



May 9, 2012

RE: Oppose Amendments that Would Undermine DADT Repeal and Open Service

The Honorable Howard P. "Buck" McKeon
Chairman
Committee on Armed Services
2120 Rayburn HOB
Washington, DC 20515

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
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Washington, DC 20515

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Dear Chairman McKeon and Ranking Member Smith:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of individual liberty and justice embodied in the U.S. Constitution, we are writing to urge you to oppose amendments to the Fiscal Year 2013 National Defense Authorization Act (H.R. 4310) that are aimed at undermining open service for those who are lesbian, gay, or bisexual as well as the repeal of Don't Ask Don't Tell (DADT).

Akin Amendment

This amendment, based on H.R. 3828, the so-called "Military Religious Freedom Protection Amendment," could be a dangerous license to use religion to discriminate against gay, lesbian, and bisexual service members. It purports to ensure that the repeal of DADT does not infringe upon the free exercise of religion by, and the rights of conscience of, members of the Armed Forces, including chaplains.

The Akin Amendment is an unnecessary solution in search of a problem.

First, *all* service members' Free Exercise rights are already expressly protected by the First Amendment. Religion is also a protected class under the Military Equal Opportunity program. Upon joining the Armed Forces, service members are not obliged to give up any religious beliefs, including beliefs about a particular sexual orientation.

All service members remain free to hold their sincerely held religious beliefs and can face no adverse consequences for those beliefs. What all service members must do, however, is uphold their duty to protect and defend our nation. This duty is shared by all service members regardless of their race, religion, or sexual orientation. People of different religious beliefs, and no belief at all, already serve together in the military and treat one another with dignity and respect.

Second, with regard to the amendment's provision on military chaplains, Congress has already clearly addressed the issue. Just last year, the National Defense Authorization Act included language, authored by Senator Roger Wicker (R-MS), stating that a military chaplain who, as a matter of conscience or moral principle, does not wish to perform a marriage may not be required to do so. This provision was redundant because it is consistent with what is already true under the First Amendment — no military chaplain can be required by any law or government official to perform any marriage ceremony that does not comply with the teachings and tenets of the military chaplain's denomination or faith.

Because all service members' Free Exercise rights are already protected, this amendment is unnecessary.

The Akin Amendment raises false fears and encourages discriminatory treatment of gay, lesbian, and bisexual service members.

This legislation is simply an attempt to raise false fears that the DADT repeal has privileged gay, lesbian, and bisexual service members over their comrades who have religious objections to equality on the basis of sexual orientation. This is absolutely not the case.

The repeal of DADT ended the official exclusion of lesbian, gay, or bisexual service members from the Armed Forces. Currently, there are no prohibitions against discrimination and harassment of service members on the basis of sexual orientation — as there are for race, color, religion, sex, and national origin. Despite this, the military has repeatedly said that all service members, regardless of sexual orientation, are entitled to an environment free from personal, social, or institutional barriers. This amendment, however, would invite discriminatory treatment of gay, lesbian, and bisexual service members by stating that the beliefs of a member of the Armed Forces “concerning the appropriate and inappropriate expression of human sexuality” must be accommodated and shall not be the “basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.” This language could erect the personal, social, and institutional barriers from which the military should be free. It would make it very difficult for commanders to remove such barriers when they do arise. This language could be a license to use religion to discriminate.

It is already true that chaplains are not required to engage in practices that are contrary to their religious beliefs when performing their religious services, including marriage ceremonies. However, chaplains have a duty to care for *all* service members and facilitate the religious requirements of personnel of all faiths. This language could gut one of the core responsibilities of all military chaplains — the duty to care for *all* service members.

Amendment to Prohibit Certain Service Members from Using Department of Defense Facilities Based on their Sexual Orientation

Any amendment to prohibit Department of Defense facilities from being used for private marriage ceremonies for same-sex couples, even where state law permits such marriages would ignore the fact that these facilities are already available for use by service members for a range of religious functions and ceremonies, including weddings, funerals, baptisms, confirmations, and

other events. To deny them to gay and lesbian service members — even in those states where such marriages are legal — based on nothing more than the sexual orientation of those wishing to make use of the facilities is discriminatory.

Amendment to Reaffirm the Defense of Marriage Act (DOMA)

Any amendment that would have the effect of reaffirming DOMA is unnecessary and redundant: The Department of Defense does not have to be authorized to obey this law.

While there are multiple legal challenges to DOMA working their way through the federal courts, it is still the law of the land. The Department of Defense, like all federal agencies, is bound to uphold the law. Such an amendment serves absolutely no purpose other than to score political points at the expense of gay and lesbian couples. In addition, with President Obama and many members of Congress supporting a legislative repeal of DOMA, it is improper to attempt to tack an unnecessary reaffirmation of DOMA into legislation that addresses the critical needs of all of our troops.

The ACLU has profound respect for, and a long history of, defending religious liberty as well as the rights of lesbian, gay, bisexual, and transgender (LGBT) individuals. Establishing equality for all people who want to serve our country does not infringe upon service members' or chaplains' constitutional Free Exercise rights. These amendments are aimed at undermining open service and the repeal of DADT and are unnecessary, discriminatory distractions from the underlying legislation. The Akin Amendment could also be a dangerous license to use religion to discriminate against gay, lesbian, and bisexual service members. We urge you to vote NO on these amendments if they are offered during markup of the FY 2013 National Defense Authorization Act (H.R. 4310) in the House Armed Services Committee.

If you have any questions, please contact Dena Sher, (202) 715-0829, dsher@dcaclu.org, or Ian Thompson, (202) 715-0837, ithompson@dcaclu.org.

Sincerely,



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cc: House Armed Services Committee
Speaker John Boehner
Minority Leader Nancy Pelosi