

# Law Review 13010

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## **NDAA Provision Protects Conscience Rights of Service Members, Especially Chaplains**

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### 9.0—Miscellaneous

On January 2, 2013, President Obama signed into law the National Defense Authorization Act (NDAA) for Fiscal Year 2013. Section 533 of NDAA 2013 is reprinted below, in its entirety, as a service to our readers. Several media reports have included only snippets of this section.

#### **SEC. 533. PROTECTION OF RIGHTS OF CONSCIENCE OF MEMBERS OF THE ARMED FORCES AND CHAPLAINS OF SUCH MEMBERS.**

##### **(a) PROTECTION OF RIGHTS OF CONSCIENCE.—**

(1) ACCOMMODATION.—The Armed Forces shall accommodate the beliefs of a member of the armed forces reflecting the conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such beliefs as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.

(2) DISCIPLINARY OR ADMINISTRATIVE ACTION.—Nothing in paragraph (1) precludes disciplinary or administrative action for conduct that is proscribed by chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), including actions and speech that threaten good order and discipline.

##### **(b) PROTECTION OF CHAPLAIN DECISIONS RELATING TO CONSCIENCE, MORAL PRINCIPLES, OR RELIGIOUS BELIEFS.—No member of the Armed Forces may—**

(1) require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain; or

(2) discriminate or take any adverse personnel action against a chaplain, including denial of promotion, schooling, training, or assignment, on the basis of the refusal by the chaplain to comply with a requirement prohibited by paragraph

(1).

(c) REGULATIONS.—The Secretary of Defense shall issue regulations implementing the protections afforded by this section.

Under Article I, Section 7 of the United States Constitution, a bill must pass both the House of Representatives and the Senate, in exactly the same form, and the bill is then presented to the President for his signature. If the President disapproves of the bill, he can veto it, in which case both the House and Senate must pass it with a 2/3 majority to override the President's veto.

Article I, Section 7 does not give the President the authority to excise a specific section of a long bill—he must sign or veto the bill taken as a whole. NDAA 2013 consists of 681 pages of fine print. In his signing statement on NDAA 2013, President Obama objected to section 533, calling the section “unnecessary and ill-advised.” But the President's objection does not make this section any less binding than any other section of this new law.