



Center for Military Readiness — Policy Analysis —

September 2012

Military Religious Freedom Protection Act of 2012

A. The Need to Protect Rights of Conscience and Religious Liberty

1. The **First Amendment** to the **U.S. Constitution** guarantees rights of conscience and religious freedom to both chaplains and military personnel. There is no need to legislate such rights; they already exist. However, Department of Defense (DoD) policies clearly indicate that there is a need to deter *infringements* on religious liberty, which are likely to result from full implementation of **LGBT** (lesbian, gay, bisexual, transgender) **law** and related policies in the military.

- Chaplains and service members should not be denied the very constitutional liberties they have volunteered to defend. Recent measures adopted in the House version of the **National Defense Authorization Act for 2013 (NDAA)** would preserve the status quo prior to repeal of the law called "**Don't Ask, Don't Tell.**" Similar legislation in the form of a free-standing bill is under consideration for introduction in the Senate.
- Congress has authority to instruct the DoD to protect rights of conscience and religious liberty, which members expect to be *accommodated*. The emphasized word encompasses both worship and non-worship activities, and covers both chaplains and lay personnel.
- Conscience clauses are common in civilian law but conspicuously absent in the repeal legislation. House and Senate legislation called the **Military Religious Freedom Protection Act (MRFPA)** would help to protect constitutional rights. Within disciplinary limits set by the UCMJ, service members and chaplains would be able to express their sincerely held religious and moral beliefs at all times, without fear of career reprisals.

2. The **DoD Implementation Plan (IP) Report**, released by the **Comprehensive Review Working Group (CRWG)** in November 2010, assured religious liberty *only within worship services*. The CRWG Implementation Plan report further recommended punishments for "*resistance*," a policy that would impose "zero tolerance" on anyone who disagrees with the new policy for any reason, including "*moral or religious beliefs.*" (IP, pp. 11, 50-51)

- Servicemembers deployed far from home have a right to receive counsel from chaplains endorsed by their faith group who are free to express their views on matters of morality at all times, not just during worship services. Religious study groups, the Army's "Strong Bonds" marriage counseling program, and social, educational, or family/athletic activities frequently involve the expression of sincerely-held beliefs outside of worship services.
- The Implementation Plan report said that chaplains will be expected to show "*respect*" for all, but conceded that on a number of issues affecting chaplains, "*boundaries are not always clearly defined.*" (IP, p. 11 and p. 80) "Respect" for others is a reasonable expectation, but the recommended direction of "respect" seems to run only one way.
- The new LGBT law and related policies take sides between a minority of military chaplains who have no moral objections to homosexual conduct, and the majority of chaplains who do. Absent congressional action, constitutional rights of conscience are protected for one group but not the other.

3. The expectation that chaplains will minister to persons of all faiths and backgrounds is standard professional practice and not in dispute. The difference is that chaplains are not required to *endorse* certain life choices, such as abortion or adultery, which most faith traditions consider immoral.

- The CRWG recommended a complaint resolution system in which the local chain of command would resolve disputes on an *ad hoc* basis. (CRWG Report, p. 14 and pp. 137-138) According to the Chaplain Alliance for Religious Liberty, the result has been inconsistency, self-censorship, and a “chill” on religious speech. (See example described below in Section C.)
- Since commanders may be punished for not investigating alleged harassment complaints or perceived LGBT discrimination, it is likely that even baseless charges will be exhaustively investigated with special treatment. (IP, p. 51) Such turbulence would harm unit cohesion and lead to personnel losses at all levels.

4. The Army's “Tier One” Training for chaplains in 2011 confirmed that those who are unable to “reconcile” their beliefs with the new policy would have to request or accept the withdrawal of official endorsement by their sending faith group. This would trigger voluntary separation of chaplains if they are not obligated to serve longer—perhaps in some capacity other than chaplain.

- During his December 2010 Senate testimony, DoD General Counsel and CRWG Co-Chairman **Jeh Johnson** said that the Pentagon expects the loss of an undetermined number of chaplains who are not able to reconcile their beliefs with the new policy.
- At a time when rates of disciplinary problems, misconduct, PTSD, suicide and failures of leadership are escalating, the voluntary or forced departure of experienced chaplains and military personnel of faith would undermine readiness and morale in the All-Volunteer Force.

B. Same-Sex Marriage and the Defense of Marriage Act (DOMA)

One of the biggest unresolved issues associated with LGBT law in the military involves same-sex marriages or marriage-like “ceremonies,” and the extension of family benefits to same-sex couples. Legislation repealing the 1993 law clearly stated that the **Defense of Marriage Act (DOMA)** should be enforced in the military, as Pentagon officials promised it would be.

However, in January 2011, Attorney General **Eric Holder** announced that the Department of Justice would no longer defend the DOMA in court. And in February 2012, the Justice Department announced that it would not oppose litigation filed by gay activists demanding the extension of marriage benefits to same-sex couples in the military. There are no estimates of costs, but in 2010 then-Defense Secretary **Robert Gates** expressed concerns about new marriage benefits.

In April 2011, the **Navy Chief of Chaplains** issued a memorandum authorizing training for same-sex marriages on military bases. Following a letter of protest signed by 63 House members, that memo was suspended but not revoked. In September 2011, DoD General Counsel Jeh Johnson issued another memo that attempted to circumvent the DOMA by authorizing same-sex “ceremonies” on military bases, without using the word “marriage” or extending spouse benefits.

C. Religious Liberty and Same-Sex Marriage on Collision Course

Recent events have demonstrated the discord and division already occurring among members of faith communities. According to media reports, a chaplain conducted the first known same-sex marriage on a military base at **Fort Polk**, Louisiana, on May 19, 2012. Much to the dismay of the congregation, the controversial ceremony “married” two women in Glory Chapel, a base facility reserved for multi-denomination religious activities. This occurred in a state where same-sex marriages and civil unions are not legal.

According to congregation members who contacted the Center for Military Readiness, the liberal chaplain, who wanted to be the first to conduct such a ceremony, did not inform superiors of his intent, except to reserve the chapel. Feeling betrayed, a group of Fort Polk congregants protested in writing.

In response to their questions and concerns, the Installation Chaplain called a community meeting to discuss the matter. At the center of the controversy, dividing congregation members from their chaplains, were the DoD regulations that General Counsel Jeh Johnson issued in September 2011. The senior chaplain, a Southern Baptist who shared the congregation's views on same-sex marriage, was unable to apologize for what happened under current policy, or to take any action except to refer the matter up the chain of command.

The Fort Polk incident demonstrates the divisiveness of LGBT law and related policies. People of faith who view marriage as a matter of morality, and who expect compliance with state and federal law, are demoralized by regulations that have imposed a “chilling effect” on base chaplains who no longer feel free to express sincerely-held religious beliefs in settings other than worship services. Rights of conscience and religious expression are protected for some (in this case, the chaplain who performed the ceremony), but not for others.

The Defense Department is attempting to circumvent the Defense of Marriage Act (DOMA) by omitting the word "marriage" from authorization of same-sex "ceremonies." Even though benefits are not authorized, it is likely that same-sex unions and marriage-like "ceremonies" will happen on military bases again, even in states that explicitly define marriage as the union of one man and one woman.

D. Pending Legislation to Protect Marriage and Religious Liberty in the Military

In view of problems resulting from the lack of a conscience clause in the 2010 lame-duck session bill that repealed the 1993 law on homosexuals in the military, members of Congress are considering new legislation to protect rights of conscience and religious liberty in the military. They believe that chaplains and people of faith should not be denied the constitutional rights of conscience they have volunteered to defend.

The House-approved version of the FY 2013 National Defense Authorization Act (NDAA) includes a section, sponsored by Representative **Todd Akin** (R-MO), which would bar discrimination and adverse personnel actions against individuals and chaplains expressing sincerely-held religious beliefs (**Sec. 536**). This is an excerpt:

"(a) Protection of Rights of Conscience - The Armed Forces shall accommodate the conscience and sincerely held moral principles and religious beliefs of the members of the Armed Forces concerning the appropriate and inappropriate expression of human sexuality and may not use such conscience, principles, or beliefs as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment. Nothing in this subsection precludes disciplinary action for conduct that is proscribed by chapter 47 of this title (the Uniform Code of Military Justice)."

A second provision, sponsored by **Rep. Steve Pallazzo** (R-MS), would reinforce the intent of Congress with regard to the DOMA on military installations (**Sec. 537**). Excerpt:

“A military installation or other property owned or rented by, or otherwise under the jurisdiction or control of, the Department of Defense may not be used to officiate, solemnize, or perform a marriage or marriage-like ceremony involving anything other than the union of one man with one woman.”

Senators Roger Wicker (R-MS) and **Jim Inhofe** (R-OK) are co-sponsoring a free-standing bill, **S.3526**, titled the **Military Religious Freedom Protection Act**. The Senate bill uses the same name as the original bill that **Rep. Tim Huelskamp** (R-KS) sponsored in the House earlier in 2012, and the language mirrors that of the Akin/Pallazzo provisions. Passage will ensure that the Department of Defense will not continue discriminatory policies that take sides on matters of deep conviction for chaplains and people of faith.

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*The Center for Military Readiness, an independent public policy organization that specializes in military/social issues, has prepared this CMR Policy Analysis, which is not intended to support or oppose legislation. More information is available at www.cmrlink.org and at www.chaplainalliance.org, the website of the **Chaplain Alliance for Religious Liberty (CALL)**.*



The Honorable John Boehner
Speaker, U.S. House of Representatives
H-232, United States Capitol
Washington, D.C. 20515

August 2, 2012

Dear Mr. Speaker,

I am writing to you to express my concern about recent actions within the military which I consider not in keeping with good order and discipline within our code of law and ethics. As you may recall, I voiced my concern while on active duty concerning the repeal of the 'Don't Ask, Don't Tell' Policy. Frankly, what we are seeing now in the military is a movement to use the military to support radical social agendas. This agenda is creating intense moral and ethical challenges to soldiers and family members.

Recently the Department of Defense broke with long standing policy and allowed service members in uniform to march in a Gay Parade which in effect was a political parade. Also, there have been illegal marriage ceremonies with same sex service members conducted in military chapels. These ceremonies are in direct violation of the Defense of Marriage Act. After serving nearly 36 years on active duty, I never would have imagined our military being used as a political pawn in such a way and potentially violating federal law.

I firmly believe there is a serious lack of oversight for protection of the laws afforded to service members who are uncomfortable with the LGBT lifestyle. This is an issue of National Security which requires Congress to intervene with congressional authority to ensure our military is focused on its mission to defend the Nation and to ensure that religious liberties and rights of all service members and family members are respected.

It is without question, there are many service members who do not support this inappropriate use of our military and are counting on their elected officials to intervene. A service member's daily focus is to do their job in a demanding and fast paced environment. Please help them to have a voice in these matters. I know there are many other issues of National importance that you are working on, I hope this is one of those issues.

Respectfully,

Lieutenant General Benjamin R. Mixon
U.S. Army Retired

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