



June 5, 2013

RE: Oppose Fleming (R-LA) and Jones (R-NC) Amendments to H.R. 1960, the
FY14 National Defense Authorization Act

Dear Representative:

On behalf of the American Civil Liberties Union, please find attached our vote
recommendations for today's anticipated votes on the Fleming and Jones
Amendments to H.R. 1960, the FY14 National Defense Authorization Act
(NDAA). Votes on these amendments may occur today during the House
Armed Services Committee markup of the legislation.

Please call Legislative Counsel, Dena Sher, with any questions at (202) 715-
0829.

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Regards,

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Dena Sher
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Ian S. Thompson
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cc: Members of the House Armed Services Committee

ACLU Vote Recommendation
Fleming Amendment to FY14 NDAA (H.R. 1960):
“Expansion and Implementation of Protection of Rights of Conscience of Members of
the Armed Forces and Chaplains of Such Members”

The American Civil Liberties Union recommends a NO vote on the Fleming Amendment.

Religious liberty is one of our nation’s most cherished liberties. Religious liberty guarantees us the freedom to hold any belief we choose and the right to act on our religious beliefs, unless those actions harm others. We support the right of service members to hold their own religious and moral beliefs. We also support accommodating beliefs—so long as doing so does not result in discrimination or harm to others.

If adopted, however, this amendment would greatly undermine good order and discipline, threaten mission accomplishment, military readiness, unit cohesion, standards, or discipline, and could result in discrimination or harm to others. It ties commanders’ hands by prohibiting them from responsibly addressing threats to unit cohesion that a religious accommodation might create. The amendment only permits action when there is actual harm caused by an accommodation—which may be too late.

This amendment has the potential to lead to claims of a right to discriminate against lesbian, gay, and bisexual service members; women; religious minorities; and in the provision of health care. For instance, this could make it very difficult for commanders to appropriately deal with problems regarding conduct that undermines longstanding prohibitions against harassment, give rise to claims that could threaten the role of women in the Armed Forces, of a right to proselytize other service members and civilians in occupied areas, and lead to claims affecting health care services.

On top of causing actual harm, this amendment is unnecessary. All service members’ free exercise rights are already expressly protected by the First Amendment to the Constitution and existing regulations. All service members are free to hold their sincerely held religious beliefs and can face no adverse consequences for those beliefs. People of different religious beliefs and none at all, serve together in the military and treat one another with dignity and respect. They all share, and honorably uphold, their duty to protect and defend our nation. Moreover, Congress just addressed this issue in the FY13 NDAA, reiterating service members’ constitutional protections. Section 533 of that legislation set forth the duty to accommodate the conscience, moral principles, or religious beliefs of all members of the Armed Forces. Secretary of Defense Hagel has been asked about this provision twice in recent congressional hearings, including in the House Armed Services Committee, and has clearly stated that the Pentagon is currently working on implementation. The Fleming Amendment will lead to needless confusion and potential delay in the ongoing implementation of Section 533.

For more information, please contact Dena Sher, Legislative Counsel, at (202) 715-0829, dsher@dcaclu.org or Ian Thompson, Legislative Representative, at (202) 715-0837 or ithompson@dcaclu.org.

ACLU Vote Recommendation
Jones Amendment to FY14 NDAA (H.R. 1960):
“Protection of the Religious Freedom of Military Chaplains to Close a Prayer Outside of a Religious Service According to the Traditions, Expressions, and Religious Exercises of the Endorsing Faith Group.”

The American Civil Liberties Union recommends a NO vote on the Jones Amendment.

Military chaplains’ free exercise rights are protected by the First Amendment and federal law. They are not required to engage in practices that are contrary to their religious beliefs when performing their religious services—and thus may close prayers according to their faith traditions. Military chaplains also help to ensure other service members can exercise their religious beliefs—the chaplains have a duty to care for all service members and facilitate the religious requirements of personnel of all faiths.

Just last year, the NDAA included a provision ensuring that chaplains cannot be required to “perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain” and protecting against discrimination or adverse personnel actions when chaplains refuse to participate in such a ceremony. Therefore, a chaplain can refuse to perform a prayer that violates his or her religious beliefs.

Religious freedom is a fundamental and defining feature of our national character. Given our robust, longstanding commitment to the freedom of religion and belief, it is no surprise that the United States is among the most religious, and religiously diverse, nations in the world. Indeed, religious liberty is alive and well in this country precisely because our government cannot tell us how or even whether to worship.

This is equally true in the Armed Forces. Department of Defense reports show that nearly one-third of all members of the Armed Forces identify as non-Christian. All denominations and faiths that sponsor military chaplains agree to provide chaplains who will fulfill the duty to serve this religiously diverse population and must care for and facilitate the religious requirements of all service members and their families. It is a unique privilege that comes with responsibilities.

Military chaplains, therefore, must be willing to serve every soldier even if that means refraining from proselytizing, sectarian prayer, or engaging in coercive religious activity in certain situations. This amendment, however, would affirmatively state that chaplains have the prerogative to engage in such behavior, putting the desire of individual chaplains to engage in sectarian prayers ahead of the interests, rights, and needs of the service members they are there to serve. The language shows a lack of respect for the diversity of religious beliefs in our military.

Service members are often required to attend ceremonies and special events that may include prayer. When they attend non-voluntary events, they should not be forced to participate in sectarian prayers given by a chaplain. Moreover, this amendment would be a serious obstacle for commanders to fulfill their obligation to ensure that these non-voluntary events are neutral with regard to religion and not used as an occasion to promote or disparage any religious belief.

For more information, please contact Dena Sher, Legislative Counsel, at (202) 715-0829 or dsher@aclu.org.