

Congress of the United States
Washington, DC 20515

March 9, 2018

Chaplain (Rear Admiral) Margaret G. Kibben
Chief of Chaplains of the Navy
Department of the Navy Chief of Chaplains
2000 Navy Pentagon
Washington, DC 20350

Vice Admiral Robert P. Burke
Deputy Chief of Naval Operations
(Manpower, Personnel, Training and
Education)
2000 Navy Pentagon
Washington, DC 20350

Dear Chaplain Kibben and Vice Admiral Burke:

It is our understanding that the Navy Chaplain Appointment and Retention Eligibility Advisory Group (CARE AG) has recommended accepting Dr. Jason Heap to serve as a secular-humanist chaplain. We are concerned that the Navy is taking steps to expand the chaplain corps beyond its focused purpose of protecting and facilitating the constitutional right of service members to the free exercise of religion. The chaplaincy was designed to facilitate the exercise of religious belief, not philosophical belief; this is the bright line that the Department of Defense must use in defining the boundaries of the chaplain corps.

Because of the unique authority the military has over the lives of its service members, it bears a constitutional obligation under the Religion Clauses of the First Amendment to ensure that service members have access to having their religious needs met.¹ The chaplain corps exists to fulfill this duty. The Supreme Court of the United States has made clear that non-religious beliefs, “however virtuous and admirable,” may not rely on the Religion Clauses for protection.² To invoke the protection of the Religion Clauses, claims must be “rooted in religious belief”³—something that Dr. Heap specifically disavows.

The chaplain corps faithfully serves all members of our armed forces without regard to religious preference or belief. Though each chaplain must have the support of an endorsing group to serve, the military chaplaincy is arguably the most ecumenical body of religious care ministers in the world. The commitment of the chaplain corps to diversity and service to all has resulted in valorous and inspirational testimonies of service. One such example is the sacrifice of the four chaplains from four different faith groups who gave their lives working together to save and comfort the men of the U.S.A.T. *Dorchester* when it was struck by a German submarine in 1943.

¹ See *Cutter v. Wilkinson*, 544 U.S. 709, 710, 722 (2005) (noting that the chaplaincy was created to “accommodate[e] religious practice by members of the military” and that government may give “greater protection to religious rights than to other constitutionally protected rights.”); *Katcoff v. Marsh*, 755 F.2d 223 (2d Cir. 1985) (finding that both Religion Clauses compelled provision of a military chaplaincy).

² *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972).

³ *Id.*

The chaplain corps is an institution older than our nation, first created in 1775 by General George Washington to serve the specifically *religious* needs of his troops, and repeatedly reinforced by Congress as a fundamentally religious entity in the hundreds of years since. Most recently, in 2016, the Senate Armed Services Committee included language in its report accompanying the National Defense Authorization Act (NDAA) speaking to the religious role of the chaplain corps:

The committee further recognizes that a military chaplain is a certified religious military professional of a qualified religious organization who has satisfied the professional religious education and ecclesiastical qualifications of his or her endorsing agency and is appointed a commissioned officer in an Armed Service's chaplain corps. The chaplain remains a representative of and accountable to the endorsing faith group for the religious ministry he or she provides to members of the Armed Services and to their families.⁴

In 2014, the House Armed Services Committee also included similar language in its report accompanying the NDAA:

The committee acknowledges that military chaplains exist “to advise and assist commanders in the discharge of their responsibilities to provide for the free exercise of religion in the context of military service as guaranteed by the Constitution, to assist commanders in managing Religious Affairs, and to serve as the principal advisors to commanders for all issues regarding the impact of religion on military operations.”⁵

Furthermore, the House of Representatives has specifically declined not once, but twice, to expand affirmatively the role of the chaplain corps beyond the realm of its designed religious purpose.

The Department of Defense’s own guidelines also reinforce the uniquely religious purpose of the chaplain corps, defining “religious organization” as “[a]n entity that is organized and functions primarily to perform religious ministries to a non-military lay constituency” and defining a religious ministry professional (RMP) as “[a]n individual endorsed to represent a religious organization and to conduct its religious observances or ceremonies.”⁶ Chaplaincy candidates must have a signed statement of ecclesiastical endorsement signed by an approved endorsing agent.⁷

With the military’s constitutional obligation to meet the religious needs of service members and the long history of congressional support for the religious purpose of the chaplain corps in mind, we request a timely response to the following questions so that we accurately understand the confirmation process:

⁴ S. REP. NO. 114-49, at 136 (2016).

⁵ H.R. REP. NO. 113-446, at 144 (2014).

⁶ U.S. DEP’T OF DEFENSE, INSTR. 1304.28, GUIDANCE FOR THE APPOINTMENT OF CHAPLAINS FOR THE MILITARY DEPARTMENTS (20 March 2014).

⁷ U.S. Dep’t of Defense, DD Form 2088, Statement of Ecclesiastical Endorsement (Dec. 2014).

1. What is the full approval process for an applicant wishing to serve in the Navy chaplain corps?
2. What steps in that process does Dr. Heap still need to complete?
3. What is the full approval process for an applicant organization wishing to serve as an endorsing agent?
4. What organization has agreed to endorse Dr. Heap?
5. Has Dr. Heap's endorser been approved? If not, what is the current status of the organization as an endorser for the military?
6. Have any past agreements been made by the government to accept or consider Dr. Heap's application? If so, please provide them.

The military has the authority to determine unmet needs of humanist and philosophically atheist service members and to create programs that respond to those determined needs. However, the chaplain corps is not the appropriate place to accomplish this. While DoD has recognized chaplains for *religious* groups that are non-theist (for example, the Buddhist Churches of America is non-theistic, but does believe in a transcendent reality, which is a religious belief), it has not extended the chaplaincy to philosophical belief. The distinction between the two has already been drawn by federal courts, and it is the line that DoD must draw as well.

The expansion of the chaplaincy to philosophical beliefs would not only undermine the very constitutional purpose of the chaplaincy, it would also create a large number of additional application and difficult administrative questions for DoD. Marxism, for example, is a philosophy that takes a position on religious issues ("[r]eligion . . . is the opium of the people") but is not itself a *religious* worldview. Allowing Dr. Heap to act as a chaplain would thus open the door to a host of chaplains representing many other philosophical worldviews, complicating the chaplaincy application process and, over time, eroding the distinct religious function of the corps to the detriment of service members.

We do not suggest that Dr. Heap's educational background and experience are unimpressive. However, education and experience alone are not the full measure of qualifications for service in the chaplain corps. Without a belief in the transcendent, and with an avowed opposition to religion itself, an individual cannot fulfill the mission and duties of a chaplain.

The chaplain corps serves religious needs, not philosophical preferences, and DoD would be shirking its constitutional duty if it were to inappropriately expand—and thus dilute—the chaplain corps. The chaplaincy's religious component is core to its identity and essential to its role in fulfilling the military's constitutional obligations. We appreciate your attention to this matter and look forward to your prompt response.

Sincerely,



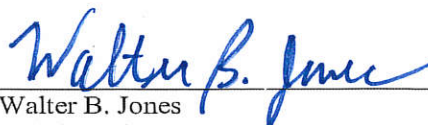
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Vicky Hartzler
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Steve Scalise
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Walter B. Jones
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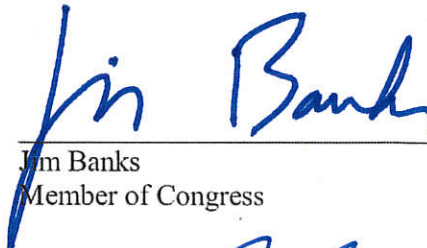
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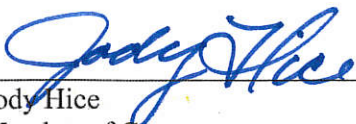
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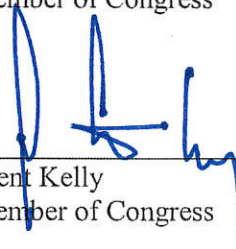
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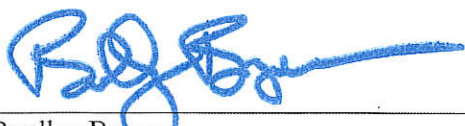
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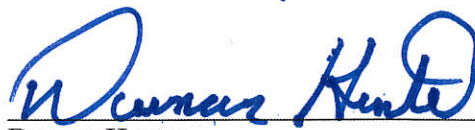
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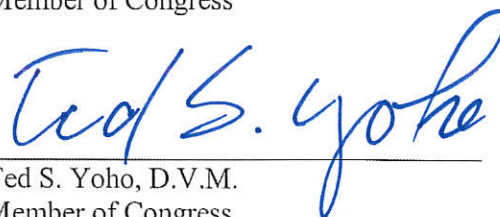
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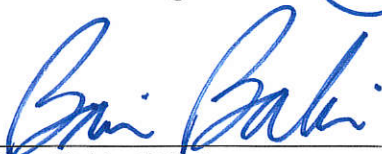
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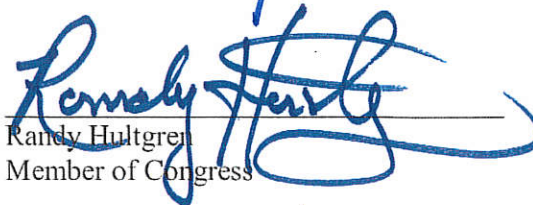
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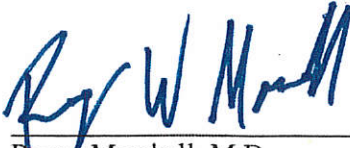
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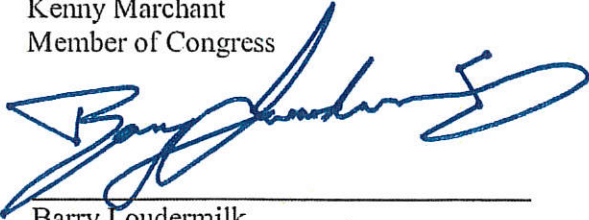
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Andy Biggs
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Glenn Grothman
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Cc:

The Honorable Richard V. Spencer
Secretary of the Navy

The Honorable Robert Wilke (P&R)
Under Secretary for Personnel and Readiness

Major General Paul K. Hurley
Chief of Chaplains of the Army

Major General Dondi E. Costin
Chief of Chaplains of the Air Force