



Center for Military Readiness — Policy Analysis —

March 2012

The Military Religious Freedom Protection Act (HR 3828)

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 policy statements 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. The **Military Religious Freedom Protection Act (MRFPA)** would preserve the status quo prior to repeal of the law called "**Don't Ask, Don't Tell.**"
- Congress has the authority to instruct the DoD to protect rights of conscience and religious liberty, which members expect to be *accommodated*. The emphasized word encompasses activities both within and outside of worship services, and covers both chaplains and lay servicemembers.
- Conscience clauses are common in civilian law but conspicuously absent in the repeal legislation. Under the MRLFA, within disciplinary limits already set in the UCMJ, service members and chaplains would be able to speak openly about 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 says that chaplains will be expected to show "*respect*" for all, but concedes 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 policy takes 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 will be 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 traditions of most major faiths consider to be immoral.

- The CRWG recommended a complaint resolution system in which the local chain of command resolves disputes on an *ad hoc* basis. This would invite inconsistencies, self-censorship, and a “chill” on religious speech. (CRWG Report, p. 14 and pp. 137-138)
- Since commanders could be punished for not investigating alleged harassment complaints or perceived LGBT discrimination, it is likely that even baseless charges will be exhaustively investigated. (IP, p. 51) Such turbulence would harm unit cohesion and lead to personnel losses at all levels.

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

- During his December 2010 Senate Armed Services Committee testimony, 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 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 gay 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. In response to that memo, which was suspended but not revoked, Missouri Republicans **Todd Akin** and **Vicky Hartzler** successfully sponsored amendments to the **2012 National Defense Authorization Act**. If passed in the Senate, the legislation would have reinforced congressional intent regarding enforcement of the DOMA in the military.

The Huelskamp bill refers to “marriage-like” ceremonies because in September 2011, Defense Department General Counsel Jeh Johnson issued a memo that attempted to circumvent the DOMA by authorizing same-sex “ceremonies” on military bases, without using the word “marriage.”

C. **Military Religious Freedom Protection Act (HR 3828), Rep. Tim Huelskamp (R-KS)**

Due to still-unresolved interpretations of legislation repealing the 1993 law regarding homosexuals in the military, usually called "**Don't Ask, Don't Tell**," there is a need for Congress to protect rights of conscience and religious liberty in the military. Chaplains and people of faith should not be denied the constitutional rights of conscience they have volunteered to defend.

Legislation titled the "**Military Religious Freedom Protection Act**," excerpts of which are quoted below, would protect rights of conscience and religious liberty for both military chaplains and personnel. The **MRFPA (HR 3828)**, sponsored by **Rep. Tim Huelskamp (R-KS)**, also clarifies the role of military chaplains and the endorsement process for certifying them:

"Protection of Rights of Conscience- The sincerely held religious or moral beliefs of a member of the Armed Forces concerning the appropriate and inappropriate expression of human sexuality shall be accommodated and shall not be 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)."

"Protection of Chaplains- A military chaplain is a certified religious leader or clergy of a faith community who, after satisfying the professional and educational requirements of the commissioning service, is commissioned as an officer in the Chaplains Corps of one of the branches of the Armed Forces. A chaplain is a representative of the chaplain's faith group, who remains accountable to the sending faith group for the chaplain's religious ministry to members of the Armed Forces, to--(A) provide for the religious and spiritual needs of members of the Armed Forces of that faith group; and (B) facilitate the religious needs for other faith groups."

The legislation would bar discrimination and adverse personnel actions against individuals and chaplains expressing sincerely held religious beliefs:

"A military chaplain shall not be directed, ordered, or required to perform any duty, rite, ritual, ceremony, service, or function that is contrary to the conscience, moral principles, or religious beliefs of the chaplain or contrary to the moral principles or religious beliefs of the chaplain's faith group. The refusal by a military chaplain to perform a duty, rite, ritual, ceremony, service, or function that is contrary to the conscience, moral principles, or religious beliefs of the chaplain or contrary to the moral principles or religious beliefs of the chaplain's faith group shall not be the basis for any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment."

In addition, the proposed legislation reaffirms congressional intent that same-sex marriages or marriage-like ceremonies should not be performed in military facilities:

"A military installation or other property owned, rented, or otherwise under the jurisdiction or control of the Department of Defense shall 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."

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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)**.*