



February 17, 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

Re: Military Policy Regarding Religious Freedom and Chaplains

Dear Mr. President and Secretary Gates,

At your urging, Congress and the U.S. military leadership are considering overturning the longstanding policy that prohibits open homosexual behavior while serving in the military.¹ Of the many severe problems this change would create, we respectfully draw your attention to one in particular: the inevitable conflict it would produce with military chaplains' religious liberty.

It is no secret that all militaries struggle with issues of fraternization across authority boundaries, preserving marriages, and restraining sexual conduct. Historically, chaplains' teachings on authority, marriage, and sexual fidelity have reinforced the military's views on these profoundly important matters. If our military is now forced to affirm homosexual behavior, *it will for the first time in history espouse a military policy that is completely at odds with the morality expressed by many of its chaplains.*

Chaplains have a unique position in military life, serving "dual roles as religious leaders and staff officers."² As staff officers, they are subject to the military's stringent need for order

¹ See, e.g., 10 U.S.C. § 654

² *Rigdon v. Perry*, 962 F.Supp. 150, 159 (D.D.C. 1997)

and discipline, which leaves little room for dissent from established policy.³ Yet as religious leaders, they represent “specific religious denominations, and are accountable in their ministries to those groups.”⁴ In fact, a prerequisite to becoming a chaplain is endorsement by a recognized faith group. If the faith group withdraws that endorsement, then the chaplain must be separated from the military.⁵ Thus, chaplains are compelled both to serve their government and to follow the teachings of their distinctive religion.

Indeed, if the government chooses to repeal current law and normalize homosexual behavior in the military, chaplains with contrary religious beliefs will be forced to choose “to obey God or men.”⁶ For instance, orthodox Christianity—which represents the majority of religious belief in the U.S. military⁷—does not affirm homosexual behavior.⁸ Should the military be forced to affirm and promote homosexual behavior, an inevitable conflict between military policy and the faith of many military members and chaplains will arise. Likely conflicts include:

1. Whether chaplains could preach on their religious doctrines about homosexual behavior when those tenets contradict the military’s affirmation of homosexual behavior.
2. Whether chaplains should provide counseling regarding homosexual behavior according to the dictates of military policy, or the tenets of their faith.
 - If the former, whether chaplains can decline to provide counsel in such situations without being disciplined or otherwise sanctioned.⁹
3. Whether chaplains must allow soldiers openly engaged in homosexual behavior to lead worship services or serve in other lay leadership roles.¹⁰
4. Whether chaplains must administer sacraments, like Communion, to soldiers who openly engage in homosexual behavior.

³ Department of Defense Instruction (“DoDI”) 1304.28.6.4.2 (requiring that all chaplains affirm that they shall “abide by applicable laws, and all applicable regulations, directives, and instructions of the Department of Defense and of the Military Department.”)

⁴ *Rigdon*, 962 F.Supp. at 159

⁵ DoDI 1304.28.6.5

⁶ Acts 5:29

⁷ See David R. Segal and Mady W. Segal, *America’s Military Population*, Population Reference Bureau, Vol. 59, No. 4 (2004), <http://www.prb.org/pdf04/59.4AmericanMilitary.pdf> (noting that 68% of soldiers identified themselves as Christian in a survey from 2001).

⁸ 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.’”

⁹ *Ward v. Wilbanks*, 2009 WL 4730457 (E.D. Mich. 2009) (where a Christian counselor was punished by her government employer for declining to provide same-sex relational counseling).

¹⁰ *Akridge v. Wilkinson*, 178 Fed. Appx. 474 (6th Cir. 2006) (allowing a prison chaplain to be penalized for refusing to allow a prisoner who openly engaged in homosexual behavior to lead a worship service). Notably, current law requires that chaplains be free to “conduct public worship according to the manner and forms of the church of which he is a member.” 10 U.S.C. § 6031(a).

5. Whether chaplains can be allowed to train other chaplains or service members regarding their religious beliefs about homosexual behavior.
6. Whether chaplains could make public statements critical of homosexual behavior or military policy on that issue.¹¹
7. Whether chaplains could encourage their congregants to ask Congress to reverse course on normalizing homosexual behavior in the military.¹²

Civilians are already experiencing a conflict between religious liberty and permissive laws on homosexual behavior. Christian counselors have been punished for declining to counsel same-sex couples, Christian chaplains have been penalized for refusing to turn their worship service over to individuals who openly engage in homosexual behavior, and Christian ministries have been attacked for choosing not to allow their facilities to be used for same-sex commitment ceremonies. Nothing will insulate military chaplains from these issues already rampant in civilian life.

If anything, the uniquely close relationship between military chaplains and the government will only intensify this divisive phenomenon, creating sharp and widespread conflict. Ominously, supporters of the policy change are already arguing that normalizing homosexual behavior would require chaplains to provide pastoral counsel to individuals engaged in such behavior, and that refusal to do so based on religious objections would be a “breach of...duty.”¹³

Further, harm to chaplains’ religious liberty will damage the religious liberty of others. Military chaplaincies exist “to provide for the free exercise of religion in the context of military service as guaranteed by the Constitution.”¹⁴ If chaplains are limited in teaching and counseling on their beliefs, then the soldiers who share their faith and rely on their instruction will necessarily also suffer a diminished ability to freely exercise their faith.

Similarly, if chaplains with beliefs that contradict the proposed policy are kept from roles that are likely to generate conflict—like preaching or counseling—then they, the faith groups they represent, and the soldiers whose religious beliefs they serve will all be marginalized. The

¹¹ For example, the chaplain of the Marine Corps circulated a paper against allowing homosexual behavior in the military the last time a policy change on the issue was considered. See <http://www.nytimes.com/1992/08/26/us/marine-corps-chaplain-says-homosexuals-threaten-military.html?pagewanted=1> (last visited Feb. 12, 2010).

¹² In *Rigdon v. Perry*, *supra*, the military unsuccessfully tried to stop chaplains from encouraging their congregants to write Congress about changing abortion laws. Chaplains may have less freedom, though, if what they seek to change is established military policy.

¹³ Open Letter by Charles D. Camp, Chaplain (Colonel), USA (Ret.); John F. Gundlach, Chaplain (Capt.), USN (Ret.); Jerry Rhyne, Chaplain (Colonel), USAF (Ret.); available at <http://thinkprogress.org/wp-content/uploads/2009/11/chaplains-dadt.pdf> (last visited Feb. 12, 2010).

¹⁴ Department of Defense Directive 1304.19.4.1.

military would effectively establish preferred religions or religious beliefs.¹⁵ That is a Constitutional offense that carries very pragmatic consequences, like what will happen to recruiting efforts if Christians become second-class Soldiers, Sailors, Airmen, or Marines.

So long as America stands for religious freedom and honors our first liberty, it is inappropriate to affirm homosexual behavior by policy. Yet at this moment, our military is strained, engaging in combat in two theaters while imminent hostilities simmer in Korea and Iran. Given the current stress on military forces, it is a particularly unwise time to raise this threat to religious liberty. As the Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, recently noted, “[D]uring a time of two wars, such a major policy change will cause some disruption in the force. It also seems plausible that there will be legal, social, and perhaps even infrastructure changes to be made.” Additionally, such a change may result in the resignation of some chaplains, as well as suppressing the desire of new chaplains to serve their country.

In fact, it is more than plausible that forcing the military to affirm homosexual behavior will prove unwise. Recently, hundreds of religious leaders in civil life—including many from the faith communities that supply many military chaplains—declared their reasoned and conscientious opposition to the normalization of homosexual behavior through the artifice of same-sex “marriage.”¹⁶ This opposition is deeply rooted in the theology of the faith communities represented by the signatories, and such conscientious opposition will come to a sharp head within a military that compels affirmation of homosexual behavior.

We urge you to reconsider your decision and avoid this collision with America’s most cherished and fundamental freedom of religious liberty. You have our prayers as you consider this momentous impact on our armed forces.

Respectfully submitted,



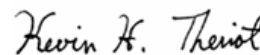
Gary McCaleb,
Senior Vice President and Senior Counsel



Jordan Lorence,
Senior Vice President and Senior Counsel



Austin R. Nimocks,
Senior Legal Counsel



Kevin H. Theriot,
Senior Counsel

¹⁵ *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.”)

¹⁶ See the *Manhattan Declaration*, <http://www.manhattandeclaration.org/the-declaration>.

cc:

John M. McHugh
Secretary of the Army
101 Army Pentagon
Washington, DC 20310-0101

Ray Mabus
Secretary of the Navy
100 Navy Pentagon
Washington, DC 20350-1000

Michael B. Donley
Secretary of the Air Force
1670 Air Force Pentagon
Washington, DC 20330-1670

Admiral Michael Mullen
Chairman of the Joint Chiefs of Staff
9999 Joint Staff Pentagon
Washington, D.C. 20318-9999

Speaker Nancy Pelosi
Office of the Speaker
H-232, US Capitol
Washington, DC 20515

Senator Harry Reid
Senate Majority Leader
528 Hart Senate Office Building
Washington, DC 20510

Senator Mitch McConnell
Republican Leader of the Senate
361-A Russell Senate Office Building
Washington, DC 20510

Representative John Boehner
Republican Leader of the House
H-204 The Capitol
Washington, DC 20515