



29 September 2010

General Carter F. Ham, USA, CRWG Co-Chair
Major General Greg Biscone, USAF, CRWG Chief of Staff
Jeh Johnson, General Counsel, Department of Defense, CRWG Co-Chair
Pentagon, Room 2B546A
Washington, DC 20330-1670

Dear General Ham, General Biscone, and Mr. Johnson:

Thank you for your service on the Consolidated Review Working Group. We deeply appreciate the time that the CRWG committed to meeting with the Alliance Defense Fund, the Center for Military Readiness, and several of our colleagues on 16 September 2010.

ADF is a national legal alliance that defends religious freedom, the natural family, and the right to life through both litigation and training legal professionals in a proper understanding of constitutional rights.

We are well-qualified to evaluate the impact on religious freedom if the military officially normalizes homosexual and bisexual behavior. Our 26 in-house litigators and almost 1900 volunteer attorneys have long defended the natural family and marriage between one man and one woman against legal attacks by homosexual advocacy groups such as the ACLU, Lambda Legal, and the National Center for Lesbian Rights. The number of our legal matters in this area is well into the hundreds.

Accordingly, at our meeting I identified three problems posed by the proposed repeal of 10 U.S.C. § 654—commonly known as the Don't Ask, Don't Tell ("DADT") policy: (1) unavoidable conflict with the military chaplaincy; (2) inevitable conflict with the religious freedom of service members, and (3) an onslaught of demands for protecting "transgendered" persons and "gender identity" rights that will follow the normalization of homosexual behavior.

Today I supply the CRWG with documentation of those concerns and expand on my prior remarks.

1. Conflict between the Chaplaincy and novel military sexual conduct policy.

The United States' military chaplaincy was founded on 29 July 1775. Then, as now, it was charged with a critical mission. The U.S. Army Chaplain Corps puts it this way: Chaplains “[p]rovide religious support to America’s Army across the full spectrum of operations[, a]ssist the Commander in ensuring the right of free exercise of religion[, and p]rovide spiritual, moral, and ethical leadership to The Army.”¹ In the Army alone, that mission has been carried out by some 25,000 chaplains serving about 25 million Soldiers and dependents.² The chaplaincy of each of the armed services has a similar duty and may lay claim to similar performance.

Broadly, chaplains serve two roles: a pastoral role where the chaplain serves members of his own faith as a spiritual leader (such as a priest, pastor, imam, or rabbi), and a support role where the chaplain’s expertise in comforting, counseling, and teaching bolsters the emotional and spiritual reserves of all service members, regardless of their faith. Thus, chaplains must teach moral and ethical values as well as care for spiritual needs.

Historically, the values taught by chaplains—like honor, duty, self-sacrifice, courage, sexual fidelity, and complete commitment to goals and truths that are bigger than any one person—directly supported those of the military. Perhaps the only recent example of tension between the combat arms and the chaplaincy was during the later phases of the Vietnam War, when a few chaplains aligned with pacifistic teachings were perhaps overly enthusiastic in facilitating the discharge of conscientious objectors.

But a far more serious conflict will arise if homosexual behavior is officially normalized by the military: *For the first time in American history, the military’s moral policies on sexual conduct would directly conflict with the official doctrines, moral teaching, and ethical standards of every major faith group in the chaplaincy—Christian, Jewish, and Islamic.*

That statement is grounded in the assessment of 66 experienced military chaplains who collectively served our country for almost 1,700 years. Their brief biographies are a terse litany of service, sacrifice, honor, and integrity that commands respect for their views. What they have to say must be heard by the CRWG, and their letter (Exhibit A, attached) plainly lays out the looming conflict.

¹ The Army Chaplaincy Strategic Plan, 2009-2014, p.1

² *Id.*, inside cover.

The alarm sounded by these retired chaplains is urgent and immediate. Several of the signatories are very recently retired, some after completing tours in Afghanistan or Iraq, and were pleased that they were free to speak on behalf of those who are now on active duty. Moreover, their concerns are strongly reinforced by statements ADF has obtained from active duty personnel, who must remain anonymous for fear of retaliation.³

Bluntly, the potential conflict with the religious liberty of chaplains has a very high potential to seriously undercut the ability of chaplains to preserve and protect the morale and spiritual welfare of all service members.

2. Conflict between individual service members' religious freedom and novel military sexual conduct policy.

Just as a military commander accepts the duties of command, so a Christian accepts the duties of faith. Speaking briefly and broadly, Christian duties include the obligation to seek objective truth; an obligation to share that truth; and an obligation to defend the truth. While the Christian knows that these duties should be discharged as inoffensively as possible, he also knows that at bottom, the transcendent truths of the Gospel will offend some others. Importantly, the Christian can no more deny his Godly duties than can a commander deny his military duties, for the consequence in both cases is that one ceases to be who he or she is.

Obviously, Christian chaplains must go in harm's way due to their combined military and religious duties, as we were again reminded of by the loss of U. S. Army Chaplain Captain Dale Goetz in Afghanistan on 30 August 2010. But a Christian's duty *as a Christian* is so strong that he may willingly choose death rather than support policies that violate his conscientious obligations of faith. As Dutch priest Titus Brandsma aptly said before he was executed for opposing Nazi social policies, "[t]hose who want to win the world for Christ must have the courage to come into conflict with it."⁴

While Christians may be relied upon to be circumspect and reasoned, they may also be relied upon to express truth. However much the military insists its members must accommodate and affirm homosexual and bisexual behavior, Christian service members will respectfully but steadfastly point out that such is sin,⁵ policy or not.

³ See "A Senior Chaplain Weighs In," attached as Exhibit B, and footnote 10, below.

⁴ Matthew Bunson, Margaret Bunson, Stephen Bunson, *John Paul II's Book of Saints*, (Huntington, IN: Our Sunday Visitor Publishing, 1999), p. 353.

⁵ See, e.g., Genesis 19, Leviticus 20:13, Romans 1:24-27, I Corinthians 6:9; see also The Southern Baptist Convention: "Homosexuality is not a valid alternative lifestyle. The Bible condemns it as sin." SBC.net, Position Statement on Sexuality, available at <http://www.sbc.net/aboutus/pssexuality.asp>; see also *Catechism of the Catholic Church* § 2357:

Herein is the root of conflict. In civilian life, the exercise of Christian faith is profoundly protected by the religion clauses of the federal First Amendment, and it is fairly rare for the practicing Christian to have his faith directly compromised by government regulation. But in military life, those rights are necessarily less broad, and balanced against the demands of military discipline.⁶

If homosexual behavior is officially protected by the military, the military will be torn between simultaneously endorsing sexual behavior that the Bible condemns and trying to protect the right of Christians to express what their faith teaches.

Often, large organizations can avoid a problem by tactfully overlooking most minor conflicts. But recall that the phrase “zero tolerance” was repeatedly voiced at the 16 September meeting: advocates of homosexual behavior will brook no opposition to their behavior or their views. However much some commanders may want to avoid the issue, the homosexual activists will be in court forcing the point. *The likely impact of “zero tolerance” will be a powerful constraint on the ability of military commanders to govern their troops.*

There is sound evidence that “zero tolerance” rides hard on the heels of normalizing homosexual behavior. Consider this statement from Equal Employment Opportunity Commission Commissioner Chai Feldblum⁷—one of the highest federal officials enforcing nondiscrimination laws—about subordinating religious beliefs to the demands of homosexual advocates:

I find it difficult to envision any circumstance in which a court could legitimately conclude that a legislature that has passed a LGBT equality law, with no exceptions for individual religious people based on belief liberty, has acted arbitrarily or pointlessly. If the “justifying principle” of the legislation is to protect the liberty of LGBT people to live freely and safely in all parts of society, it is perfectly reasonable for a legislature not to

“Basing itself on Sacred Scripture, which presents homosexual acts as acts of grave depravity, tradition has always declared that ‘homosexual acts are intrinsically disordered.’” Whatever view one takes of religious doctrine, it is evident that there is little room for an orthodox Christian to affirm homosexual behavior. Indeed, the author resigned his position with the U.S. Forest Service rather than comply with a directive instructing fire crew bosses to “value the sexual orientation of their firefighters.”

⁶ *Parker v. Levy*, 417 U.S. 733, 759 (1974) (“Speech that is protected in the civil population may nonetheless undermine the effectiveness of response to [military] command. If it does, it is constitutionally unprotected.”)

⁷ See <http://www.eeoc.gov/eeoc/feldblum.cfm> (brief biography).

provide any exemption that will cordon off a significant segment of society from the anti-discrimination prohibition.[⁸]

Simply put, if Congress imposes a sexual orientation “equality” law upon the military, then the leading advocates of homosexual behavior will insist that it is unreasonable for the military to “cordon off” religious service members in any way that inhibits full support for the new official policies.

That is scarcely a new point of view among the advocates of homosexual behavior. Some twenty years before Ms. Feldblum was appointed to the EEOC, activists Marshall Kirk and Hunter Madsen spoke about those who believed in “orthodox religion” and bluntly proclaimed: “Our primary objective regarding diehard homohaters of this sort is to cow and *silence* them.”⁹

The threat is clearly understood by the rank-and-file military. As one active duty USAF Captain recently said, “if the ban on homosexual conduct is dropped, there will inevitably be a push to give homosexuals special protected treatment through military-wide ‘diversity’ and ‘sensitivity’ training that promotes acceptance of homosexual behavior, and to punish chaplains, counselors, and others who state what their religion teaches about homosexuality.”¹⁰

The Captain’s fear is legitimate, given that one of the largest homosexual advocacy groups demanded that “Congress should treat religiously held beliefs that being gay is sinful just as it treated religiously held beliefs that women are unequal and that segregation was God’s law. It should uphold a person’s right to believe it, but keep it out of the workplace.”¹¹ This is the standard that you should anticipate the activists will demand of the military.

⁸ Chai Feldblum, *Moral Conflict and Liberty: Gay Rights and Religion*, 72 Brook. L. Rev. 61, 115 (2006).

⁹ Marshal Kirk and Hunter Madsen, *After the Ball: How America will conquer its fear & hatred of gays in the 90s* (New York, NY: Plume/Doubleday 1990) (emphasis in original), p. 176.

¹⁰ Letter, USAF Captain at pp. 4-5 (attached as Exhibit C). Note also that the Captain’s letter confirms the concerns voiced in the 16 September meeting as to the inherent flaws in the CRWG survey methodology.

¹¹ *Lambda Legal: Weakened ENDA Means Less Protection for Everyone* (available at <http://www.lambdalegal.org/news/pr/weakened-enda-means-less-protections.html>). Of course, Lambda’s attempt to tar Christians with the broad brush of bigotry arrogantly dishonors the generations of Christians who *led* the efforts to abolish slavery worldwide; dishonors other Christians who marched with the Reverend Martin Luther King to silence the evil echoes of slavery, and dishonors still more Christians who saw women’s suffrage as grounded in Scriptural mandates.

Courts have proven all-too-willing a forum for activists to disregard First Amendment rights in favor of judge-made “privacy rights.” And even a strong statutory religious liberty exemption¹² could be undermined by principles embedded in two recent (albeit wayward) lower federal court decisions.

First, a court could make a “factual” finding that “[r]eligious beliefs that gay and lesbian relationships are sinful or inferior to heterosexual relationships harm gays and lesbians.”¹³ Second, the court could say that the right asserted by homosexual activists to “certain intimate conduct” merits a heightened degree of scrutiny from the courts—thus shifting the burden of proof from the plaintiffs to the government, and disregarding the deference normally given to the military for personnel management.¹⁴ If a court then joins these two principles while considering an exemption for religious beliefs that disapprove of homosexual behavior, there is little hope that the exemption would survive. For the service member who simply asks for his religious freedom to be protected, the military’s answer would have to be, “Sorry, you have no rights.”

If these lower court decisions stand (both are still subject to appeal) and DADT is repealed, then the military will have to enforce the first federal law imposing such broad affirmation of homosexual behavior, even as the issue remains in fierce turmoil in the rest of American society. The military should be the last place—not the first—that Congress engages in radical social engineering.¹⁵

Most importantly, statements like Commissioner Feldblum’s and Lambda Legal’s highlight one fact: the homosexual agenda will have zero tolerance for orthodox Christianity. Advocates of homosexual behavior will demand that Christianity be suppressed, and commanders will be constrained by policy to comply.

¹² See, e.g., letter of 14 May 2010 from ADF to Thomas D. Miller, transmitting proposed text for a Religious Liberty Exemption, attached as Exhibit D.

¹³ Such a factual finding was made in *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 985 (N.D. Cal. 2010).

¹⁴ Such a legal principle was applied in *Log Cabin Republicans v. U.S.*, 2010 WL 3526272 at *22 (C.D. Cal. Sept. 9, 2010).

¹⁵ Someone will no doubt analogize endorsing homosexual acts to integrating the races. But skin color is value-neutral, while sexual conduct is value-laden. Pragmatically, military integration came only after there was strong national unity about integration, which developed over a century that encompassed the abolition movement, the Civil War, the Thirteenth and Fourteenth Amendments to the U.S. Constitution, and World Wars I and II. Even then, stresses persisted for many years, as evidenced by racial violence aboard the aircraft carriers U.S.S. Kittyhawk and U.S.S. Constellation off of Vietnam in 1972. In contrast, America is certainly *not* unified in support of normalizing homosexual behavior with 45 of 50 states enacting laws that prohibit same-sex “marriage.” See DOMA Watch <http://www.domawatch.org/stateissues/index.html>.

3. Follow on demands—transgender and gender identity “rights.”

The CRWG cannot safely assume that the military may normalize homosexual/bisexual behavior, proclaim “mission accomplished” in the culture wars, and proceed unmolested by further demands from the radical advocates of novel sexual liberties.

First, normalizing homosexual behavior will bring with it the battle over “transgender rights” because (per the legal director for the National Center for Lesbian Rights) “a sizable percentage of transgender people also identify as lesbian, gay, or bisexual.”¹⁶ “Transgender,” in turn, covers a vast array of behaviors, including “transsexuals, transvestites, cross-dressers, drag queens and drag kings, butch and femme lesbians, feminine gay men, intersexed people, bigendered people, and others who . . . ‘challenge the boundaries of sex and gender.’”¹⁷ In short, once the military disconnects sex from the historic moral bounds of Western civilization, there is no principled basis to say “homosexual behavior is officially endorsed but transsexual behaviors are not.”

This linkage was evident when activist groups raked Congress over the coals after it deleted protection for transgendered persons from the proposed Employment Nondiscrimination Act (ENDA).¹⁸ Even more recently, activists are arguing that the state must accommodate “transgendered persons” in “gender-free” university housing—housing that is similar in many ways to the military’s barracks and berthing spaces.¹⁹

Nor should the military assume that clearly defining which homosexual/bisexual behaviors are endorsed²⁰ will forestall demands for “transgender rights.” Consider Title

¹⁶ Shannon Minter, *Do Transsexuals Dream of Gay Rights? Getting Real About Transgender Inclusion in the Gay Rights Movement*, 17 N.Y.L. Sch. J. Hum. Rts. 589, 591 (2000).

¹⁷ *Id.* at 621 n.4 (quoting Leslie Feinberg, *Transgender Warriors: Making History from Joan of Arc to RuPaul*, at x (1996)).

¹⁸ *Lambda Legal: Weakened ENDA Means Less Protection for Everyone* (available at <http://www.lambdalegal.org/news/pr/weakened-enda-means-less-protections.html>).

¹⁹ One recent example was at a public university, where a female student who identified as a male applied to live in the male dorms and claimed gender identity discrimination when she was refused. Lara E. Pomerantz, *Winning the Housing Lottery: Changing University Housing Policies for Transgender Students*, 12 U. Pa. J. Const. L. 1215, 1215 (2010) (internal footnotes omitted).

²⁰ The current proposal restricts official affirmation of sexual behavior to homosexual and bisexual acts. But even if the military can so limit “sexual orientation,” there will be thorny issues, such as whether the Manual for Court Martial Paragraph 62 (explaining the adultery prohibition under UCMJ Article 134) will need to be amended to protect a bisexual’s desired sexual relationships with both a man and a woman from a third sexual interloper, in the same way that a husband and wife are now protected from an adulterer.

VII of the 1964 Civil Rights Act, the preeminent federal employment nondiscrimination law. One thing Title VII forbade was sex discrimination, in terms so clear that a host of federal appellate courts rejected claims for discrimination based upon being “transgendered.” But despite numerous losses, those who demanded “transgender rights” kept suing until they found a court willing to buy their theory.²¹

And the theory is endlessly malleable. This is how one “transgender” plaintiff described his sexual identity: “Morales is a male-to-female transgender woman. Although Morales is biologically male, she identifies and presents herself as a heterosexual female who dates heterosexual men. She does not self-identify as a homosexual and does not see herself as a man.”²²

Injecting such legal battles into the military would put commanders in an intractable position. For instance, the male NCO who fondly touches his female peers may be edging toward a classic male-on-female sex harassment charge—a situation which a commander currently ignores at his peril. But in the new gender-neutral military, the commander may become a defendant if he intercedes and the aggressor male claims “gender identity discrimination,” saying he believes himself to be female and is acting consistently with that gender. Yet the aggressive male is not quite home free, as the commander will be bound to further investigate to discern whether the offender’s gender identity is really a pretext for sexual aggression—perhaps because he is a male harassing a female, but also perhaps because the male believes himself to be a lesbian female.

In sum, if the evidence of hundreds of lawsuits and legislative efforts in the civilian realm are any predictor of what will happen in the military, then normalization of homosexual and bisexual behavior will swiftly lead to demands for normalizing transgendered roles and banning “gender identity” discrimination. To invite such conflict into the military would severely impact the military’s ability to function in its role of fighting the nation’s wars.

²¹ For example, see *Schwenk v. Hartford*, 204 F.3d 1187, 1201-1202 (9th Circuit 2000), reviewing a series of cases that moved Title VII from the classic sex discrimination statute Congress enacted to a judicially modified statute that conflates biological sex with perceived “gender” and insinuates “transgender” as a protected class under the law.

²² *Morales v. ATP Health & Beauty Care, Inc.*, 2008 WL 3845294 at *1 (D. Conn. Aug. 18, 2008).

CONCLUSION

DOD General Counsel Jeh Johnson made one point at the 16 September 2010 meeting that could not be disputed by any attendee: the CRWG will be castigated for its survey results, no matter what it reports.

ADF believes that if the CRWG is to be scorned, let it be scorned for choosing hard truth over political convenience.

The truth is that what the advocates of homosexual behavior demand is not equality before the law, but a malleable legal regimen that gives them two special rights: the right to associate in the most intimate circumstances of military life with those to whom they are sexually attracted—a right *not* extended to heterosexual relationships; and a regulatory right to trump any moral dissent, however soundly grounded it may be in religious doctrine, philosophy, or constitutional law.

To reject this demand for special rights would no doubt provoke a firestorm from the left. But it is the right thing to do for the troops and for our nation. That is the course we urge.

Please let me know if I may be of further service to the CRWG.

With kind regards,



Gary S. McCaleb
Senior Counsel

EXHIBIT A:

Chaplains' Letter,
16 September 2010: Religious freedom
and repeal of DADT

EXHIBIT A

September 16, 2010

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dr. Robert M. Gates
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. President and Secretary Gates,

Mr. President, on January 27, 2010, you requested repeal of the longstanding policy prohibiting open homosexual behavior in the armed forces, popularly known as “Don’t Ask, Don’t Tell.”¹ Bills are pending in both houses of Congress to repeal the policy and replace it with a law preventing discrimination on the basis of “sexual orientation.”² As chaplains whose cumulative service is measured in centuries, we are deeply concerned that these changes would threaten the religious liberty of chaplains and Service members.

In our role as chaplains, we experienced daily the challenges of serving those within the armed forces. We preached, taught, counseled, consoled, and shared spiritual insights, both with those in our respective faith communities and with any Service member who sought our aid. We did so in times of peace and in times of war. And since we are now retired, we can speak freely to protect the right of chaplains and Service members to exercise their religious beliefs—unlike our active-duty brethren in the chaplaincy, who may risk accusations of insubordination or discrimination if they raise these concerns.³

Put most simply, if the government normalizes homosexual behavior in the armed forces, many (if not most) chaplains will confront a profoundly difficult moral choice: whether they are to obey God or to obey men.⁴ This forced choice must be faced, since orthodox Christianity—which represents a significant percentage of religious belief in

1 See, e.g., 10 U.S.C. § 654

2 See H.B. 1283, the “Military Readiness Enhancement Act of 2009” at [http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.1283](http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.1283;); and S. 3065, the “Military Readiness Enhancement Act of 2010” at <http://thomas.loc.gov/cgi-bin/query/z?c111:S.3065>.

3 Indeed, the backlash against opposition to the policy change has already started. A prominent religious leader—who is also a veteran of the U.S. Marine Corps—was disinited by Andrews Air Force Base officials from offering a brief devotional message at the National Prayer Luncheon based solely on his defense of current military policy on homosexual behavior. See <http://www.politico.com/news/stories/0210/33613.html> (last visited Mar. 4, 2010).

4 Acts 5:29

Chaplain (BG),
James M. Hutchens,
U.S. Army, Retired

Chaplain (BG),
Douglas E. Lee,
U.S. Army, Retired

Chaplain (COL),
Paul L. Vicalvi,
U.S. Army, Retired

Chaplain (COL), Stephen
W. Leonard, U.S. Army,
Retired

CAPT
Roy Bebee,
CHC, USN, (Ret.)

Chaplain (COL), Bernard
L. Windmiller, U.S. Army,
Retired

Chaplain (COL),
John W. Schumacher,
U.S. Army, Retired

Chaplain (COL),
David P. Peterson,
U.S. Army, Retired

Chaplain (COL),
Frederick L. Hudson,
U.S. Army, Retired

CAPT
George A. Ridgeway,
CHC, USN, (Ret.)

Biographical addendum, attached

EXHIBIT A

Chaplain (COL),
David E. Root,
U.S. Army, Retired

Chaplain (COL),
Allen R. Nabors,
U.S. Army, Retired

CAPT
John C. Wohlrabe, Jr.,
CHC, USN, (Ret.)

Chaplain, Colonel,
Robert W. Gardner,
U.S. Air Force, Retired

Chaplain, Colonel, Beryl
T. Hubbard,
U.S. Air Force, Retired

Chaplain (COL),
Richard R. Young,
U.S. Army, Retired

Chaplain (COL),
David Upchurch,
U.S. Army, Retired

CAPT
Ron Swafford,
CHC, USN, (Ret.)

Chaplain (COL),
Frank D. Somera, Jr., U.S.
Army, Retired

CAPT
Mark J. Schreiber,
CHC, USN, (Ret.)

Chaplain (COL),
Thomas E. Troxell,
U.S. Army, Retired

Chaplain (COL), Brandon
Keith Travis, U.S. Army,
Retired

the armed forces—does not affirm homosexual behavior.⁵ Imposing this conflict by normalizing homosexual behavior within the armed forces seems to have two likely—and equally undesirable—results.

First, chaplains might be pressured by adverse discipline and collapsed careers into watering down their teachings and avoiding—if not abandoning—key elements of their sending denomination's faith and practice. Such a result would be the very antithesis of religious freedom and inimical to the guarantees made by our First Amendment to the U.S. Constitution.

Second, chaplains might have their ability to freely share their religious beliefs challenged and torn away in a variety of everyday situations. For instance, chaplains who methodically preach book-by-book from the Bible would inevitably present religious teachings that identify homosexual behavior as immoral.⁶ Thus, while chaplains fulfill their duty to God to preach the doctrines of their faith, they would find themselves speaking words that are in unequivocal conflict with official policies.

In fact, the proposed “non-discrimination” law may effectively ban chaplains from expressing their religious beliefs on homosexual behavior.⁷ The affects of this ban would be felt keenly within a chaplain's religious duties, but it would extend outside the pulpit, too. Since chaplains are tasked with teaching classes in moral leadership and ethics both on armed forces bases and at branch schools, such censorship would prevent them from providing the full moral instruction their faith background gives them.

An additional conflict will come in the context of the armed forces' work to preserve their members' marriages. For example, the Army's Strong Bonds program, which receives millions of dollars in annual funding and has successfully supported many marriages facing the unique stresses of military life, is administered solely by the chaplaincy. If homosexual conduct is normalized in the armed forces, it will only be a matter of time before homosexual couples request to participate in the Strong Bonds program. The religious beliefs of many chaplains involved in the program would not allow them to support relationships that are both harmful and sinful. Such chaplains will either have to deny their religious beliefs to comply with the “non-discrimination” policy

5 See, e.g., the Southern Baptist Convention: “Homosexuality is not a valid alternative lifestyle. The Bible condemns it as sin.” SBC.net, Position Statement on Sexuality, <http://www.sbc.net/aboutus/pssexuality.asp> (last visited Feb. 15, 2010). See also Catechism of the Catholic Church § 2357: “Basing itself on Sacred Scripture, which presents homosexual acts as acts of grave depravity, tradition has always declared that ‘homosexual acts are intrinsically disordered.’”

6 See, e.g., Leviticus 18:22; Romans 1:24-32; I Corinthians 6:9.

7 The executive branch has a history of trying to censor chaplain's religious speech. In *Rigdon v. Perry*, 962 F.Supp. 150 (D.D.C. 1997), the court rejected the Clinton administration's attempt to censor chaplains from encouraging their congregants to write Congress about pending legislation to change abortion laws as unconstitutional. Unfortunately, chaplains may have less freedom if what they seek to change is established military policy.

EXHIBIT A

CAPT
James F. Poe,
CHC, USN, (Ret.)

or face the potentially career-ending consequences of a discrimination complaint when they deny the request.

CDR
Christopher P. Bennett,
CHC, USN, (Ret.)

Normalizing homosexual behavior will also harm chaplains' ability to counsel. Service members seeking guidance regarding homosexual relationships will place chaplains in an untenable position. If chaplains answer such questions according to the tenets of their faith, stating that homosexual relationships are sinful and harmful, then they run the risk of career-ending accusations of insubordination and discrimination. And if chaplains simply decline to provide counseling at all on that issue, they may still face discipline for discrimination.⁸ Either way, chaplains are punished simply for counseling (or not counseling) in light of their faith.

CDR
Mark A. Jumper,
CHC, USN, (Ret.)

CDR
Ronald G. Wilkins,
CHC, USN, (Ret.)

CDR
James K. Ellis,
CHC, USN, (Ret.)

Chaplain (LTC),
Robert W. Collins,
U.S. Army, Retired

Chaplain (LTC),
Robert A. Wildeman,
U.S. Army, Retired

Chaplain (LTC)
Robert G. Leroy,
U.S. Army, Retired

Chaplain (LTC)
Eric Erkkinen,
U.S. Army, Retired

Chaplain (LTC)
Martin L. Dawson, Sr.,
U.S. Army, Retired

Chaplain (LTC)
Robert C. Marsh,
U.S. Army, Retired

Chaplain (LTC)
Scott R. Huber,
U.S. Army, Retired

Another practical issue concerns the conduct of religious services. Chaplains are commonly called on to share the pulpit with other chaplains of theologically compatible denominations for religious services. Also, Service members often fill a variety of lay leadership roles at religious services, from receiving the offering and assisting with communion to helping lead worship and reading Scripture. A chaplain, then, who is requested to co-lead a service with an openly homosexual chaplain or to allow an openly homosexual Service member act as lay leadership may be concerned about the confusing moral message it would send to his congregants if he agrees to do so. The chaplain's religious concern about condoning homosexual behavior may lead him to deny such requests—and thereby jeopardize his ability to continue ministering in the armed forces.

Similarly, chaplains hire civilian workers to assist ministry activities like youth work. At least one of the undersigned chaplains was faced with a choice between two qualified candidates for a ministry role, but chose not to hire one of them since she was involved in a heterosexual relationship he believed to be immoral. That ministry-based choice was permissible because the armed forces have not normalized heterosexual immorality, like adultery or fornication. But if homosexual behavior is normalized, chaplains may be forced to hire openly homosexual individuals to fill ministry positions.

Even if a chaplain never receives a formal complaint for exercising his religious beliefs, his career and ministry will be threatened simply by the existence of the "non-discrimination" law. By raising homosexual behavior to the same protected status as innate, innocuous characteristics like race and gender, the armed forces will cast the sincerely held religious beliefs of many chaplains and Service members as rank bigotry comparable to racism. Further, all officers, including chaplains, are evaluated by their superiors in a report like the Army Officer Efficiency Report or the Navy Officer Fitness Report. A question on the report specifically asks if the officer supports the armed forces'

⁸ In *Walden v. Center for Disease Control*, Case No. 1:08-CV-02278-JEC (N.D. Ga. 2008), a Christian counselor was fired by her private employer, based in part on pressure from a federal government entity, because she declined to provide counseling that would have facilitated a same-sex sexual relationship, even though she promptly and professionally referred the client to another counselor who addressed the client's concerns.

EXHIBIT A

Chaplain (LTC)
Michael Frazier,
U.S. Army, Retired

Chaplain (LTC)
John S. Parker,
U.S. Army, Retired

Chaplain, Lieutenant
Colonel, Joseph
Henriques, U.S. Air Force
(ANG), Retired

LCDR
David E. Mullis,
CHC, USN, (Ret.)

LCDR
Kenneth V. Botton,
CHC, USN, (Ret.)

LCDR
David A. Crum,
CHC, USNR

LCDR
Stephen L. Parker,
CHC, USN, (Ret.)

New Signatories

Chaplain, Colonel
Donald G. Smith,
U.S. Air Force, Retired

CAPT
David Starkey,
CHC, USN, (Ret.)

Chaplain (COL)
Ronald A. Crews,
U.S. Army, Retired

CAPT
J. Robert Fiol,
CHC, USN (Ret.)

Chaplain (COL)
Alexander F.C. Webster,
U.S. Army, Retired

CAPT
Richard J. Wolfram,
CHC, USN, (Ret.)

Biographical addendum attached

equal opportunity policy, of which the “non-discrimination” policy would be a part. A bad or lukewarm report would destroy a chaplain’s career. And thus a law protecting homosexual behavior could be used to attack chaplains who share our religious beliefs.

These concerns are not mere speculation. Civilians are already experiencing widespread conflict between religious liberty and “non-discrimination” policies protecting homosexual behavior. Christian counselors have been punished for declining to counsel same-sex couples,⁹ Christian prison chaplains have been disciplined for refusing to turn their worship service over to individuals who openly engage in homosexual behavior,¹⁰ Christian voluntary organizations have been discriminated against by governmental entities for requiring organizational leadership to share their religious beliefs on homosexual behavior,¹¹ Christian businesses have been fined for declining to promote homosexual behavior,¹² and Christian ministries have been penalized for choosing not to allow their facilities to be used for same-sex commitment ceremonies.¹³ These are just a few examples of the ongoing conflict, and nothing will insulate armed forces chaplains from these issues already rampant in civilian life.

If anything, the uniquely close relationship between armed forces chaplains and the government will only intensify this divisive phenomenon, creating sharp and widespread conflict. Ominously, a high-ranking administration official has stated that government should always resolve such conflict by diminishing religious liberty.¹⁴

9 *Ward v. Wilbanks*, 2009 WL 4730457 (E.D. Mich. 2009) (where a Christian counseling student declined to provide counseling for a same-sex sexual relationship and, when she refused to take “remediation training” from her government school to change her religious “belief system” on homosexual behavior, was dismissed from the school’s counseling program); *see also Walden v. Center for Disease Control*, *supra*, at note 8.

10 *Akridge v. Wilkinson*, 178 Fed. Appx. 474 (6th Cir. 2006) (upholding a prison’s punishment of a prison chaplain for refusing to allow an openly homosexual prisoner to lead a worship service); *Phelps v. Dunn*, 965 F.2d 93 (6th Cir. 1992) (allowing a volunteer prison chaplain to be sued for refusing to permit an openly homosexual prison inmate to take a leadership role in chapel services).

11 *See, e.g., Christian Legal Society v. Martinez*, 130 S.Ct. 795 (2009) (where a Christian society at a public law school was discriminated against by the school because the society required its leadership to abide by certain religious beliefs, including a prohibition on extra-marital sexual conduct like homosexual behavior. The school based its discriminatory action on its “non-discrimination” policy that protected homosexual behavior).

12 *Elane Photography v. Willock*, HRD No. 06-12-20-0685 (N.M. Human Rights Comm’n 2008) (where a small photography business owned and operated by a young Christian couple was fined over \$6,000 for refusing to photograph a same-sex commitment ceremony, even though same-sex “marriage” and civil unions are illegal in New Mexico); *see, e.g.,* <http://www.alliancedefensefund.org/news/story.aspx?cid=4593>.

13 *Bernstein v. Ocean Grove Camp Meeting Assoc.*, N.J. Div. on Civ. Rights, No. PN34XB-03008 (2008) (where a United Methodist church campground had its tax exempt status revoked for failing to allow its facilities to be used for same-sex commitment ceremonies).

14 *See* <http://www.alliancealert.org/2009/09/14/obama-picks-chai-r-feldblum-for-ecoc-commission/>, recounting the Commissioner of the Equal Employment Opportunity Commissions’ statement that, when religious liberty and homosexual conduct conflict, “I’m having a hard time coming up with any case in which religious liberty should win.” She made similar arguments in her law review

EXHIBIT A

Chaplain, Colonel
Larry W. Myers,
U.S. Air Force, Retired

Chaplain (COL)
John South,
U.S. Army, Retired

CAPT
Joseph C. Cappar,
CHC, USN, (Ret.)

Chaplain, Colonel
Randolph W. McHone,
U.S. Air Force, Retired

Chaplain, Colonel
Melvin E. Witt,
U.S. Air Force, Retired

Chaplain, Lieutenant
Colonel
Hugh H. Moran,
U.S. Air Force, Retired

Chaplain (LTC)
Clinton Caszatt,
U.S. Army, Retired

Chaplain (LTC)
Douglas R. Stephenson,
U.S. Army, Retired.

CDR
Richard J. Boeck, Jr.,
CHC, USN, (Ret.)

Chaplain (LTC)
Edward L. James,
U.S. Army, Retired

CDR
Glen A. Krans,
CHC, USN, (Ret.)

CDR
Steven E. Thomas,
CHC, USN, (Ret.)

Chaplain,
Lieutenant Colonel
William C. Weinrich,
U.S. Air Force (IN-ANG),
Retired

Chaplain (MAJ)
Leslie Paul Schellbach,
U.S. Army, Retired

Chaplain (MAJ)
Eric R. Dye,
U.S. Army, Retired

Service members' religious liberty will also suffer if chaplains' religious liberty is diminished. The chaplaincy exists to support the constitutionally-guaranteed free exercise of religion to Service members.¹⁵ If chaplains are limited in teaching and counseling on their beliefs, then the men and women in uniform who share their faith and rely on their instruction will face a reduction in the free exercise of their faith. Likewise, if chaplains with beliefs that contradict the proposed policy are kept from roles that are prone to generate conflict—such as administering the Army's Strong Bonds program—then they, the faith groups they represent, and the Service members whose religious beliefs they serve will all be marginalized. The armed forces would effectively establish preferred religions or religious beliefs.¹⁶

The harm to religious liberty will not occur in a vacuum: both readiness and troop levels could be collateral damage as well. Chaplains' services are integral to maintaining high morale, which is in turn a necessary ingredient of armed forces readiness. Marginalizing a large group of chaplains, then, will unavoidably harm readiness by diminishing morale. Similarly, making orthodox Christians—both chaplains and servicemen—into second-class Soldiers, Sailors, Airmen, or Marines whose sincerely-held religious beliefs are comparable to racism cannot help recruitment or retention.

Opposition to normalizing sinful behavior is deeply rooted in our theology, and that opposition will come to a sharp head if the armed forces compel affirmation of homosexual conduct. Recently, hundreds of religious leaders in civil life—including those from faith communities that supply many armed forces chaplains—signed the Manhattan Declaration, which stated their reasoned and conscientious opposition to normalizing homosexual behavior, particularly through the artifice of same-sex "marriage:"

Because we honor justice and the common good, we will not...bend to any rule purporting to force us to bless immoral sexual partnerships, treat them as marriages or the equivalent, or refrain from proclaiming the truth, as we know it, about morality and immorality and marriage and the family. We will fully and ungrudgingly render to Caesar what is Caesar's. But under no circumstances will we render to Caesar what is God's.¹⁷

Far from an academic exercise, the Declaration articulates principles that article on that topic, stating that the conflict was a "zero-sum game" where "society should come down on the side of protecting" homosexual conduct. Chai R. Feldblum, *Moral Conflict and Liberty: Gay Rights and Religion*, 72 BROOK. L. REV. 61, 119 (2006).

¹⁵ Department of Defense Directive 1304.19.4.1.

¹⁶ *Rigdon*, 962 F.Supp. at 164 (finding that application of military policy to allow Catholics of one belief to speak out while Catholics of another belief must remain silent "sanctioned one view of Catholicism...over another.")

¹⁷ See *Manhattan Declaration*, <http://www.manhattandeclaration.org/the-declaration> (last visited March 19, 2010).

Biographical addendum attached

EXHIBIT A

Chaplain (MAJ)
Michael A. Morehouse,
U.S. Army (NG), Retired

Chaplain (MAJ)
Mark E. Benz,
U.S. Army, Retired

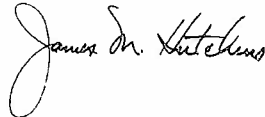
Chaplain (MAJ)
Paul E. Barkey,
U.S. Army, Retired

guide the choices of many influential religious groups. The ink was hardly dry on the Declaration when the Catholic Charities of Washington, DC, was ordered by city government to affirm homosexual behavior or stop providing adoption services. As he regretfully closed the Catholic Charities' adoption services, Archbishop Wuerl—a signatory to the Declaration—relied in part on the Declaration's principles as a basis for his decision.¹⁸

To clarify, we are not saying that active-duty chaplains who share our beliefs would be unwilling to minister to those who engage in homosexual behavior. To the contrary, we believe that God loves everyone, that He desires that everyone should hear and receive the Truth, and that He calls us to speak that Truth. But condoning conduct that God says is harmful and sinful would both violate chaplains' religious calling and betray Service members relying on them for Godly counsel.

We believe that normalizing homosexual conduct in the armed forces will pose a significant threat to chaplains' and Service members' religious liberty. The best way to protect religious liberty—and avoid lowering widely-respected religious belief to the level of racism—is simply retaining the current policy to prevent open homosexual behavior in the armed forces. At the very least, though, Congress should include comprehensive and robust religious liberty protections in any sort of policy change. Either way, we urge you to protect religious liberty, the first and foremost of America's fundamental freedoms. You have our prayers.

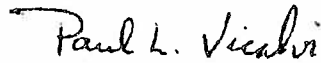
Very respectfully submitted,



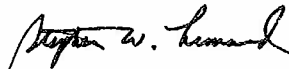
Chaplain (BG), James M. Hutchens, U.S. Army, Retired



Chaplain (BG), Douglas E. Lee, U.S. Army, Retired



Chaplain (COL), Paul L. Vicalvi, U.S. Army, Retired



Chaplain (COL), Stephen W. Leonard, U.S. Army, Retired

¹⁸ See

http://www.ncregister.com/blog/the_manhattan_declaration_and_the_archdiocese_of_washington/
and <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/16/AR2010021604899.html>.

EXHIBIT A



CAPT Roy Bebec, CHC, USN, (Ret.)



Chaplain (COL), Bernard L. Windmiller, U.S. Army, Retired



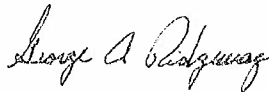
Chaplain (COL), John W. Schumacher, U.S. Army, Retired



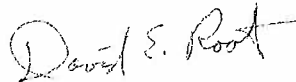
Chaplain (COL), David P. Peterson, U.S. Army, Retired



Chaplain (COL), Frederick L. Hudson, U.S. Army, Retired



CAPT George A. Ridgeway, CHC, USN, (Ret.)



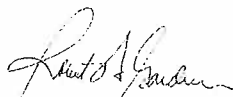
Chaplain (COL), David E. Root, U.S. Army, Retired



Chaplain (COL), Allen R. Nabors, U.S. Army, Retired

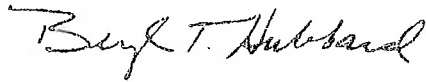


CAPT John C. Wohlrabe, Jr., CHC, USN, (Ret.)

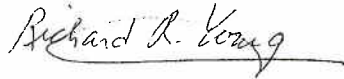


Chaplain, Colonel, Robert W. Gardner, U.S. Air Force, Retired

EXHIBIT A



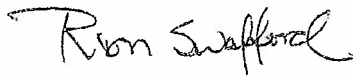
Chaplain, Colonel, Beryl T. Hubbard, U.S. Air Force, Retired




Chaplain (COL), Richard R. Young, U.S. Army, Retired



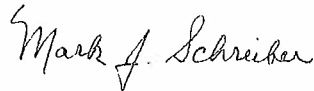
Chaplain (COL), David Upchurch, U.S. Army, Retired



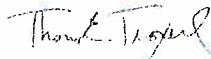
CAPT Ron Swafford, CHC, USN, (Ret.)



Chaplain (COL), Frank D. Somera, Jr., U.S. Army, Retired



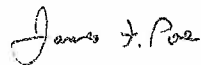
CAPT Mark J. Schreiber, CHC, USN, (Ret.)



Chaplain (COL), Thomas E. Troxell, U.S. Army, Retired



Chaplain (COL), Brandon Keith Travis, U.S. Army, Retired



CAPT James F. Poe, CHC, USN, (Ret.)



CDR Christopher P. Bennett, CHC, USN, (Ret.)

EXHIBIT A



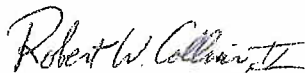
CDR Mark A. Jumper, CHC, USN, (Ret.)



CDR Ronald G. Wilkins, CHC, USN, (Ret.)



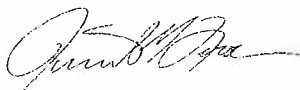
CDR James K. Ellis, CHC, USN, (Ret.)



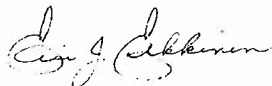
Chaplain (LTC), Robert W. Collins, U.S. Army, Retired



Chaplain (LTC), Robert A. Wildeman, U.S. Army, Retired



Chaplain (LTC) Robert G. Leroy, U.S. Army, Retired



Chaplain (LTC) Eric Erkkinen, U.S. Army, Retired



Chaplain (LTC) Martin L. Dawson, Sr., U.S. Army, Retired



Chaplain (LTC) Robert C. Marsh, U.S. Army, Retired



Chaplain (LTC) Scott R. Huber, U.S. Army, Retired

