

Testimony of Rep. Tim Huelskamp

H.R. 3828, the Military Religious Freedom Protection Act

House Armed Services Committee

April 17, 2012

I want to begin by thanking Chairman McKeon and the Committee for giving me this opportunity to come testify. The defense of our nation is one of the few things done by the federal government that is required by the Constitution, and I appreciate this Committee's dedication to ensuring that America remains the cornerstone of freedom for the world. I am also grateful that you have solicited the input of Members who do not serve on this Committee. We all have a vested interest in protecting America for future generations, and your willingness to hear from other Members reflects that.

Today I am here to respectfully request that my bill, H.R. 3828, the Military Religious Freedom Protection Act, be included in the National Defense Authorization Act for Fiscal Year (FY) 2013. Beginning with the repeal of "Don't Ask, Don't Tell," the current administration has looked to our military as a proving ground for their radical social agenda. New regulations, standards, and policies enacted as a result of the repeal have fostered an attitude of hostility towards anyone who does not fully support homosexual behavior. As an example, the Department of Defense (DOD) sensitivity training documents instruct officers to show no opposition to the implementation of these new policies. To quote the training manual, "We as leaders must work to reinforce the importance of dignity and respect for all Service members. We promote these values by living them, and reaffirm our commitments to enforcing standards of conduct and the expectations for a military culture where Service members are valued for their contributions to national defense. Our leadership and personal commitment to implementation must be visible and unequivocal (emphasis is original to the document)." Let me repeat this last line, "Our leadership and *personal commitment to implementation must be visible and unequivocal* (emphasis added)." In an institution that has obedience without question or dissent, such instruction provides no opportunity for respectful opposition.

It is, therefore, disingenuous for people within the Obama administration to claim that there are no reports about opposition to implementation of new policies, when voicing those concerns are strictly prohibited. Nonetheless, my office has received reports of a handful of situations that would indicate there are problems with implementation. I believe that several of these instances have been brought to the Committee's attention through a letter submitted by the Chaplains' Alliance for Religious Liberty. I have provided a copy of that letter included at the end of my testimony, and would like it to be included in the record of today's hearing.

Additional problems arose in the form of pair of memos issued in September 2011 by DOD that, to any layman reading them appear to violate the Defense of Marriage Act (DOMA). The first

memo, from Undersecretary of Defense for Personnel and Readiness Clifford Stanley, gives military chaplains permission to conduct or participate in same-sex marriage ceremonies. Even when acting in a private capacity, there is still a sense of federal support for such activities, when, under DOMA, there should not be any. The second memo, written by DOD Counsel Jeh Johnson, permits the use of DOD facilities for same-sex ceremonies. This, too, gives the appearance of support for activities in contravention of federal law.

Personnel Subcommittee Chairman Wilson held a briefing with Jeh Johnson on these very memos in November 2011. While there seemed to be some contentious debate about whether or not the memos violated the letter of the law, I do not believe there is any question that they violate the spirit and congressional intent of DOMA when it passed the House and Senate with overwhelming bipartisan support.

My bill, H.R. 3828, is an effort to bring the DOD back into compliance with both the spirit and the letter of DOMA. It simply states that DOD facilities cannot be used to perform marriage or marriage-like ceremonies (i.e., civil union, domestic partnership). The presence of a military chaplain, performing the ceremony in a military facility gives the event a sense of propriety and affiliation with the military.

H.R. 3828 also ensures the rights of everyone serving in uniform to express their firmly held religious or moral beliefs regarding homosexual behavior. The bill explicitly states that expression of a deeply held belief regarding homosexual behavior cannot be grounds for punishment or retribution. It provides these protections for everyone in our Armed Forces—chaplains, enlisted men and women, and officers. The brave men and women in our military should not be signing away the very rights they are giving their lives to protect. Their service in our Armed Forces should not negate their right to express their sincerely held religious or moral beliefs.

The Military Religious Freedom Protection Act has more than 40 cosponsors, including several Members of this Committee and has been endorsed by a number of grassroots organizations, including the Family Research Council, Center for Military Readiness, Chaplains' Alliance for Religious Liberty, Concerned Women for America, Eagle Forum, the National Organization for Marriage, the Alliance Defense Fund, and the Traditional Values Coalition. I would like to include in the record a letter of endorsement from over 40 organizations, emphasizing the importance of this legislation.

Again, thank you for allowing me the opportunity to speak before the Committee today. I would be happy to answer any questions that you may have.



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The Honorable Howard P. McKeon
Chairman, House Armed Services Committee
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29 March 2012

Dear Chairman McKeon,

We know that you share our passion and admiration for the men and women in uniform that faithfully serve our country. Every day, they serve to protect our many liberties, including our first liberty—religious freedom. And as these patriots serve us, oftentimes facing grave danger, we chaplains cannot allow them to assume that risk without providing them with every opportunity to clear their conscience, and for many, provide the opportunity to be assured of salvation that extends beyond their own mortality.

This is why we have chaplains and, as you are aware, for this very reason, the chaplain is the only constitutionally-required post in our armed forces. *Katcoff v. Marsh*, 755 F.2d 223, 232, 234 (2d Cir. 1985) (“Unless the [military] provided a chaplaincy it would deprive the [service member] of his right under the Establishment Clause not to have religion inhibited and of his right under the Free Exercise Clause to practice his freely chosen religion.”). And a chaplain, though an officer and employee of the military, is first and foremost a religious leader. Thus, it is the obligation and right of chaplains to proclaim clearly, and without restraint, the teachings of their particular faith.

Of course, this obligation is not just for chaplains that agree with certain governmental policies, but also for ALL chaplains. Chaplains endorsed by the LDS church must have the same rights as chaplains endorsed by faith groups that promote same-sex “marriage” or homosexual behavior; and chaplains endorsed by Orthodox Jewish denominations must have the same rights as those chaplains that follow the teachings of Catholicism. It is the military’s adherence to this pluralistic environment and the creed of ALL chaplains to “perform or provide” that has allowed the chaplaincy to faithfully serve our uniformed heroes for centuries.

Unfortunately, recent changes in military and other policies have ushered into existence a seeded hostility towards chaplains that subscribe to longstanding, deeply-held tenets regarding marriage and sexual behavior. If this hostility toward the chaplaincy persists, and certain chaplains lose their endorsements because of their inability to preach, teach, or share with their fellow servants the full counsel of God, a constitutional crisis will emerge, as the military cannot function without the chaplaincy, much less a partial chaplaincy.

In order to concretely preserve the rights of religious freedom for all service members, regardless of their faith tradition, H.R. 3828, the Military Religious Freedom Protection Act was authored. This bill would “amend title 10, United States Code, to require that implementation of the repeal of the former Department of Defense policy concerning homosexual behavior in the Armed Forces not infringe upon the free exercise of religion by and the rights of conscience of members of the Armed Forces, including chaplains, and for other purposes.” Alarming, the way that these new Department of Defense policies are being implemented is with an open and palpable hostility to those chaplains and service members that hold constitutionally-protected beliefs about sexual behavior.

Unfortunately, the repeal of Section 654 of Title 10 of the United States Code does not mark the first time that a presidential administration has implemented a policy that negatively impacts the free exercise of religion within our armed forces. In 1996, after President Clinton vetoed H.R. 1833, the Partial Birth Abortion Ban Act, military chaplains joined a campaign to ask Congress to override the president’s veto. Citing a Department of Defense Directive, among other things, the chaplains were instructed by the military that “the applicable directives prohibit you from participating in this campaign . . .” After suing for their rights, the chaplains were victorious. *See, e.g., Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997). However, chaplains and service members should not be required to bring a lawsuit in federal court in order to secure their constitutionally-protected rights. Moreover, free exercise rights of our men and women in uniform, which are grounded in the constitution, should not be subjected, administration by administration, to the policies and directives of their commander-in-chief. This natural and unyielding tension, alleviated by no particular president or administration, warrants Congressional action.

By the very nature of government itself, efforts to silence persons of faith, or those that find themselves in the minority, will not cease. Accordingly, in order to uphold these constitutional mandate of the chaplaincy, it is critical that Congress require that no restrictions or limitations be placed on the teaching or participation of any chaplain,

whether in the pulpit, the classroom, the field, the barracks, private counseling sessions, or at the office. This purpose can be accomplished with the passage of H.R. 3828, the Military Religious Freedom Protection Act.

Until Congress acts decisively, efforts to silence the voices of our military chaplains of all faiths and backgrounds will likely continue well into the future. It is time that Congress secures the rights of ALL chaplains, once and for all, instead of allowing those that do not subscribe to the orthodoxy of the day to be unconstitutionally silenced. But that is exactly what is occurring, as demonstrated by the following recent reports to the Chaplain Alliance for Religious Liberty:

- Chaplain W, the senior chaplain on a major stateside military installation, was recently stripped of his authority over the chapel under his charge for his insistence that, in accordance with federal law, and military regulations proclaiming the chapel as a “sacred space,” the chapel would not be used to celebrate “marriages” between same-sex couples.
- Chaplain X was threatened with early retirement then was moved to an assignment where he could “be supervised.” His sin? He merely forwarded an email to his subordinates that was a thoughtful reflection on the military’s former Don’t Ask, Don’t Tell policy.
- Chaplain Y was asked for help at Andrews AFB by a senior NCO. Apparently, two sailors under the NCO’s command were eating and talking in the public food court, when one of them mentioned that he might want to be a chaplain someday, but didn’t know how the repeal of Title 10, § 654 would affect that plan. Another service member at the next table, listening to their conversation, stood up and berated the two sailors for talking about the repeal of Title 10, § 654, then reported the “incident” to the NCO. The NCO wasn’t sure what to say to the offended sailor, but then instructed the soldier who wanted to become a chaplain that they needed to be more careful in public.
- Chaplain Z was on funeral detail with some enlisted Sailors. The Sailors were discussing

how their fellow service members that proclaimed a “gay” or “lesbian” identity could choose their roommates, but that they were unable to choose their roommates. Understandably, they wondered how "that was fair?"

- A Service school that trains officers experienced a recent incident where a male service member sexually harassed another male service member through text messages, emails, phone calls and visible confrontations. The offended male was not interested in a same-sex relationship, but the offending male insisted that the two would make a good couple. The harassment was reported, but no disciplinary action resulted.
- DLI in Monterey had to force an open door policy on all dorms so that neither heterosexual nor homosexual students could not close them for sexual and private purposes. The lesbians argued the most about the policy since they thought the new policy allowed them to have their fun. But DLI reminded them the facility was "gender-neutral" and no "gender" would be privileged. Some DLI students have asked Chaplains if they'll do a "partner service," too.

The Chaplain Alliance’s purpose is to “defend and maintain the religious liberty and freedoms of expression and conscience the Constitution guarantees our chaplains and military service personnel.” We represent more than 2,000 uniformed chaplains in our armed forces. To that end we support any legislation that defends freedom OF religion as opposed to freedom FROM religion.

The examples above are painfully real; so much so that we must protect the identities of those reporting lest they suffer retaliation. Enacting H.R. 3828 would benefit the military by educating and directing commanders so that freedom of conscience and free exercise of religion within our armed forces continues with openness, diversity, and the backing of our elected officials. The motto of the chaplaincy to “perform or provide” is not merely an empty slogan, but one that all chaplains take to heart and has allowed the pluralistic nature of the military to peacefully co-exist for centuries. The ideals that drive chaplains to serve are worthy of preservation and protection, not persecution. At this stage, the persecution is beginning; the antidote is the protection of H.R. 3828.

Accordingly, H.R. 3838 is crucial for the ongoing protection of America's first liberty and most foundational principle—that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

Respectfully,

CH (BG) Doug Lee, USAR Retired
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CH (COL) Ron Crews, USAR Retired
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Military Culture Coalition

The Honorable Howard P. McKeon
Chairman, House Armed Services Committee
2120 Rayburn House Office Building
Washington, D.C. 20515

March 22, 2012

Dear Chairman McKeon,

The undersigned leaders of the Military Culture Coalition are writing to thank you for your leadership in protecting rights of conscience and religious liberty in the armed forces, and for supporting enforcement of the Defense of Marriage Act in the military.

We also appreciate Speaker John Boehner's continued resolve to defend the DOMA in court, and the leadership of Rep. Tim Huelskamp and Rep. Todd Akin, who are sponsoring and supporting the Military Religious Freedom Protection Act, [HR 3828](#). As you know, the legislation would a) Protect the rights of both chaplains and people of faith in the military, and b) Reaffirm congressional support for traditional marriage in the military.

The First Amendment to the U.S. Constitution guarantees rights of conscience and religious freedom to both chaplains and military personnel. However, Department of Defense policy statements clearly indicate that there is a need to deter *infringements* on religious liberty, which are likely to become more apparent as Pentagon officials continue to implement LGBT (lesbian, gay, bisexual, transgender) law and related policies in the military.

Chaplains are relatively few in number, but their role is critically important in maintaining morale, discipline, and rights of conscience in the military. The U. S. Constitution established the chaplaincy to protect rights of religious expression among military personnel, even when troops are deployed far from home.

At the present time, a minority of chaplains who support LGBT law in the military may express their views regarding homosexual conduct at all times. But chaplains who represent the majority of faith traditions face career penalties for expressing sincerely held religious or moral beliefs on that issue in situations other than worship services. There are no conscience or religious freedom protections for chaplains and people of faith involved in activities such as the Army's "Strong Bonds" marriage counseling program, religious study groups, and social, educational, or family/athletic activities.

According to Army Tier One training instructions (Slide #11), the only option for chaplains who cannot reconcile their sincerely held religious views regarding homosexual conduct in settings other than worship is to relinquish their sponsoring agency's endorsement and seek "voluntary separation" and an honorable discharge if they owe no time to the Army. Such policies already are imposing a chilling effect that infringes rights of conscience and religious liberty in the armed forces.

We are also concerned about the administration's attempts to circumvent the Defense of Marriage Act (DOMA), which defines marriage as the bond between one man and one woman. In April 2011, the Navy Chief of Chaplains issued a memo calling for same-sex marriage training. Following strong opposition from Congressman Todd Akin and 61 colleagues, the Navy memo was suspended but not revoked.

In September 2011, the Pentagon issued [two policy memoranda](#) authorizing the use of military facilities for same-sex "ceremonies" or "functions" in states where they are not prohibited, but without official Defense Department endorsement or benefits.

Administration officials who provided to Congress repeated assurances that the Defense Department would comply with the Defense of Marriage Act did not mention that the Department of Justice was about to discontinue legal defense of the DOMA in court. This "bait and switch" situation, which broke faith with Congress and the military, is lending support to current and future litigation demanding extension of all marriage benefits to same-sex couples.

Thank you again for your recognition that elected representatives in Congress should have something to say about ongoing, still-unresolved controversies such as this.

We hope that you will do everything possible to protect constitutional rights of conscience and religious freedom in the military, and to reaffirm congressional intent with regard to same-sex marriages or "marriage-like ceremonies" on military bases.

Sincerely,

CC: The Hon. John Boehner
The Hon. Tim Huelskamp
The Hon. Todd Akin

The Undersigned - (All names for identification only)

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