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

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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,

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