



**Veterans' Benefits for Servicemembers Discharged Due
to Sexual Orientation or Gender Identity
(S.45-A – Hoylman; A.54-A – Buchwald)**

Memorandum of Opposition

Bill S.45-A-Hoylman and Bill A.54-A-Buchwald, both of which are known as the New York State Restoration of Honor Act,¹ relate to military veterans who received less-than-honorable discharges for making statements about their sexuality or gender identity, for engaging in consensual same-sex activity, or for engaging in transgendered behavior. The bills would make such veterans eligible for state and local government veterans' programs, benefits and services.

These bills are problematic on multiple levels. First, they are carelessly drafted and would open the door to fraud. The bills would allow applicants to request certificates of eligibility for benefits without providing the state with military discharge papers or any other military records. An applicant could instead submit a personal affidavit describing the circumstances surrounding the discharge and certifying that he/she did not possess any relevant documents. If an applicant were to submit such an affidavit, the New York State Division of Veterans' Affairs could seek backup documentation from the Department of Defense; however, the Division would not be required to do so. Worse yet, the bills explicitly state that an applicant could not be denied a certificate of eligibility due to a lack of documentation regarding the circumstances of a military discharge. In essence, the bills would allow access to veterans' benefits based only upon the say-so of an applicant. Such a system could waste state resources and services on persons who never served in combat, or on persons who never served in the Armed Forces at all.²

¹ As of May 28, 2019, Bill S.45-A-Hoylman and Bill A.54-A-Buchwald are not identical; however, they are substantially similar.

² The bill provides that a veteran shall only receive a certificate "if, with respect to their original discharge, there were no aggravating circumstances [other than LGBT-related matters] that would have independently led to a discharge characterization that was less than honorable." However, the lax requirements set forth in this bill make it quite possible that the Division of Veterans' Affairs would have no knowledge of such aggravating circumstances before issuing a certificate of eligibility.

Second, the bills are unnecessary. Veterans who believe that they were unjustly discharged from the Armed Forces due to sexual orientation, due to gender identity, or for other reasons may apply for discharge upgrades.³ The Armed Forces—not state governments—are in the best position to determine whether a discharge upgrade is appropriate. Rather than setting up an unnecessary and unwise process for giving previously-ineligible veterans access to state benefits and services, the State of New York ought to simply direct such veterans to the discharge upgrade process and rely on the results of that process to determine access to state benefits and services.

New Yorkers for Constitutional Freedoms urges Members of the Legislature to vote “no” on this bill.

³ See <https://www.va.gov/discharge-upgrade-instructions/>.