said no one would lose their job "until the last possible moment." He and others said they hope Congress repeals the law before then, or that a court challenge is filed that prompts a judicial order to stop implementing the law until its constitutionality is tested. The Clinton actions drew strong praise from civil and gay rights groups. "This was a momentous step toward fairness," said Kim Mills, spokeswoman for the Human Rights Campaign, a gay and lesbian political organization.

Matt Coles, director of the American Civil Liberties Union AIDS project, said Clinton should have vetoed the legislation but that he took the next best step. "I think there is no question that singling out HIV-positive service people was done just to spite them. That is not legitimate."

Dornan has said it is unfair to let HIV-positive service members remain in the military because they are not eligible for combat or certain other duties, so other personnel must do such work. Paul Mero, Dornan's chief of staff, said Dornan welcomed the debate and any legal battle. "We think we will win, hands down," Mero told Knight-Ridder.

In deciding to keep the Justice Department from performing its routine job of defending a federal law, Clinton took an unusual but not unprecedented step. Several presidents have done the same, with the most famous case being a decision by Franklin D. Roosevelt to sign a defense spending bill during World War II despite a provision he believed was unconstitutional. The provision—which called for blocking pay of several individual federal officials whom Congress viewed as radical and irresponsible—was not defended in court by Roosevelt and was eventually ruled unconstitutional. The Clinton administration relied on a Justice Department ruling that the HIV law would only be constitutional if it "serves a legitimate government purpose," according to Assistant Attorney General Walter E. Dellinger.

Defense Secretary William J. Perry and Gen. John Shalikashvili, chairman of the Joint Chiefs of Staff, said to discharge HIV-infected service members who are deemed fit to perform

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The White House opposed the provision when it emerged in Congress, but Clinton never threatened to veto the overall bill because of it. Many in the administration thought it would be killed in a House-Senate conference and never become law.

Clinton yesterday endorsed legislation sponsored by Sen. Edward M. Kennedy (D-Mass.) and Sen. William S. Cohen (R-Maine) to repeal the provision. To give that legislation a boost, the White House and basketball star Earvin "Magic" Johnson released a letter that Johnson sent to House Speaker Newt Gingrich (R-Ga.) and Senate Majority Leader Robert J. Dole (R-Kan.) asking that the provision be repealed.

Johnson, who quit basketball after he was diagnosed as HIV-positive and then returned to the courts last week, asked their support for repeal for the military "who, like me, just want to do their jobs and provide for their families." He asked the Republicans to "do right by the 1,049 service members and stop ignorance, fear and prejudice from forcing them to retire."

Rep. Steve Gunderson (R-Wis.), who is gay, said he believes at least some of the Republican leadership in the House will support repeal of the provision. He said the provision was not thwarted earlier because AIDS activists and others believed they had a commitment in the Senate that it would be killed—an expectation that

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Defense Secretary William J. Perry and Gen. John Shalikashvili, chairman of the Joint Chiefs of Staff, said to discharge HIV-infected service members who are deemed fit to perform their duties would be "unwarranted and unwise" and serves no military purpose. That conclusion, Dellinger said, leads to the conclusion that no government purpose is served by the provision.

FOR MORE INFORMATION

To read the text of the defense bill, see *Digital Ink*, The Post's on-line service. To learn about *Digital Ink*, call 202-334-4740.

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