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**RELIGIOUS ACCOMMODATIONS IN THE
ARMED SERVICES**

HEARING

BEFORE THE

SUBCOMMITTEE ON MILITARY PERSONNEL

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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RELIGIOUS ACCOMMODATIONS IN THE ARMED SERVICES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE ON MILITARY PERSONNEL,
Washington, DC, Wednesday, January 29, 2014.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2118, Rayburn House Office Building, Hon. Joe Wilson (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. JOE WILSON, A REPRESENTATIVE FROM SOUTH CAROLINA, CHAIRMAN, SUBCOMMITTEE ON MILITARY PERSONNEL

Mr. WILSON. Ladies and gentlemen, the hearing will come to order. Welcome to a meeting of the House Armed Services Subcommittee on Military Personnel. Today, the subcommittee will examine religious accommodations in the armed services, including the military services' interpretation, enactment, and enforcement of religious accommodation statutory and regulatory guidance.

Historically, the armed services have supported religious freedom and, when possible, accommodated service members' religious beliefs and practices. I believe we can maintain a proper balance between religious accommodations, which will promote military readiness, unit cohesion, and good order and discipline. This should not present challenges to the military services.

Chaplains have always been vital to our military. I am very grateful the chaplain school is located in the district that I represent, at Fort Jackson. One of the strengths of our military is its diversity with mutual respect. And as such, it has been important for Congress to work with the Department of Defense to ensure that appropriate statutory and regulatory guidance is in place in order for the services to meet the important spiritual and religious needs of our troops. Recognizing that there have been challenges in accommodating religious practices and beliefs, we have engaged in various efforts to clarify the role of religion in the military, prevent religious discrimination, and provide appropriate religious accommodations for those service members who seek it.

Our goal today is to better understand how the Department of Defense has balanced the implementation of the religious accommodations policy with maintaining military readiness, unit cohesion, and good order and discipline.

Before I introduce our panel, let me offer Congresswoman Susan Davis, the ranking member from California, an opportunity to make her opening remarks.

[The prepared statement of Mr. Wilson can be found in the Appendix on page 27.]

STATEMENT OF HON. SUSAN A. DAVIS, A REPRESENTATIVE FROM CALIFORNIA, RANKING MEMBER, SUBCOMMITTEE ON MILITARY PERSONNEL

Mrs. DAVIS. Thank you, Mr. Chairman.

And I want to also welcome our witnesses today. Thank you very much for being with us. Today's hearing on the accommodation of religious beliefs, including the right to observe no religion at all, by service members is an important issue. Over the past several years, the committee has attempted to balance the accommodation of religious beliefs of service members and chaplains with the need for commanders to establish and to maintain good order and discipline among their ranks. It is especially difficult for military chaplains who face difficult and unique challenges, unlike our chaplains or our rabbis in communities where congregations are able to self-select where and whom they choose to receive their spiritual support.

Military chaplains must provide spiritual care for all of those who serve in the military, most of which may not share their particular faith, or religious beliefs. This challenge has often created the perception that the Department of Defense or the services are prohibiting chaplains and service members from practicing the tenets of their faith. Often in these discussions what is lost is a recognition that a military chaplain's responsibility is not just to his or her tenets of their faith and those who follow that specific faith, but we know that ultimately, responsibility of military chaplains and why we have chaplains in the uniform at all, is to provide non-denominational, inclusive, spiritual support to all of those in uniform and their families, regardless of their specific religious belief.

Our Armed Forces is a reflection of our country. Our country, which is comprised of individuals from all walks of religious beliefs, to those who have no belief in a specific religion, including atheists and free thinkers. Our diversity is what makes our country stronger and our ability to respect different cultures and beliefs, including religious beliefs, is the bedrock of our American values. We need to ensure that these values are upheld and protected for all service members and military clergy alike.

Thank you so much, Mr. Chairman, I look forward to hearing from our witnesses.

Mr. WILSON. Thank you, Ms. Davis, and I appreciate your commitment to our clergy serving in the military.

I would like to welcome our distinguished witnesses. Ms. V. Penrod, Deputy Assistant Secretary of Defense for Military Personnel Policy; Chaplain Mark L. Tidd, Rear Admiral, Chief of Navy Chaplains; Chaplain Bobby Page, Brigadier General, Deputy Chief of Chaplains, U.S. Air Force; Chaplain Charles R. Bailey, Brigadier General, Deputy Chief of Chaplains, U.S. Army; Right Reverend James B. Magness, Captain Retired, U.S. Navy, Bishop Suffragan for the Armed Forces and Federal Ministries; and our last witness, who could not be with us today, due to unusual winter weather, a unique snow storm from Florida in the southeast United States this week, was Mr. Douglas Carver, Chaplain Major General Re-

tired, U.S. Army, Executive Director of the North American Mission Board.

We will enter his testimony for the record.

[The statement of Mr. Carver can be found in the Appendix on page 57.]

Mr. WILSON. I now ask unanimous consent that Congressman Robert Wittman of Virginia, Congressman Randy Forbes of Virginia, Congressman Dr. John Fleming of Louisiana, Congressman Steve Palazzo of Mississippi, Congressman Rich Nugent of Florida, Congressman Tim Huelskamp of Kansas, Congresswoman Vicky Hartzler of Missouri, Congressman Jim Bridenstine of Oklahoma, Congressman Mike Rogers of Alabama, Congressman Doug Lamborn of Colorado, Congressman Bradley Byrne of Alabama, and Congressman Alan Nunnelee of Mississippi be allowed to participate and ask questions after all members from the subcommittee have had the opportunity to question the witnesses.

Without objection, so ordered.

In addition, I ask unanimous consent to enter the following statements into the record: From the Chaplains Alliance for Religious Liberty, from the Americans United for Separation of Church and State, from the American Civil Liberties Union, from the Anti-Defamation League, from the Sikh Coalition, from the U.S. Army Major Kamal Kalsi, from the Interfaith Alliance, from the Religious Action Center, from the Family Research Council, and from Congressman Doug Collins of Georgia.

Without objection, so ordered.

[The statements referred to can be found in the Appendix beginning on page 65.]

Mr. WILSON. Ms. Penrod, we will begin with your testimony.

We will follow with a statement from Admiral Tidd, representing the chaplains, and then to our non-governmental witnesses.

As reminder, keep your statements to three minutes. We have your written testimony for the record.

Following your testimony, each member will participate in rounds of 3 minutes each until adjournment. And there are extraordinary time constraints. We just learned that votes may be at 10:20. And certainly, everyone would be given the opportunity to provide questions for the record.

Ms. Penrod.

STATEMENT OF VIRGINIA S. PENROD, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MILITARY PERSONNEL POLICY, DEPARTMENT OF DEFENSE

Ms. PENROD. Good morning, Chairman Wilson, Ranking Member Davis, and distinguished members of the subcommittee. Thank you for the opportunity to provide testimony today. The Department places a high value on helping chaplains as well as military personnel and their families to observe the tenets of their faith.

As you now know, we have revised and published policy on the accommodation of religious practices within the military services to ensure the protection of rights of conscience of members in the Armed Forces in accordance with the 2013 and 2014 National Defense Authorization Act [NDAA]. Part of the delay in publication

was necessary to incorporate the changes in law in the last two NDAAAs.

In response to concerns of the Congress, I conducted a teleconference with over 30 of our hard-working chaplains in the field. I asked if they are allowed to preach or practice according to the tenets of their faith. Their response was an overwhelming yes. They felt they were given the support they needed from command. When asked if they were forced to perform ceremonies that went against their faith, 100 percent said no.

There were a few chaplains that felt some of the leadership positions tend to be overly reactive to social media. However, almost all believed the key to a productive and trusting climate was good communication and continued training on the rights of chaplains and not only the chaplains, but also for commander. Our chaplains and commanders continue to navigate recent policy changes, such as same-sex marriage, but have not expressed a difficulty in doing so.

The group felt that social media and rumors were the source of most misinformation, and these create constant challenges to keep the chaplains properly informed of the facts. I am and continue to be most impressed with our military chaplaincy. Although a small sampling, my direct communication with the chaplains reinforced what the service chiefs of chaplains have been telling us, that they have open communication with their chaplains and that their chaplains are not concerned regarding the free exercise or expression of their faith. If an incident does occur, they are confident it will be worked appropriately.

Your concern for our chaplains gave me the idea to pulse the field for direct feedback. As we continue to pulse the field, another form will be the survey, as directed by the 2014 NDAA.

In conclusion, Mr. Chairman, I want to thank you and the distinguished members of this subcommittee for your strong advocacy on behalf of the men and women of the Department of Defense and your steadfast support for military chaplaincy. I look forward to your questions.

[The prepared statement of Ms. Penrod can be found in the Appendix on page 28.]

Mr. WILSON. Thank you very much.
And Captain Tidd.

STATEMENT OF RDML MARK L. TIDD, USN, CHIEF OF NAVY CHAPLAINS, U.S. NAVY; ACCOMPANIED BY BG CHARLES R. BAILEY, USA, DEPUTY CHIEF OF CHAPLAINS, U.S. ARMY, AND BRIG GEN BOBBY PAGE, USAF, DEPUTY CHIEF CHAPLAIN, U.S. AIR FORCE

Admiral TIDD. Chairman Wilson, Ranking Member Davis, and esteemed members of the committee, thank you for the opportunity to appear before you today to address how the chaplaincies of the military departments support the religious and spiritual needs of our people.

With my colleagues here, we are members of the Armed Forces Chaplains Board, and together, we do have a few decades of experience in military ministry. And that has been our privilege and honor. Part of the genius of the American way is that we are com-

mitted to recognizing that each person has the right to determine his or her own deepest convictions, including one's religious convictions.

As chaplains, we work together cooperatively to meet the religious needs of as many of our people as we can, always guided by the teachings of our religious bodies. And we care for all with dignity and respect and compassion, whatever their religious beliefs.

For many of our people, religious faith is an essential component, even the foundation, of their resilience in the face of adversity. Chaplains bring a message of hope for all who seek our support, often in times of our deepest human need. Chaplains oversee religious ministries around the globe, aboard ships at sea, in battalions and brigades, on flight lines, in our installation chapels, in military hospitals, and in combat. These ministries build resistance—resilience, and they help our people to be ready to meet the demands of military service.

We also act as advisors to commanders on unit morale, on morals and ethics, and on the free exercise of religion. In the last 8 months, the chiefs of chaplains have communicated with our chaplains to reaffirm the protections afforded them by the Constitution, by law, and by policy when performing their religious ministry. We have also provided guidance on ways to resolve issues that they might face in providing religious ministry.

When we are made aware of a situation that appears to challenge the religious freedom of service members, including chaplains, we are eager to step forward to help resolve it. We expect our chaplains to be guided by the teachings of their religious bodies to work together and to provide outstanding religious ministry that includes responsive pastoral care. Our chaplains are meeting the religious needs of our people around the world to the greatest extent possible.

Again, Chairman Wilson, Ranking Member Davis, and distinguished members of the committee, thank you for the opportunity to appear before you today. We look forward to answering your questions.

[The joint prepared statement of Admiral Tidd, General Bailey, and General Page can be found in the Appendix on page 35.]

Mr. WILSON. Thank you very much, Chaplain Tidd.

And we now proceed to Right Reverend Magness.

STATEMENT OF REVEREND JAMES B. MAGNESS, BISHOP SUFFRAGAN OF THE ARMED FORCES AND FEDERAL MINISTRIES, WASHINGTON NATIONAL CATHEDRAL

Rev. MAGNESS. Good morning, Chairman Wilson, Ranking Member Davis, and esteemed members of the committee.

Thank you for inviting me here today. It is an honor to speak with you. Since 2010, I have been the Bishop for the Armed Forces and Federal Ministries for the Episcopal Church. In that capacity, I endorse and work with all Episcopal chaplains in the Armed Forces.

I have had the honor of serving the Navy in two capacities during my military career. I served first as an enlisted person on ships and in Vietnam, later becoming a Navy chaplain, retiring in the rank of captain and served as Command Chaplain of U.S. Joint

Forces Command and Fleet Chaplain for the U.S. Fleet Forces Command.

Based upon my own service, my work now with the Episcopal chaplains who serve, I would like to share my thoughts with you. Based upon my service now—in 1976, my Navy enlisted service, I stood before a Navy officer to take the solemn oath of office as a Navy Chaplain Corps officer. Instinctively, I knew that when I took the commissioning oath, I was committing myself as never before to serve our service men and women. Not only was I taking this oath as an officer, I was making the pledge that I would support their rights that are guaranteed by the First Amendment to the Constitution.

I have learned that the military chaplain may at times be required to place the needs and rights of the service member ahead of his or her own needs and rights. I learned that as a religious leader, the ministry of a military chaplain is in some very significant ways different from that of their civilian counterparts. Normally, a civilian religious leader is only responsible for and accountable to the congregation to which called; whereas, the military chaplain has a far broader set of responsibilities. These responsibilities are to care for America's sons and daughters, who come from every sector of this country.

During my first active duty assignment as a chaplain, I learned a meaningful lesson when I was asked to participate in a retirement ceremony and offer prayers for the retiree, a Navy captain of the Dental Corps. Using my distinctively Christian Book of Common Prayer, I created a prayer, which as I recall, ended with these words, "through Jesus Christ our Lord."

Later, the retiring officer came up to me to thank me for being available to assist and then, in a calm and reasoned way, said to me, "You might want to know that all of the members of my family and I who are present here today are practicing Jews."

It didn't take me long to realize that I had just excluded and offended the honoree and all of the members of his family by offering an inappropriate prayer. I learned that when in uniform, my responsibility is to care for all of those who are present, not just those of my own faith tradition; for all people, Christian, Jew, Muslim, nontheist, straight, gay, or lesbian, all people.

I tell this story because in a number of ways it gets to the heart of the subject of this hearing. I believe that the current law and the Department of Defense policies provide more than adequate guidance in matters of religious accommodation for service members and chaplains alike. I am satisfied that when there have been instances of religious discrimination, the service leaders have invariably taken swift and appropriate action to ensure that fairness and equality and mission accomplishment are all held in a productive balance.

In today's very complex social and cultural environment, I believe that the service leaders are doing a splendid job of using existing law and policy and finding creative ways to ensure universal religious accommodation for all people. Thank you for having the opportunity to speak with you.

[The prepared statement of Rev. Magness can be found in the Appendix on page 46.]

Mr. WILSON. Thank you, Reverend.

Thank you very much, and as we proceed, David Giachetti is going to be maintaining a 3-minute rule, including on me.

And I am so grateful that we have had so many colleagues who wanted to be here today because this issue is so important.

And indeed, Chaplain Tidd, I think it confirms what you said, that the chaplaincy is an essential component of military service, and for our family, my oldest son served for a year in Iraq, and his roommate was Chaplain Steve Shugart. We learned firsthand what extraordinary service and how meaningful that is for our military service members.

Ms. Penrod, what was the delay in publishing the implementing instruction enacting this legislation, and why was the provision on chaplains not included in the published instruction?

Ms. PENROD. Well, thank you for those questions, Mr. Chairman.

We were actually in the process of publishing our instruction that included accommodation of religious practices in the military services. That particular instruction includes the protection of rights of all our service members, which includes our chaplains. It takes anywhere between 9 months to 18 months to publish an instruction in the Department, although not ideal. I will be the first to criticize the process.

However, when the watch was changed in 2013, we decided to include the change in law in that instruction, which required us to pull the instruction and begin the process over. So there was a delay. We are not pleased with the delay, but we did want to include the change as far as it pertained to all our service members. The specific section of law, 533(b) that pertains to chaplains will be included in a different instruction. That one is the guidance for appointment of our chaplains. That instruction is under revision, and we are pushing hard to have that completed by this summer.

Mr. WILSON. And so you would anticipate completion by July 1.

Ms. PENROD. I would not want to give a specific date, Mr. Chairman, but our goal is to have it this summer.

Mr. WILSON. And as soon as possible. It is just so helpful to our military. Additionally, how long do the services have to publish their companion regulations on this issue, and will the Department be able to meet the 90-day deadline to publish further implementing regulations as required by the fiscal year 2014 National Defense Authorization Act?

Ms. PENROD. I can leave it to the chaplains to speak to the specific instructions, but I believe they have already put out a guidance through memos and emails to the field, to—so that they know that these changes are in place.

Mr. WILSON. And for everyone, again, I appreciate your being here, but you can tell the Members of Congress are vitally interested, our constituents, service members, military families, veterans, are vitally interested in your input and your service. And that is why, to me, this is a record turnout at any subcommittee and truly a reflection of the concern of the people of our country about supporting the service of our chaplains.

I now turn to Congresswoman Davis.

Mrs. DAVIS. Thank you, Mr. Chairman, and Ms. Penrod, I wanted to—again, please, I understand that the Department has inves-

tigated allegations of chaplains being required to perform duties inconsistent with the tenets of their faith but have not necessarily been able to substantiate those claims. Is that correct?

Ms. PENROD. Yes, Congresswoman Davis, I cannot speak to specific cases, but to my knowledge, we have not had instances where we can pinpoint a specific chaplain that has complained or provided evidence that they have been forced to provide a sermon or attend a ceremony or oversee a ceremony that went against the dictates of their particular religion.

Mrs. DAVIS. Thank you. I wonder also then if the Department or the services track complaints by service members who were subject to inappropriate proselytizing by other service members or by military chaplain. Do we know anything about that?

Ms. PENROD. Chairman Davis, I would need to defer to our chaplains to speak to any specifics.

Admiral TIDD. Ma'am, we have not received those kinds of complaints. It is not something that we have been tracking, but we are certainly very sensitive to those and eager to get information on that if that is the case.

Mrs. DAVIS. But to your knowledge, there haven't been any that have come to you or to others who have spoken with you?

Admiral TIDD. Not to my knowledge, ma'am.

General BAILEY. It is the same with the Army, ma'am. There are no complaints that we have received, nor have we had any accumulation of those complaints, but we are sensitive to that and are monitoring constantly any issues that are out there.

General PAGE. That would also be true for the Air Force. It is something very, very important to us that all airmen are free to practice their faith, and I am not aware of any cases where airmen are complaining about or alleging that they have been mistreated for lack of faith or disagreeing with someone.

Mrs. DAVIS. Okay, thank you.

And Bishop Magness, if I could turn to you, and I appreciate the story that you shared with us. One of the—could you talk just a little bit more about how you feel that allowing sectarian prayers at military ceremonies would harm unit cohesion and other important goals and laws that we have?

Rev. MAGNESS. Yes, thank you for the question, Congresswoman Davis. And I base most of this on my own experience, both as a practitioner of religion within the Department of Defense and also as one who had occasion to supervise a large number of chaplains from time to time.

The issue of good order and discipline and unit cohesion is incredibly important, and when we find ourselves offending others by the use of sectarian prayers, that has a significant negative impact upon good order, discipline, and unit cohesion. In the case that I cited with this Navy captain and the Dental Corps, he certainly was of senior rank and able to come forward and state his complaint. And I was a lieutenant, Navy lieutenant at the time.

However, in other cases, I fear that those who have their—feel that they have their rights violated and have intrusive prayers offered with them, sectarian prayers, will not come forward. They don't feel the opportunity to come forward. They don't feel that they have a voice in the organization because of their situation,

place in the system that they—in which they participate. So I think unit cohesion is incredibly important in this issue.

Mrs. DAVIS. Thank you.

My time is up.

Mr. WILSON. And thank you, Ms. Davis.

And indeed, the significance of appreciation of chaplains is indicated. We have been joined by the chairman of the House Armed Services Committee, Buck McKeon of California.

So, Chairman McKeon, thank you for being here.

We proceed now to Congressman Dr. Joe Heck of Nevada.

Dr. HECK. Thank you Mr. Chair.

And thanks Ms. Penrod, Chaplains, Right Reverend, thank you all for being here to talk about this important issue. And as we can see, it is also not just a big issue from the sake of the chaplaincy, but also for the Sikh community. Several members are present here today.

And Ms. Penrod, I know that DODI 1300.17 [Department of Defense Instruction] was recently revised. But it is my understanding that there is still within the DODI a presumptive ban on members of the Sikh religion from joining, from having to give up their articles of faith, from having to seek an accommodation every time they have a change of assignment, and whether or not there is still some question as if they are allowed to access into the service, whether or not they have to stop wearing their head gear, or shave while going through boot camp until an accommodation is granted.

Can you please explain why there remains the presumptive ban? I know, previously, I served with Colonel Sekhon, who is one of the trailblazers when he was commander of the 349th CSH [Combat Support Hospital] and seemed to be able to overcome every obstacle that the military tried to put in his way from effective service. I am curious why the DODI still maintains those bans.

Ms. PENROD. It is good to see you again, Dr. Heck. What the DODI, what the changes do, it tries to balance the needs or provides the service the ability to balance the needs of the service member with the needs against mission accomplishment. What we have done is decisions relating to any waiver of a regulation or policy that pertains to uniform, wearing of religious articles of clothing is now elevated to the service secretary and cannot be delegated below a three-star level. So it is at a very high level and the decision with the—we have delegated that to service, and the reason behind that is the service is in the best position to determine their readiness needs, to determine unit cohesion, safety and health of not only the individual, but the unit.

The service has the responsibility, though, to look at the request of the individual, and it has to be a compelling governmental interest before they make that decision. They will look at the facts. They will look at precedence in making that decision. So that is what we have done in this particular DODI.

Dr. HECK. But does it still require, correct me if I am wrong, but does it still require a new waiver every time there is a change of assignment? If it is now elevated to the three-star level, you would think that that would carry through in the person's lifetime of service, as opposed to every time they change assignment.

Ms. PENROD. Well, Dr. Heck, when you look at military readiness, each unit of assignment has a different responsibility. The service has to make that determination if now this new position or new job that the individual would be performing impacts safety, health, the unit, they may deny the accommodation.

Dr. HECK. I understand. I know we are short on time today because of a compressed timeframe, I would like to discuss this more offline with you, and we can kind of do a bigger deep dive into this issue.

Thank you, Mr. Chair. I yield back.

Mr. WILSON. Thank you, Dr. Heck.

We now proceed to Congressman Dr. Brad Wenstrup of Ohio.

Dr. WENSTRUP. Thank you, Mr. Chairman.

You know, I found that when I served in theater in Iraq that, you know, there was definitely an effort by the chaplain to be respectful of all religions. And I found that our chaplain was able to provide compassion and comfort for anyone who was in need, even if they were nonbelievers of any type. And I think that that is an effective role of a chaplain, and I think chaplains display a tremendous ability to be accommodating.

You know, personally, I am not offended by anyone praying in their own way. That doesn't bother me. Some people do get offended if someone is praying in a different way.

I don't really have a question today, but I would caution us as we proceed just to recognize that there is a fine line between accommodating and respecting all religions and restricting religious freedom. And that is the line that we are walking on here. And I think we have to be very cautious. And I hope that we are going in the right direction in trying to accomplish that.

And I thank you all for being here today.

Mr. WILSON. Thank you, Dr. Wenstrup.

We now proceed to Congressman Austin Scott of Georgia.

Mr. SCOTT. Thank you, Mr. Chairman.

I guess I share the same concerns that my colleague, Dr. Wenstrup, shares.

I have a specific question, though. As a Christian, I am very respectful of other people's right to practice their faith. We have a First Amendment in this country. It is what our country was founded on; founded on the First, protected by the Second. And it seems that in the military people of my faith can get reprimanded for a statement as simple as one saying that my priorities in life are a commitment to my Lord and Savior Jesus Christ, a commitment to my family, and a commitment to my country, in that order. I am aware of a colonel that got reprimanded in a change of command for saying that on the stage. He didn't say that anybody in the crowd had to believe as he did or share his priorities. And my question is, can you give me any example of a person of a faith other than a Christian faith, where they were reprimanded for a statement that was that simple?

Ms. PENROD. Congressman, thank you for your question. I cannot give you an example of anyone that was reprimanded for expressing their religious beliefs because really it is free speech. We become concerned in the Department if an individual is coercing any other individual or impacting unit cohesion.

Again, I can defer to the chiefs of chaplains if they know of any instance, but I do not know.

Mr. SCOTT. Ma'am, if I may, we know of instances where Christians have been reprimanded for statements as simple as that. Are you saying that you know that there are no other instances of people of any other faith?

Ms. PENROD. I know of no instances of any faith. If you do have examples, the Department would be more than willing to look into specific examples.

Mr. SCOTT. We will get you that information. And I would ask for the different branches, if they would, to—this was an Air Force colonel that the reprimand came to. If each of you would speak briefly to that, I have got 30 seconds.

Admiral TIDD. Sir, I am not aware of any of those instances.

General BAILEY. Also, I am not aware either, sir, but also, that there is—if there was an instance possibly, a chaplain would be there to advise the command that that was a wrong procedure to go by.

General PAGE. Thank you for bringing up this issue.

Commanders are also airmen. Airmen are free to practice their faith. In order for the airmen under that commander, under any person of authority, to practice their faith, it is necessary that the commander, as the agent of the government, if you will, exercise some discretion and some wisdom in what he, she, would do, so that the people under him, under her, would be able to practice their faith.

So as long as the person of authority, as long as it is clear that what he is saying is personal and not official, not an expectation, he is free to practice his faith and speak of his faith.

Mr. SCOTT. My time is expired, thank you.

And we will get you a copy of the reprimand if he will share it with us. It is clearly biased.

Mr. WILSON. Thank you, Mr. Scott.

We now proceed to Congressman Dr. John Fleming of Louisiana.

Dr. FLEMING. Thank you, Mr. Chairman.

And before I ask questions, I would like to address the chair if I could. First of all, we have about an hour for a subject that could go on for days. I am very concerned about that. We have many Members here who are not even on this subcommittee, which, again, shows you how much interest there is. There is a long line outside down the hallway, and so what I would like to say, first of all, is that we definitely need to repeat this hearing and perhaps at the full committee level. So I would ask that.

Secondly, just to begin my questions here, in terms—if you do want to know about the problems that we are seeing with religious liberty, all you have to do is go to “Clear and Present Danger.” It is an FRC [Family Research Council] Web site. There is a huge tabulation that has occurred over recent years. I have spoken with the head chaplain of the Air Force. I have made him aware of this. And again, I am disappointed that we don't have General Boykin and others who can actually tell us about all of these problems.

But let me say this, I feel very good about the fact that there has not been a single complaint or problematic complaint with proselytizing. Yet, we hear from our sectarian atheist friends that that is

a huge problem in the military, and that is the reason why we have to change the culture of the military.

So if people are free to express their religious beliefs, why do we have a growing number of complaints? And again, I won't go into those, but I would refer to that Web site, because of lack of time.

Here is my question, Ms. Penrod, you know, last week DOD [Department of Defense] issued an instruction, 1300.17, regarding the accommodation of religious practices within the military services. Were these revisions the Department's official response to the congressional requests in the NDAA 2013, and/or 2014?

Ms. PENROD. Congressman, thank you for that question. The accommodation, the DODI, is the official document that includes the changes in law in 2013, 2014.

Dr. FLEMING. Okay. So, in the fiscal year 2014 NDAA, language was included that said, quote, "In prescribing such regulations, the Secretary shall consult with the official military faith group representatives who endorse military chaplains," end quote. Did the DOD comply with the fiscal year 2014 NDAA by consulting with the official military faith group representatives in formulating this instruction?

Ms. PENROD. Well, the instruction was under revision as the law was being deliberated. Actually, it was pretty much completed. However, we had the opportunity on January 16th, to meet with over 100 religious endorsers.

Dr. FLEMING. Well, I am running out of time. Just to make it clear, the answer to that is, no.

Ms. PENROD. No, the answer is yes.

Dr. FLEMING. It is no. And that is why we need more hearings, Mr. Chairman.

Thank you, I yield back.

Mr. WILSON. Thank you, Dr. Fleming.

Congressman Doug Lamborn of Colorado.

Mr. LAMBORN. Thank you, Mr. Chairman.

You all know, I am sure, of Chaplain Dale Goetz, who died in Afghanistan. I have legislation to name a post office in his memory. If and when that day arrives, I would like to invite you all to help memorialize that occasion and to honor his memory. So please be aware of that.

Chaplain Tidd, do you agree that chaplains should be free to prepare and deliver sermons or teachings according to the faith traditions of their endorsing agency without interference from a commander?

Admiral TIDD. Sir, that is correct. That is our policy, and that is our practice.

Mr. LAMBORN. And would anyone disagree with that answer he gave?

[Nonverbal response.]

Mr. LAMBORN. Thank you.

Chaplain Page, should chaplains be free to write public essays about a faith's teaching and the tenets of their personal faith in particular?

General PAGE. Absolutely.

Mr. LAMBORN. Okay, thank you. And would anyone disagree with that answer?

[Nonverbal response.]

Mr. LAMBORN. For any one of you, chaplains are not only members of the Armed Forces but also representatives of faith groups and accountable to an endorsing agency that holds to specific faith tenets. If the chain of command has veto power over the content of religious speech in the military, would the core of the chaplaincy be compromised?

Chaplain Tidd.

Admiral TIDD. Sir, as we have discussed, it is hard for me to conceive that the chain of command would want to have veto power particularly over a sermon, a Bible study, teaching like that. So that is just not part of who we are as a military, as well as a chaplain.

Mr. LAMBORN. And that situation would be unacceptable in your opinion?

Admiral TIDD. Yes, sir.

Mr. LAMBORN. Okay, thank you. Should DOD policy determine in any way what is an acceptable body of moral or religious beliefs to discuss, teach, or share in the military?

Ms. Penrod.

Ms. PENROD. No.

Mr. LAMBORN. Okay, thank you.

And would anyone disagree with her answer?

[Nonverbal response.]

Mr. LAMBORN. Lastly, it is our understanding that additional regulations regarding chaplains are forthcoming. Will you commit to come back before the committee and discuss these regulations?

Ms. Penrod.

Ms. PENROD. Yes, I will.

Mr. LAMBORN. Thank you all very much for your answers and thank you for being here.

Mr. Chairman, I yield back.

Mr. WILSON. Thank you, Mr. Lamborn.

We now proceed to Congressman Trent Franks of Arizona.

Mr. FRANKS. Well, thank you, Mr. Chairman.

And thank all of you so much for being here. You know, it is my contention that those who defend our country are the most noble figures in society. And often, in the process of doing that, they put themselves at mortal risk.

And it is also my contention that part of military efficiency and cohesion and capability is rooted in their own ability to have refuge in their own faith when they face death for all of us, and it is not a small issue, and it is not just a religious freedom issue. This is about a military capability that we protect religious freedom, and religious freedom goes to the very heart of who we are as a people and as a Nation.

And in terms of when prayers are written by some commanding officer or something like that, you understand the danger that if we have to proscribe or prescribe any prayer to the chaplain or someone that has dedicated their life to a particular tenet or faith, it can vitiate the entire reason that they pursue this entire impetus. And I was struck by Reverend Magness' comments and very respectful of it, but was struck by it. If the people had approached you and said, well, we are atheist and we are offended by any pray-

er, would that have motivated you to say, well, we wouldn't pray at all? And my question here to all of you is, when it comes to prayers that chaplains make before an official crowd or anything else, is there anything in the military code or anything in the practice of the military or anything in the anticipated regulations that would prohibit a prayer that—say if it is a Christian prayer, in Jesus' name, like you mentioned, or if it was a Jewish prayer in some other way, would there be anything anticipated or anything in the military code that would prohibit any person officially or quasi officially from being able to pray in a public setting, even in an official setting, according to the tenets of their faith? It is a specific question.

If it is all right, Ms. Penrod, I will talk to you and then just go down the line here.

Ms. PENROD. Yes, Congressman.

There is absolutely nothing in policy or code that prohibits a chaplain from praying in accordance with the dictates of their faith.

Mr. FRANKS. And Chaplain Tidd, would you agree with that?

Admiral TIDD. Yes, sir. Chaplains are always free to pray according to the manner and forms of their religious organizations. We also as a matter of practice understand that not every setting is a worship service. And so we are free to work within the parameters of our religious traditions to pray in a way that is meaningful for that particular group.

Mr. FRANKS. But any reports of people being said that, you know, in the case of Reverend Magness, it was voluntary on his part, but any reports of anyone saying, no, you cannot pray in that way, or is there anything anticipated in the regulations?

Admiral TIDD. Sir, I am not aware of that. If a chaplain feels that they can't pray in a way that would be meaningful for that group, they always have the opportunity to respectfully withdraw from that with no kind of retribution. The commander is also free to choose any chaplain that the commander would like to offer a prayer.

Mr. FRANKS. Thank you, Mr. Chairman.

Thank you all very much.

Mr. WILSON. Thank you, Congressman Franks.

And we now proceed to a brand new Member of Congress, Brad Byrne of Alabama.

Mr. BYRNE. Thank you, Mr. Chairman.

And Bishop Magness, I wonder if I could start with you. Just so you know, I am a cradle-to-grave Episcopalian and the nephew of an Episcopal priest who was a chaplain. And I was struck by your comments, and I want to make sure that we give you an opportunity to clarify if you need to.

Many of our prayers in the "Book of Common Prayer" end with that simple statement, "In the name of the Lord Jesus Christ." Do you feel like that there are times for you or for other chaplains when you feel inhibited in being able to invoke the name of Jesus or invoke the name of God because of a particular thing that is in the code or just because of a practice in the military?

Rev. MAGNESS. Thank you for the question.

Speaking personally for myself, I never felt that I was inhibited in any way as a military chaplain from praying in any particular way, nor do I think there should be any policy that prohibits that. This is a matter of education and training. We train chaplains and continue to train chaplains, as I train our Episcopal priests, to be able to understand and learn and read situations, to know the distinctions between a religious service and a command function, and to know that in certain settings, certain things are appropriate and other settings they are not, that they can be offensive.

One of the things we do in the Episcopal Church when we take our baptismal vows is to say that we will respect the dignity of every human being. I take that very seriously, and I expect my chaplains to take that very seriously. And I will not restrict them from praying in any way that they want to or need to at any particular place; yet to be mindful that they have an effect as a command leader upon the dignity of everyone who is there with them.

Mr. BYRNE. And if you know that there is, if you are speaking to an audience and it includes people who happen to be Jewish, you know that there may be an appropriate way to state your prayer that is in keeping with your own faith and with their faith as well.

Rev. MAGNESS. I believe that there are a lot of different ways to pray. I don't think that from my own personal preference of the ending subscription, "in Jesus' name," always has to be there. In fact, not every prayer I pray always has that at the end.

Mr. BYRNE. And I wonder if I could direct this to you, Ms. Penrod. My uncle told me, the first time I ever heard it, that there is no such thing as atheists in foxholes. Maybe we have them today, but during World War II and the aftermath of that, he didn't feel that way.

Do you think it is appropriate for our chaplains to be able to witness to the men and women in our armed services when they are going through these difficult times and to witness in a personal way, not just in some sort of an abstract way, but to personally witness to them?

Ms. PENROD. Sir, what the Department believes is that all members have the right to practice according to the tenets of their religion or no religion. If an individual is comfortable with that, absolutely.

Mr. BYRNE. By "any individual," you mean a chaplain as well, not just an individual service man or woman?

Ms. PENROD. Absolutely. And if the individual is uncomfortable with the chaplain praying, they can address that with the chaplain.

Mr. BYRNE. Thank you, Mr. Chairman.

I yield back.

Mr. WILSON. Thank you, Congressman Byrne.

We now proceed to Congressman Rob Wittman of Virginia.

Mr. WITTMAN. Thank you, Mr. Chairman.

I would like to thank our panelists for joining us today.

Ms. Penrod, I want to begin with you. Can you give me some perspective about the Defense Equal Opportunity Management Institute and what they use as a metric in communicating to units out in the field? And can you tell me, do they consider the Southern Poverty Law Center's list of hate groups to be a reliable indicator of extremist groups in the United States?

Ms. PENROD. Well, Congressman, thank you for that question. That organization is out of the purview of my responsibilities. I will need to take that for the record.

Mr. WITTMAN. Okay, because my concern is that as these groups have been identified as extremist groups, they include some religious groups, which to me is very troubling. Can you tell me if there are any steps in the plan that the Defense Equal Opportunity Management Institute puts out that determines recommended resources for EO [equal opportunity] trainers for a further study to look at how they identify these extremist groups and whether they do include religious groups that I think do intersect into the idea of religious freedom by identifying certain groups on a very subjective basis, and how that is communicated out to the field with the EO trainers?

Ms. PENROD. Again, Congressman, I would need to get the specifics for you, so I will take that for the record.

[The information referred to can be found in the Appendix on page 147.]

Mr. WITTMAN. Okay. Let me ask you, this was specific to the Army and how the Army was communicating as to whether certain religious groups were extremist groups. Has the Army made any changes to training or anything that they are doing as far as identifying religious groups as extremist groups and how they train their men and women?

Ms. PENROD. I will defer to Chaplain Bailey.

Mr. WITTMAN. Chaplain Bailey.

General BAILEY. Yes, sir, thank you. They have stopped all training and revised the training packets to ensure that all of the information is correct. This that you are talking about was an isolated case in which information was brought in from an outside source. It was a mistake, and it was quickly corrected at the time.

Mr. WITTMAN. Okay, so that has been corrected. I understand that those training courses were stopped in order for this to be considered. So what you are saying is, changes have been made. Are the new training courses now being reinstated? Are trainers now continuing with that EO training based on a new directive from the Army?

General BAILEY. Sir, it is outside of my perimeter of information. However, I understand that they have stopped that. They have got better information in, and they are starting the training back up again with the correct information.

Mr. WITTMAN. Okay, very good.

Thank you, Mr. Chairman. With that, I yield back.

Mr. WILSON. Thank you, Congressman Wittman.

We now proceed to a very proud military dad, Congressman Rich Nugent of Florida.

Mr. NUGENT. Thank you, Mr. Chairman.

And I certainly do thank our chaplains for your service to this country and particularly to our service members. You know, much has been made about our military's role in religion, and there are those who argue it is the responsibility of the military to promote religious values, specifically, Christian values. Others argue it is the responsibility of the military to create a purely secular environ-

ment, where no person would ever be exposed to religious beliefs or challenge—that challenge their own.

I am the father of three sons currently serving in the United States Army, and I am a Christian. I believe it is the military's responsibility to provide for the spiritual needs of warfighters of any faith. The dedicated chaplains and support assistants meet that need everywhere our armed services are in the world.

Would you please confirm with me, or confirm to me the military's level of commitment to religious need of all personnel while validating the following facts: The Air Force had 2,472 chaplains and 3,344 enlisted assistants who have served since the program was created in 1975; 1,870 chaplains and assistants currently serve today in the Air Force. Two died while deployed. Navy, total number of chaplains could not be found, but the largest the chaplain corps has ever been was 1,487 serving during the same time during World War II. Today, 2,042 chaplains and assistants serve currently. Fifteen chaplains died while deployed, and two chaplains received the Medal of Honor. In the Army, more than 25,000 chaplains and assistants have served in the Army; 6,400 chaplains and assistants currently serve. Three hundred have died while deployed, and six chaplains received a Medal of Honor.

I just want to make sure that the commitment of the armed services is to provide for that spiritual need of any service member within any of the organizations. Does that commitment still stand today? I think by the numbers, would you agree with those numbers? And I know you may not know specifically the numbers, but in general terms.

Admiral TIDD. Sir, I would say for the Navy, that is roughly right, and I would have to check on the specifics; but absolutely, our commitment is strong to honoring the religious and spiritual values of our people and supporting religious and spiritual values of all of our people.

Mr. NUGENT. It is not just spiritual values, I would think, from my time when I was in basic training, and my sons, who currently serve; it really is to minister to any. It matters not if they have a religious affiliation. They are there as a counselor and a shoulder to lean on and talk to get help if necessary. And so I do appreciate all that the chaplains do. It is a huge service to this country, and to our warfighters, and please continue.

I yield back.

Mr. WILSON. Thank you, Congressman Nugent.

We now proceed to Congressman Mike Rogers of Alabama.

Mr. ROGERS. Thank you, Mr. Chairman.

Ms. Penrod, late last year, I had a young woman in my district go to a VA hospital down near Montgomery, Alabama. The young woman made homemade cookies and packaged them up to take to the VA Hospital, a couple of hundred packages to give to some of the veterans in the hospital in honor of her late grandfather. But when she arrived at the VA hospital, she was denied the ability to hand out those cookies because the packaging had the word "Christmas" on it.

While this incident occurred in a VA hospital, I am curious if it had been a DOD facility, do you all have a policy that would prevent somebody from doing something for our men and women in

service if the word “Christmas” or “Hanukkah” or whatever was on the packaging.

Ms. PENROD. We do not have such a policy.

Mr. ROGERS. Thanks.

On another subject, current DOD policy states that service members can share their faith or evangelize but must not force unwanted intrusive attempts to convert others of any faith or no faith to one’s beliefs. My question is, who makes the determination of the relative comfort of others, and what is the practical application of that policy?

Ms. PENROD. I will defer to our chiefs of chaplains.

Admiral TIDD. Sir, as we share our faith, as service members share our faith, we are always open to do that. It is always an option for us to do that and to do so respectfully and gracefully. And that is something that is worked out between the individuals. If an individual says, “Thanks, I am not interested,” that is an appropriate time for the other person to step back. If they say, “I would like to hear more about that,” then, absolutely, we continue.

Mr. ROGERS. All right, thank you.

That is all I have.

I yield back, Mr. Chairman.

Mr. WILSON. Thank you very much, Congressman Rogers.

We now proceed to Congresswoman Vicky Hartzler of Missouri.

Mrs. HARTZLER. Thank you, Mr. Chairman.

Last week, the DOD issued an instruction indicating that it’s DOD policy that religious expression of service members should be accommodated as reiterated in the NDAA, and of course, the intent is that expression is not just a belief, but it is also in practice. So my question is, can—and I guess I will start with General Bailey—can you give me examples of an expression of religious belief, whether verbal or nonverbal, that is considered to be borderline inappropriate?

General BAILEY. Thank you, ma’am. I would think that a statement that would indicate that their religious beliefs are better or more—have more importance than another belief system and how they would phrase something like that and state that in some sort of way, that their god or their higher being, that they—who they call would be something that is the supreme over anything else, where maybe that would suppress another individual to think that they are not less in their faith, that would be a wrong statement to make in that sense.

Mrs. HARTZLER. Here is an example. So the respectful expression of an individual’s conscious or religious belief while engaging in personal conversation in public space would be considered inappropriate. So if you said, you know, I believe I am a Christian because of this reason, and it—that would entail as a faith that you believe he is the Son of God and all of that. So you couldn’t get into that without reprimand?

General BAILEY. No, ma’am. That is perfectly okay for that individual to state what they believe openly, understanding who is around the area; that is a private conversation within their own convictions of what they believe. When it is in conflict with those around, that is denouncing them or intruding on them, then there is a sensitivity there that we have to help that individual under-

stand through training and through other means like that. But they are never told they cannot share their own personal faith of any sort.

What we try to do, though, for the discipline purposes, is to understand that every faith has to be respected and dignified as well as those who have no faith whatsoever. So you must state your faith in a sense that, and hopefully they will, in a sense of that respect, but never suppressed in any sort of way.

Mrs. HARTZLER. I think that is a fine line, but it is important to be sensitive to others, but I just hope through your training, it doesn't result in suppression of that because that is very important.

How about an invitation from one service member to another to attend a Bible study or other religious function? Would that be inappropriate?

General BAILEY. No, ma'am, not whatsoever.

Mrs. HARTZLER. A religious text or symbol that is visible in a commanding officer's office?

General BAILEY. No, ma'am. A commanding officer can have whatever he has on his desk, a Bible, or a Quran, or whatever it may be. That is up to him. That is his individual conviction whatever it may be.

However, the chaplain, that is what our role is to advise the commander of the impact that would have or possibly any repercussions of that. The commander will make a wise decision at that point, understanding his or her role as a leader of all faiths in regard to religious accommodation or a lack of faith, whatever it may be, of the choices of the service members they lead. So that will be their individual right.

Mrs. HARTZLER. All right, thank you. My time is up.

Mr. WILSON. Thank you, Ms. Hartzler.

We now proceed to Congressman Tim Huelskamp of Kansas.

Mr. HUELSKAMP. Thank you, Mr. Chairman.

I certainly appreciate the ability to be here today. Appreciate the leadership of many on this committee.

First question I would have, and I believe one of the colleagues here had asked, all of the above, in terms of sermons, whether or not folks should be able to preach, chaplains preach what they believe in a particular homily or sermon. And perhaps for the Right Reverend, are there any cases in which military has censored in advance anything you anticipated to preach?

Rev. MAGNESS. Neither has that been the case in my experience nor has it been the case with any of my chaplains who serve around this globe in all the services.

Mr. HUELSKAMP. And as I understand from the others, that was a pretty firm commitment that that doesn't happen.

But one instance I would like to refer to that I was worried about. And I believe General Bailey might be able to address this. January of 2012, every Catholic chaplain in the Army was forbidden to use one particular sentence in a sermon that every other Catholic across the country was allowed to hear. Do you not consider that censorship? And exactly can you describe how that decision was made by which that was a forbidden sentence in our—to be uttered by our Catholic chaplains?

General BAILEY. Yes, sir, thank you very much. At the time, if I believe, the endorsing agency for the Roman Catholic Church, a bishop had put out a letter to all to be read and sermonized and to all the Roman Catholic services throughout the military, the Department of Defense at that time. Our chief of chaplains at that time went to our Judge Advocate General, screening that letter as properly to be done to look at to make sure that it was in good order and discipline, that it would go against the chain of command, things of this nature that we are supposed to do to ensure that we do say the right things in that regard. And so through that means and through that mechanism, the one sentence that was said would be misconstrued and possibly from the judicial perspective in that sense from the chain of command, that information was fed back to the Roman Catholic Church to understand that that would not be. In fact, the Roman Catholic endorser met with the Secretary of the Army over that issue, and they discussed it, and it was agreed to that it was not to be used, as well as that every—the letter be read by everyone Catholic priest to the congregates in the sense that they all know what is being said by their endorser. So all the information was let out to the people.

Mr. HUELSKAMP. Sir, the last sentence, not all information, the one sentence was stricken in every Catholic chaplain's homily in every military base in this country, as I understand. Do you not think that is censorship?

General BAILEY. No, sir, I don't. What I do believe is that we worked with the bishop's office to understand that that one sentence was not the intent of the bishop, what he was trying to say. And because the culture of the military being misconstrued against the President, against all what was going on at that time.

Mr. HUELSKAMP. Sir, in my definition of censorship, when the government demands something not be said and forces that—again, every Catholic in America heard that one sentence unless you were in an Army installation at a Catholic mass. So I am very frustrated by that, frustrated by your response. And the fact is I believe that is censorship. And I would love to discuss at length why that sentence was problematic to you and not problematic to every other Catholic in this country.

And I yield back. Thank you, Mr. Chairman.

Mr. WILSON. Thank you, Mr. Huelskamp.

As we proceed, votes have been called.

But fortunately, we have time for our last Member. I am delighted the number of persons who are here.

And, Dr. Fleming, I agree with you that this issue is so important, we will be having another hearing, and it would fit right into when the companion regulations are released within the next 60 days. So this shall occur.

And thank you again, Dr. Fleming, for your passion on this issue.

We will be concluding with Congressman Alan Nunnelee of Mississippi.

Mr. NUNNELEE. Thank you, Mr. Chairman.

Thank you for having this hearing and for allowing me, a non-member of the committee, to be part of it.

Ms. Penrod, I want to follow up with a line of questions from Mr. Wittman specifically concerning the equal opportunity that—the

Defense Equal Opportunity Management Institute. Mr. Wittman's questions were asked, and we get the same answer we continually get, and that is this is an isolated incident; it will not happen again. And then it happens again.

Just a quick chronology of a couple of events. April of 2013, a Pennsylvania Army Reserve unit: Evangelical Christians are examples of religious extremists; Catholics are equated to the Ku Klux Klan, Al Qaeda, and Hamas. Fall of 2013, Fort Hood, same institute: Christians are a threat to the Nation and any soldier that donates to these groups will be subject to punishment under the Uniform Code of Military Justice. October of 2013, similar statements at Camp Shelby. December of 2013, soldiers were told, don't use the word "Christmas." Might be offensive. Army's investigated these. What is the purpose of these equal opportunity briefings? Who thought it was a good idea to have these briefings? And what has been done to those that made the decision to have such briefings?

Ms. PENROD. Well, Congressman, again, I do not have the specifics of those cases. I will need to get that for the record for you.

Mr. NUNNELEE. Mr. Chairman, if we could have a follow-up hearing and have representatives from this Department of Defense Equal Opportunity Management Institute, I think it would be most helpful.

Mr. WILSON. Thank you, Congressman Nunnelee.

And as we proceed with the additional hearing, any suggestions anyone has, please let me know.

Ms. Davis, do you have any concluding comments?

Again, thank you all for being here. I think you can see the intelligence and appreciation of chaplains. That is why—you had a record turnout in terms of Members of Congress who came who are profoundly and very positively concerned but also supportive of our chaplains in the U.S. military. We are adjourned.

[Whereupon, at 10:34 a.m., the subcommittee was adjourned.]

A P P E N D I X

JANUARY 29, 2014

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

JANUARY 29, 2014

Chairman Joe Wilson Opening Statement
Hearing: Religious Accommodations in the Armed Services
January 29, 2014

Ladies and Gentlemen, the hearing will come to order. Welcome to a meeting of the House Armed Services Subcommittee on Military Personnel. Today, the subcommittee will examine religious accommodations in the Armed Services including the military services' interpretation, enactment and enforcement of religious accommodation statutory and regulatory guidance.

Historically the Armed Forces have supported religious freedom and when possible, accommodated service member's religious beliefs and practice. I believe we can maintain a proper balance between religious accommodations which will promote military readiness, unit cohesion, and good order and discipline. This should not present challenges for the military services. Chaplains have always been vital to our military. One of the strengths of our military is its diversity with mutual respect and as such it has been important for Congress to work with the Department of Defense to ensure that appropriate statutory and regulatory guidance is in place in order for the services to meet important spiritual and religious needs of their troops.

Recognizing that there have been challenges in accommodating religious practices and beliefs we have engaged in various efforts to clarify the role of religion in the military, prevent religious discrimination, and provide appropriate religious accommodations for those service members who seek it.

Our goal today is to better understand how the Department of Defense has balanced the implementation of the religious accommodations policy with maintaining military readiness, unit cohesion and good order and discipline.

Prepared Statement
of
Mrs. Virginia S. Penrod
Deputy Assistant Secretary of Defense (Military Personnel Policy)
Before the
House Armed Services Committee
Military Personnel Subcommittee
on
Religious Accommodation in the Armed Services

January 29, 2014

NOT FOR PUBLICATION
UNTIL RELEASED BY THE SUBCOMMITTEE

Chairman Wilson, Ranking Member Davis, and distinguished members of the Subcommittee, I appreciate the opportunity to appear before you to address the Department of Defense's (DoD) role concerning the free exercise of religion and the accommodation of religious practices in the Armed Services.

We are grateful to the Congress for your continued commitment in upholding the protections of religious freedom guaranteed to all Americans by the Constitution and codified in law. The Department has the responsibility to safeguard the First Amendment rights of all military personnel. We place a high value on helping chaplains, as well as military personnel and their families, to observe the tenets of their religion. Continued assistance in helping the entire military community practice their religious beliefs is an important element of operational readiness and contributes to the well-being of our force.

The military Chaplaincy is as old as the Country itself, as it was authorized by the Second Continental Congress on July 29, 1775. Since that date, military chaplains have filled a critical role in assisting the Department in facilitating and safeguarding First Amendment rights of military personnel. Throughout this history, military chaplains have provided religious services and counseling, have advised commanders on ethical and moral issues, and provided key insight and guidance on general unit morale and welfare matters. Chaplains have cared for, and continue to care for, all Service members and their families with the utmost dignity, abiding compassion and respect regardless of the presence or absence of religious beliefs in both peacetime and at war.

The Armed Forces Chaplains Board, composed of six members, to include the three Chiefs of Chaplains and their Deputies. The responsibilities of this Board are to assist the Department in the establishment of policy pertaining to procurement, standards, requirements,

and training of military chaplains, the establishment and maintenance of a relationship with civilian church organizations and the clergy, and procurement of supplies, equipment and facilities.

For the past sixty years, this Board has provided advice to the Secretary of Defense, and other members of the Office of the Secretary of Defense, on religious, ethical, and moral matters for the Military Services. The Board is organizationally aligned under the Under Secretary of Defense (Personnel and Readiness). With the administrative support of an Executive Director, the Board continues in its role in providing advice concerning the accession and management of military chaplains from the nearly 200 different religious organizations who endorse these chaplains for ministry in the religiously pluralistic military environment. Since 2005, the Board has hosted an annual conference for the endorsing agents of these religious organizations to ensure continuance of a harmonious relationship and to keep open lines of communication regarding policies related to the religious freedoms of their chaplains.

Military members, to include Chaplains, may exercise their full range of rights under the First Amendment, including the free exercise of religion, unless by doing so the member would adversely affect good order, discipline, or some other aspect of the military mission. Even then, the Department and the Services seek a reasonable religious accommodation for the military member. We are extremely proud of our long track record of accommodating requests for religious practices on a case-by-case basis.

Throughout history, the Department and the Services have, through policy and practice, consistently sought to strike the proper balance required in protecting its members' religious practices and maintaining military operational readiness. The Department has a compelling governmental interest in mission accomplishment which includes military readiness, unit

cohesion, good order, discipline, health and safety on both the individual and unit levels. In short, religious accommodation requests will be approved, on a case-by-case basis, if such requests do not negatively affect mission accomplishment.

As I previously noted, the Department appreciates your leadership and concern on this vitally important subject. Military members are allowed to privately and/or publicly express their religious beliefs. They can use Bibles, Korans, Torahs, sacred text, and literature, and may discuss or share their faith with others. However, they may not coerce others of dissimilar faith or no faith to adopt their own beliefs. These are just a few examples to highlight the Department's policy, and hopefully reassure you that the Department's long standing religious accommodation policy remains viable and healthy.

Next, I'd like to address policy that specifically applies to the performance of chaplains' duties. First, in accordance with Department of Defense Instruction 1304.28, 19 January 2012, *Guidance for the Appointment of Chaplains to the Military Departments*, chaplains remain free to preach and conduct religious worship according to the dictates of their religions without fear of reprisal and without having to perform services, including giving sermons, which are inconsistent with their personal religious beliefs and those of the religious organizations that endorse them. Additionally, policy ensures they are neither required to participate in, nor officiate at, a ceremony where, if by doing so, they would be in conflict with the tenets of their religion or personal beliefs.

We have received letters of concern from the Congress asking about incidents where individual chaplains allegedly are being, or have been required, to perform duties inconsistent with the tenets of their faith. When the Department examined these allegations, we have been unable to find any evidence to support these claims. At our January 16, 2014 annual conference,

we sought examples of such policy violations from the numerous religious organizations that endorse our military chaplains. We also sought examples from our chaplains in training at their respective Chaplains Schools in Fort Jackson, South Carolina. Neither group reported knowledge of any such incidents, nor were they able to provide any illustrative information regarding these types of situations. Nevertheless, the Department and Military Department Chiefs of Chaplains continue to communicate the message that we are keenly interested in receiving information or having complainant provide concrete details of such incidents so that we can investigate, and when appropriate given the facts, take corrective action. The Department stands ready to immediately address any incidents that violate chaplains' rights in the performance of their duties.

In light of the concerns regarding religious freedoms of members of the Armed Forces identified in the National Defense Authorization Act (NDAA) for Fiscal Year 2013, and amended language in NDAA FY 2014, the Department recognized the need to clarify these freedoms in our policy. First, we have revised and published Department of Defense Instruction 1300.17, *Accommodation of Religious Practices Within the Military Services*, to ensure the protection of rights of conscience of members of the Armed Forces in accordance with section 533 (a) of NDAA for Fiscal Year 2013. We delayed publication to specifically include changes directed by NDAA FY13. Second, we are revising Department of Defense Instruction, 1304.28, *Guidance for the Appointment of Chaplains to the Military* to bolster the protection of chaplains' decisions relating to conscience, moral principles, or religious beliefs in accordance with section 533 (b) of NDAA FY 13. However, because chaplains are Service members, their rights are protected in Department of Defense Instruction 1300.17.

In summary, Department policies allow for individual expressions of religious beliefs and strive to accommodate all such requests. If concerns arise, commanders of the unit involved handle these issues on a case-by-case basis with advisement from chaplains to find the best avenue in balancing religious freedoms with mission accomplishment.

In conclusion, the Department recognizes our duty to provide policy and oversight which safeguard the First Amendment rights of the high-quality, motivated, and well-trained men and women in our All-Volunteer Force. As we move through the 21st Century, we must continue to build upon the remarkable legacy of the visionaries who crafted the laws and policies that protect these rights. I thank this Committee for its continued and dedicated support to the men and women everywhere who are currently serving and to those who have served our great nation.



Virginia S. Penrod
Deputy Assistant Secretary of Defense
(Military Personnel Policy)



Ms. Virginia (Vee) Penrod, assumed the duties of Deputy Assistant Secretary of Defense for Military Personnel Policy on October 6, 2010.

A member of the Senior Executive Service, she is responsible for recruiting, retention, compensation, travel and the related human resource management for the 1.4 million active duty military members of the U.S. Armed Services.

A graduate of Chapman University with a Bachelor of Science Degree in Business Administration, Ms. Penrod holds a Master of Business Administration Degree from Central Michigan University and a Master of Science Degree in National Resource Strategy from National Defense University.

Ms. Penrod's career includes 35 years of service in the Air Force in the field of manpower management at Air Force Logistics Command, executive-level management at the 601st Tactical Control Wing in Germany, and military personnel management, including Command at base level; personnel policy at Headquarters Air Force and the Air Force Personnel Center.

She has also served as a member of the Senior Executive Service in the Office of the Secretary of Defense for Military Personnel Policy for over four years. Most recently, she served as the Acting Principal Director and Deputy Under Secretary of Defense for Military Community and Family Policy from April through September, 2010.

Her awards and decorations include the Legion of Merit and Defense Superior Service Medal.



Prepared Statement
of
The Armed Forces Chaplains Board
Before the
House Armed Services Subcommittee on Military Personnel
“Religious Accommodation in the Armed Services”

January 29, 2014

**NOT FOR PUBLICATION
UNTIL RELEASED BY THE SUBCOMMITTEE**

Chairman Wilson, Ranking Member Davis, and esteemed members of the committee, thank you for the opportunity to appear before you today to address how the military chaplaincies provide supportive religious ministry to our military members, federal civilian employees within the military Departments, and their families. Representing the Armed Forces Chaplains Board (AFCB) are Rear Admiral Mark L. Tidd, Chief of Navy Chaplains, Brigadier General Charles Bailey, Deputy Chief of Army Chaplains, and Brigadier General Bobby V. Page, Deputy Chief of Air Force Chaplains.

Before we move forward with the formal portion of our statement, we would like to extend our condolences to the members of the committee regarding the recent passing of Mr. John Chapla. His wonderful reputation extended well beyond the halls of Congress. We are grateful to have worked with him, and we recognize that you will miss him deeply. Please know that you and your staff, and the Chapla family, are in our prayers.

Department of Defense (DoD) Instruction 5120.08, August 20, 2007, governs the AFCB and its role providing advice to the Secretary of Defense and other members of the Office of the Secretary of Defense on religious, ethical, and moral matters for the Military Services. In particular, the AFCB provides advice on the best measures to protect the free exercise of religion within the Military Services. Organizationally, the AFCB is under the authority, direction and control of the Under Secretary of Defense (Personnel and Readiness). The AFCB consists of the Chief of Chaplains and the active duty Deputy Chief of Chaplains for each of the Military Departments.

Within the Military Departments, the Chief of Army Chaplains provides advice to the Secretary of the Army and the Chief of Staff of the Army; the Chief of Navy Chaplains provides advice to the Secretary of the Navy, the Chief of Naval Operations, the Commandant of the

Marine Corps, and the Commandant of the Coast Guard; and the Chief of Air Force Chaplains provides advice to the Secretary of the Air Force and the Chief of Staff of the Air Force. All of the Chiefs of Chaplains also support their Service Personnel Chiefs regarding the proper manning, training, and equipping of chaplains.

The appointment of chaplains for the Military Departments is governed by DOD Directive 1304.19, 11 June 2004, and certified current as of 23 April 2007, and DoD Instruction 1304.28, 11 June 2004, incorporating change 2 of 19 January 2012. Chaplains are religious ministry professionals (our technical term for professional clergy) from religious organizations that have met the requirements set by DoD policy. Among other qualifications, applicants for appointment within the military chaplaincies must have at least two years of leadership experience as religious ministry professionals, must have a Master of Divinity degree (or equivalent), and must be prepared to perform religious ministry in a pluralistic military environment.

We appreciate the interest, concern, support, and leadership of the Congress on this vitally important subject. The Military Departments, as you know, exist to protect and defend the Constitution of the United States. As chaplains we are honored to support our commanders and warriors as they remain on watch around the globe, protecting the many freedoms we enjoy as Americans. This includes the constitutional right to the free exercise of religion, the reason for which we, as chaplains, have been appointed to serve in the military. Many of our Service members and their families find strength and support in their religious faith, and the opportunity to practice their faith helps them develop the resilience to be ready for the challenges of military life. We share your concern for the religious freedom of Service members and chaplains, and hope that our testimony today will serve to assist Congress with its oversight of this matter.

Military chaplains are privileged to serve in the religiously pluralistic military environment. As you know, our chaplains serve with our warriors around the globe, including in combat zones. Many chaplains have lost their lives in combat and some have been awarded medals of valor including the Congressional Medal of Honor.

Nearly 200 different religious organizations endorse chaplains for ministry within the Military Departments. Chaplains are guided by the teachings of their religious bodies, and those teachings guide their ministry within this pluralistic setting. At the same time, chaplains and their endorsing religious organizations recognize that chaplains serve in an environment that is extremely diverse religiously. Chaplains work cooperatively and respectfully with Service members who have different religious convictions or no religious beliefs at all. We are committed to working together cooperatively to meet the religious needs of as many of our people as we can, and to protect the religious freedom of *all* Service members, including the chaplains with whom we serve.

Within the Departments' long standing policy and practice, the spirit of cooperation and respect for diversity does not mean compromising one's individually held beliefs. Our chaplains continue to conduct their religious ministry with fidelity and compassion in ways that meet the requirements of their endorsing religious organizations and the standards of conduct for commissioned officers.

The relationship between the Chiefs of Chaplains and the religious organizations that endorse chaplains is open, flexible, and productive. For many decades, the endorsing agents have had direct access to the Chiefs of Chaplains. This unfettered access, which is supported in policy, has helped to resolve challenges related to protecting the religious liberties of Service members and chaplains. The AFCB recently concluded two days of annual meetings, to which

all of the ecclesiastical endorsers were invited. In addition to these annual meetings, many endorsing religious organizations contact our offices throughout the year when they need to bring something to our attention. In the last eight months we have all communicated with our chaplains reaffirming the protections afforded them, by the Constitution, law, and policy, when performing their religious ministry. We have also provided guidance regarding ways to resolve the issues they face in providing ministry. Additionally, formal training has either been completed, or is in progress, to ensure that all of our chaplains understand the proper mechanisms to redress any grievances they have, in particular their ability to contact our offices directly or to work through their endorsing religious organizations. We mention this to underscore the many ways available to resolve any issues regarding religious freedom.

Each Military Department also has specific policy recognizing that its chaplains cannot be compelled to perform religious ministry contrary to the tenets of their endorsing religious organizations. The actions of the Congress have further served to ensure that Service members and chaplains are protected. We refer specifically to National Defense Authorization Act, Fiscal Year 2013 (NDAA FY13), section 533, and its amendments in NDAA FY14.

The AFCB's annual meetings with the ecclesiastical endorsers and our routine communication with them throughout the year are efforts we have made to maintain a mutually positive relationship with the religious organizations that send us their finest religious ministry professionals. As Chiefs of Chaplains, we communicate up and down the chain of command with our chaplains. We also travel regularly to meet face-to-face with our chaplains, from the most junior to the most senior. We recognize that this is a period in our history of change that includes the repeal of Don't Ask Don't Tell and the U.S. Supreme Court's decision to strike down portions of the Defense of Marriage Act. As always, we are committed to supporting our

Service members and our chaplains by honoring their religious freedom and obeying the law. Each of the Military Departments has policy in place that designates chaplains as advisors on religious matters such as these and regularly provides recommendations to chaplains and senior military leaders on how best to respond to situations where religious freedoms are questioned. When we are made aware of a situation that appears to challenge the religious freedom of Service members or chaplains, we are eager to help resolve it.

In conclusion, we expect our chaplains to obey the law, to faithfully represent their endorsing religious organizations, and provide outstanding religious ministry to Service members and their families with dignity, respect, and compassion. With well over two million Service members in the active and reserve components, we feel that our chaplains are meeting the religious needs of our people to the greatest extent possible, and it is our great privilege to serve them.

Again, Chairman Wilson, Ranking Member Davis, and distinguished members of the committee, thank you for the opportunity to appear before you today. We look forward to answering your questions.



United States Navy Biography



Rear Admiral Mark L. Tidd Chaplain Corps Chief of Navy Chaplains

Rear Admiral Tidd comes from a career Navy family and is a graduate of Williams College in Williamstown, Mass. He received his Master of Divinity from Fuller Theological Seminary and a Master of Theology from Princeton Theological Seminary. He is a graduate of the National War College in Washington, DC, with a Master of Science in National Security Strategy and a graduate of the Marine Corps Command and Staff College and the Armed Forces Staff College.

Tidd's Navy tours include Naval Air Station Moffett Field, Calif. with Patrol Wing 10 and the USS *Reeves* (CG 24), homeported in Yokosuka, Japan. During his time on board, *Reeves* visited Qingdao, China, as part of the first port visit by U.S. warships to that country in 39 years. He went on to serve as deputy command chaplain on the USS *Theodore Roosevelt* (CVN 71).

Marine Corps tours include 3rd Battalion, 2nd Marines, and the division staff of 2nd Marine Division, Camp Lejeune, N.C., deploying to Southwest Asia in support of Operation *Desert Storm*. He served at Marine Corps Combat Development Command as the chaplain for the Marine Corps Brig and the Base Security Battalion and later returned to 2nd Marine Division as the division chaplain.

Tidd has served in leadership positions on the chief of Chaplain's staff as the branch head for Professional Development and Religious Programs and as the Advanced Training officer at Navy Chaplain School. Tidd was assigned as the force chaplain for U.S. Naval Forces Central Command and the fleet chaplain for U.S. 5th Fleet, headquartered in the Kingdom of Bahrain. After serving as command chaplain for the U.S. European Command, he became deputy chief of Navy Chaplains and Chaplain of the Marine Corps.

Tidd assumed his current duties as the 25th chief of Navy Chaplains on Aug. 27, 2010.

Tidd's military decorations include the Defense Superior Service Medal, Legion of Merit with gold star, Meritorious Service Medal with gold star, Joint Service Commendation Medal, and Navy Marine Corps Commendation Medal with three gold stars.

Biography of Chaplain (Brigadier General) Charles R. "Ray" Bailey



Chaplain Bailey is the son of a United Methodist minister in the Nebraska Conference and has grown up living and attending school over a large part of the United States. Chaplain Bailey graduated from Texas Wesleyan University in Ft. Worth, Texas in June 1975 with a Bachelor of Arts degree in business and religion. He then attended Texas Christian University, Brite Divinity School, graduating in June 1978 with a Masters of Divinity degree.

Chaplain Bailey was commissioned a second lieutenant in the Chaplain Corps in 1977 as part of the US Army Reserve. During his time in the reserves he participated in multiple training and operational opportunities throughout the Army.

Chaplain Bailey was ordained as an Elder in June 1981 by the United Methodist Church and served churches in Ft. Worth, Corsicana, and Mineral Wells, Texas before entering active duty in June 1982 as a United States Army chaplain.

Chaplain Bailey became the 24th Deputy Chief of Chaplains, United States Army, on July 28, 2011. His previous chaplain assignments include serving as the Command Chaplain United States Army, Europe & Seventh Army, Heidelberg, Germany; Combat Development Director at the United States Army Chaplain Center and School, Ft. Jackson, SC.; Command Chaplain for Operation Enduring Freedom VI in Afghanistan; Command Chaplain, Southern European Task Force, Vicenza, Italy; Division Chaplain, 4th Infantry Division, Ft. Hood, TX; Chief of Concepts, Training, and Doctrine, U. S. Army Chaplain Center and School in Ft. Jackson, SC; Operations Chaplain for Combat Training, U.S. Army Europe Chaplain's Office, Heidelberg, Germany; Deputy Task Force Chaplain for Task Force Eagle in Tuzla, Bosnia; Deputy Division Chaplain for the 1st Armor Division in Bad Kreuznach, Germany; Senior Chaplain Observer Controller at the Combined Maneuver Training Center, Hohenfels, Germany; Brigade Chaplain, 2nd Brigade, 6th Infantry Division, Fairbanks, Alaska; Brigade Chaplain, 504th Infantry Regiment (Airborne), 82d Airborne Division, Ft. Bragg, NC; 82d Aviation Brigade Chaplain, 82d Airborne Division, Ft. Bragg, NC; 1/17 Cavalry Squadron Chaplain, 82d Airborne Division, Ft. Bragg, NC; 2-6 Infantry Battalion, 1st Armor Division, Germany; 307th Engineer Battalion, 82nd ABN Division, 82d Airborne Division, Ft. Bragg, NC; 3-325th Infantry (Airborne), 82d Airborne Division, Ft. Bragg, NC.

His military education includes the Chaplain Officer Basic and Advanced Courses, the Airborne Course, the Combined Arms and Services Staff School, the Command and General Staff College, the Division and Installation Chaplain Courses, and the United States Army War College.

Chaplain Bailey has served in Operation Sudden Fury, Operation Desert Storm, Operation Joint Endeavor, Operation Restore Hope, and Operation Enduring Freedom.

His military awards and decorations include the Legion of Merit, the Defense Meritorious Service Medal, the Meritorious Service Medal with 11 Oak Leaf Clusters, Joint Commendation Medal, Army Commendation Medal with 1 Oak Leaf Cluster, Joint Meritorious Unit Award with 2 Oak Leaf Clusters, Master Parachutist Badge, and Honduran Airborne Badge.

Chaplain Bailey is married to the former Karen Goldesberry. They have two sons, Matthew, of Heidelberg, Germany and Patrick, of Charleston, South Carolina.



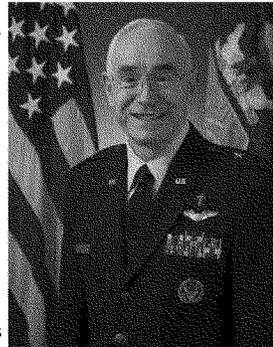
BIOGRAPHY



UNITED STATES AIR FORCE

CHAPLAIN (BRIGADIER GENERAL) BOBBY V. PAGE

Chaplain (Brig. Gen.) Bobby V. Page is the Air Force Deputy Chief of Chaplains, Headquarters U. S. Air Force, Pentagon, Washington, D.C. As a member of the special staff of the Chief of Staff, Chaplain Page assists the Chief of Chaplains in establishing guidance on all matters pertaining to the religious and moral welfare of Air Force personnel and their dependents and directing and maintaining a trained, equipped and professional Chaplain Corps of more than 2,200 chaplains and chaplain assistants from the active and Air Reserve components. As a member of the Armed Forces Chaplains Board, he and other members advise the Secretary of Defense and Joint Chiefs of Staff on religious, ethical and quality-of-life concerns.



Chaplain Page was commissioned through the Reserve Officer Training Corps at Louisiana State University in 1973. He earned his wings at Mather Air Force Base, Calif. in 1975 and served as a navigator, instructor navigator and senior navigator for the Standards and Evaluation section. In January, 1980, he separated from the Air Force to attend Southwestern Theological Seminary in Fort Worth, Texas to fulfill a commitment to pastoral ministry. After graduation, he served pastorates in Arkansas and North Carolina from 1983 to 1989. During that time he also served as a chaplain in the Air National Guard in Arkansas and Georgia, then the Air Force Reserve in South Carolina. In July 1989 he returned to active duty and has served a variety of chaplain assignments at the wing, two major commands and Headquarters U.S. Air Force.

Chaplain Page has significant deployed experience serving as the wing chaplain at Prince Sultan Air Base, Saudi Arabia, in 2000 and leading the largest chapel team in the Central Command area of responsibility during Operation Iraqi Freedom. In June, 2003, he established the first Air Force chaplain ministry at the Baghdad International Airport.

EDUCATION

1973 Bachelor of Arts in History, Louisiana State University, Baton Rouge
 1975 Undergraduate Navigator Training, Mather AFB, Calif.
 1978 Master of Public Administration, Golden Gate University, San Francisco, Calif.

1983 Master of Divinity, Southwestern Baptist Theological Seminary, Fort Worth, Texas
 1990 Squadron Officer School, by correspondence
 1994 Air Command and Staff College, by seminar
 1997 Air Force Institute of Technology, Northern Baptist Theological Seminary, Lombard, Ill.
 1999 Doctor of Ministry, Northern Baptist Theological Seminary, Lombard, Ill.
 2001 Air War College, by seminar

ASSIGNMENTS

1. May 1974 - March 1975, Student, undergraduate navigator training, Mather AFB, Calif.
2. March 1975 - June 1975, Student, KC-135 upgrade training, Castle AFB, Calif. 3. July 1975 - January 1980, Navigator, Instructor Navigator, Standards and Evaluation Senior Navigator, 307th Air Refueling Group, Travis AFB, Calif.
4. March 1985 - December 1986, Chaplain, 188th Fighter Wing, AR Air National Guard, Fort Smith, Ark.
5. January 1987 - June 1989, Chaplain, Air Force Reserve, 20th Fighter Wing, Shaw AFB, S.C.
6. July 1989 - July 1993, Chaplain, 475th Air Base Wing, Yokota Air Base, Japan
7. July 1993 - July 1996, Senior Chaplain to Tech Training Airmen, 37th Training Wing, Lackland AFB, Texas
8. August 1996 - June 1997, Student, Air Force Institute of Technology, Northern Baptist Theological Seminary, Lombard, Ill.
9. June 1997 - July 2000, Chief of Program Development, Office of the Command Chaplain, Air Education and Training Command, Randolph AFB, Texas
10. July 2000 - July 2003, Wing Chaplain, McGuire AFB, N.J.
11. September - December 2000, Wing Chaplain, deployed to Prince Sultan Air Base, Saudi Arabia
12. February - July 2003, Wing Chaplain, deployed to PSAB and Baghdad International Airport
13. August 2003 - May 2004, Strategic and Professional Programs Officer, Headquarters U.S. Air Force, Bolling AFB, Washington, D.C.
14. May 2004 - June 2006, Chief, Plans and Programs Division, Headquarters, U.S. Air Force, Bolling AFB, Washington, D.C.
15. June 2006 - June 2009, Command Chaplain, Air Combat Command, Langley AFB, Va.
16. June 2009 - July 2012, Command Chaplain, Air Education and Training Command, Randolph AFB Texas
17. July 2012 - present, Deputy Chief of Chaplains, Headquarters U.S. Air Force, Pentagon, Washington, D.C.

MAJOR AWARDS AND DECORATIONS

Legion of Merit with two oak leaf clusters
 Meritorious Service Medal with three oak leaf clusters
 Air Force Commendation Medal with two oak leaf clusters
 Air Force Outstanding Unit Award with Valor and five oak leaf clusters
 Combat Readiness Medal
 National Defense Medal with one device
 Armed Forces Expeditionary Medal
 Global War on Terrorism Expeditionary Medal
 Global War on Terrorism Service Medal
 Air Force Overseas Ribbon Long
 Air Force Longevity Service with five oak leaf clusters
 Small Arms Expert Marksmanship Ribbon (Pistol)
 Air Force Training Ribbon

EFFECTIVE DATES OF PROMOTION

Second Lieutenant Aug. 10, 1973
First Lieutenant Feb. 10, 1976
Captain Feb. 10, 1978
Captain (Revised) March 15, 1984
Major June 1, 1992
Lieutenant Colonel June 1, 1999
Colonel Aug. 1, 2004
Brigadier General Aug. 2, 2012

(Current as of September 2012)



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January 29, 2014

The Rt. Rev. James B. Magness
Bishop for the Armed Forces and Federal Ministries
The Episcopal Church

Introduction

Good morning Chairman Wilson, Ranking Member Davis and esteemed members of the Committee. Thank you for inviting me to be here today. It is an honor to speak with you.

Since 2010, I have been the Bishop for the Armed Forces and Federal Ministries for The Episcopal Church. In this capacity, I endorse and work with all the Episcopal chaplains in the Armed Forces. I had the honor of serving in the U.S. Navy in two capacities in my first career. In 2003, I retired in the rank of captain, serving as command chaplain of U.S. Joint Forces Command and fleet chaplain for the U.S. Fleet Forces Command. Prior to those assignments, I served from 1997–2000 on the Navy Chief of Chaplains' staff as personnel manager of the Navy Chaplain Corps. Prior to serving as a chaplain, I served 8 years of enlisted active duty and reserve service, first joining the Navy in 1966, serving aboard three Navy ships and spending one year in a logistics unit in the northernmost port of South Vietnam.

Based on my own service and my work now with Episcopal chaplains currently serving, I would like to share a few thoughts with you.

In 1976, after 8 years of enlisted active duty and reserve service in the United States Navy, I was in front of a Navy officer about to take the solemn oath of office as a Navy Chaplain Corps officer. Instinctively I knew that when I took the commissioning oath I was committing myself to serve the men and women in service to the United States. Not only was I taking this oath as an officer, I was making a pledge that I would support rights that are guaranteed by the First Amendment to the Constitution.

It was clear to me that the military chaplain may, at times, be required to place the needs and rights of the service member ahead of his or her own needs and rights. I began to learn that the ministry of a military chaplain is in some significant ways different from the ministry of the civilian religious leader. Normally a civilian religious leader is only responsible for and accountable to the congregation to which called. In contrast, the military chaplain has a far broader set of responsibilities. These responsibilities are for service to military members who come from a diverse population. Chaplains are not only called to care for the service members of the military unit to which the chaplain is assigned but also to be available to provide spiritual care for all of the women and men who serve within the chaplain's service component and the Department of Defense. This is a huge responsibility, which calls for a different set of operating principles.

Some 4 years later, during my first assignment on active duty, I learned a meaningful lesson about those operating principles. I was asked to participate in a retirement ceremony by offering prayers

for the retiree, a Navy Captain in the Dental Corps. Going to my distinctive Christian Book of Common Prayer I adapted a general prayer for the occasion. As I recall, the prayer ended with these words, "...through Jesus Christ our Lord." After the ceremony was concluded the retiring officer came up to me to thank me for being available to assist, and then in a calm and reasoned way said to me, "You might want to know that I and all the members of my immediate family present today are practicing Jews." It did not take me long to realize that I had just excluded the honoree and all of his family by offering an inappropriate prayer. I realized then that my responsibility when offering public prayers in uniform is to care for all of those who are present, not just those from my own faith tradition.

I tell this story because in a number of ways it gets to the heart of the subject of this hearing. The reality is that current Department of Defense policies, along with stipulations of law in Title 10 of the United States Code, provide more than adequate guidance in matters of religious accommodation for service members and chaplains alike.¹ In fact, the current Religious Accommodation policies elevate the importance of protecting the rights of service members to both practice their chosen religion without any command bias and simultaneously be protected from being subjected to unwanted religious advances. It is clear that the leaders of the Department of Defense wisely view such religious intrusions as an affront to unit cohesion, good order and discipline, and the Constitutional rights of individuals serving within a command. In the aforementioned example I created a potential violation of the need for unit cohesion, good order and discipline, and the individual's Constitutional rights. The service member for whom my prayers were offered was offended, and he should have been offended.

Today I am satisfied that when there have been instances of religious discrimination, such as inappropriate actions that lack heed for the requirements of religious accommodation, the service Secretaries, senior military and civilian leaders of the services, the service chiefs of chaplains, and unit commanders have taken swift and appropriate action to ensure that fairness, equality, and mission accomplishment are all held in a respectful and productive balance. For example, during the previous decade there were a number of high-profile allegations of religious discrimination at the United States Air Force Academy. Air Force leaders took swift corrective action by meeting with members of numerous civilian faith communities to create a system to ensure that the provisions of the First Amendment to the Constitution were thoroughly observed and maintained. I was one of the invited participants to these meetings. One result of their collaborative work was a comprehensive program based upon concepts of religious respect. The basic component of this program was to ensure that there was respect for the religious expression of all entitled persons at the Air Force Academy. These Air Force leaders set the benchmark for all to follow.

A Historic Military Model: Provide, Facilitate and Care

Traditionally service chaplaincy leaders have taught their chaplains to honor the requirements for religious accommodation. Each of the three services, Army, Navy, and Air Force, have taught their chaplains to use slightly different paradigms to enable designs for the delivery of religious ministry

¹**DoD Instruction 1300.17** February 10, 2009, Incorporating Change 1, Effective January 22, 2014. Section 4.b. In accordance with section 533(a)(1) of Public Law 112-239 (Reference (d)), as amended, unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Military Departments will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) of Service members in accordance with the policies and procedures in this instruction. This does not preclude disciplinary or administrative action for conduct by a Service member requesting religious accommodation 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.

support. One widespread paradigm, which is used by many Department of Defense chaplains, is to *provide, facilitate and care*. Very briefly I will review each component.

Provide: In accordance with the First Amendment, Title 10 of the U.S. Code, Department of Defense and service policy and doctrine, chaplains are taught to provide religious ministry support to the members of their faith communities. For example, a military chaplain who is a clergy person of the Evangelical Lutheran Church in America will provide for both Lutheran service members and for the extended community of all Department of Defense entitled service members who are members of the Christian faith. It is important to note that this Lutheran clergy person's military chaplain service is possible because the chaplain has received the Ecclesiastical Endorsement of a Federal Chaplaincy representative of the Evangelical Lutheran Church in America. Accordingly, this chaplain will use all of the rites, ordinances, sacraments, prayers and scripture texts that are appropriate for a Christian chaplain who is a Lutheran.

Facilitate: Using the example of the Evangelical Lutheran Church in America chaplain, there will be service members with whom it is inappropriate to outwardly function as a Lutheran who delivers rites and sacraments. It may be that the service member is Roman Catholic, Jewish, Buddhist, or Latter Day Saint. In these cases, the chaplain may have to do one of two things: either moderate and appropriately contextualize the personal delivery of religious ministry, or provide a personal referral to another religious ministry professional who can and will have a greater professional connection or affinity for the person in need.

Care: In a very straightforward way, uniformed religious ministry professionals are expected to do the work of pastoral support ministry to all people of the command to which he or she is assigned. The scope of that pastoral ministry may range from personal pastoral care for Christians who are Lutherans to Wiccans to atheists and free thinkers. As you can see, the broad range of armed services religious ministry requirements is one of the most diverse in America. The social and cultural context of the 21st century military is in the midst of change. In the wake of the removal of policies such as "Don't Ask – Don't Tell" and the Defense of Marriage Act, I understand that chaplains have been confronted with some significant challenges. Notwithstanding, as in other challenging religious ministry performance categories, the leaders of the military services have done splendid work in their efforts to insure that two things happen. First, the leaders have worked to insure that all uniformed members, to include gay and lesbian service members, and authorized members of their families are always provided with necessary and appropriate pastoral care. Second, the leaders have worked to insure that military chaplains, whose ecclesiastical faith communities may impose restrictions upon how their chaplains function, are never obligated to perform or provide any pastoral care ministry² that is outside of either their conscience or which is a breach of what their civilian ecclesiastical faith community leaders expect of them.

Situational Tools to Determine the Proper Religious Ministry Products

On a near daily basis one of the substantial challenges that military chaplains face is to determine the context of their religious ministry support so as to be able to tailor their words and actions when they deliver their religious ministry products. One of the traditional ways to make this determination is to evaluate the situation with the question of whether the event at which the religious ministry

² Recently two Ecclesiastical Endorsing groups, the Roman Catholic and Southern Baptist churches, have issued statements prohibiting their chaplains from engaging in pastoral and sacramental ministry with same-sex partnered couples. Notwithstanding, it is my belief that the chaplain's obligation to offer care for all service members is not diminished by such faith community statements. In cases where the chaplain cannot personally provide, there is an obligation to make a referral to a competent pastoral care provider.

support will be offered is a command function or a faith community function. Trained religious ministry professionals know that there is a significant difference between these two environments. Once identified, these differences will help the chaplain to determine the precise religious ministry product. Command functions are events that are directly sponsored by the command leaders and at which attendance may be mandatory. In contrast, faith community functions are designed in such a way that persons can self-select about whether or not to attend the function.

My earlier story about the retirement ceremony of a Navy dentist and my prayer is a very real and applicable example of this. A retirement ceremony is a command function which members of the command will be expected to attend. They have no choice but to be there. When I participated in that ceremony I was somewhat ignorant of the distinctions between command and faith community functions. The result was an oppressive religious ministry product that was inappropriate and lacked respect for the dignity of the intended recipient.

Conclusion

From my preceding statements it should be obvious that the landscape of religious ministry, to include religious pastoral care, is very complicated. Even considering the changing social and cultural environment, religious support within the United States military services always has been complicated. Today there are over 100 civilian religious organizations represented by clergy who serve as religious ministry professionals in the military branches. It is a challenge to create a service environment in which all chaplains and others can work together effectively. Simultaneously, military leaders, such as the chiefs of chaplains, are well aware of the ongoing need to respect the right of civilian religious ministry organizations to set the religious standards for the chaplains who are from their respective faith communities.

Faithful adherence to the tenets of the First Amendment, United States Code Title 10, service policy, and doctrine has been, is, and always will be a challenge. Service schools, to include the chaplain schools, must be very diligent and be given all necessary support in order to provide chaplain officers with the requisite training needed to navigate the emerging military landscape and simultaneously give nothing less than the finest religious ministry support to members of our military. It is my opinion that military chaplains may well be hampered in their responsibility to ensure the protection of First Amendment rights of all service members by enacting ill-advised law and policy changes. Thank you for providing me this opportunity to submit my testimony to you.

THE RIGHT REVEREND JAMES B. MAGNESS, D.Min., D.D.
 Bishop Suffragan for the Armed Forces and Federal Ministries
 The Episcopal Church



In March 2010 the House of Bishops of The Episcopal Church elected James B. Magness to be the VI Bishop Suffragan for the Armed Forces and Federal Ministries. In June 2010 at Washington National Cathedral he was consecrated as a bishop of the church. Bishop Magness' span of responsibility is for Episcopal chaplains and their congregations in the Department of Defense, the Department of Veterans Affairs and the Federal Bureau of Prisons. In January 2012 Bishop Magness was seated by the Presiding Bishop as the Canon for Federal Ministries of Washington National Cathedral. Since becoming a bishop he was appointed as the Vice-Chair of the Anglican Standing Committee for International Peace with Justice Concerns and has served the Presiding Bishop as her representative for a number of communion and international ecumenical engagements to include the Church of England, the Philippines, South Sudan and Israel & Palestine.

At the time of his election he was serving as the bishop's Canon for Mission and Diocesan Administration in the Diocese of Southern Virginia, Norfolk, VA. Prior to that in 2007 Bishop Magness had been the rector interim for Galilee Episcopal Church, Virginia Beach, VA. In this position he provided pastoral and transitional leadership to a parish of over 1200 members, enabling them to create a new and healthy vision for their future. In 2004 Bishop Magness joined the Diocese of Kentucky as the bishop's Canon to the Ordinary. His duties were to assist his bishop through being the director of diocesan staff, transition ministries officer and diocesan operating officer.

Bishop Magness retired from the U.S. Navy in 2004 in the rank of Captain, serving as Command Chaplain of U.S. Joint Forces Command and Fleet Chaplain for the U.S. Fleet Forces Command. Prior to those assignments, from 1997 to 2000 he served as the Navy Chief of Chaplains' Director of Personnel for the Navy Chaplain Corps. Bishop Magness first joined the Navy as an enlisted person in 1966. During his enlisted service he served aboard three Navy ships and spent one year serving as a member of a forward logistics command in the northern-most port of South Vietnam.

After his initial naval service he returned to his hometown of Hendersonville, N.C., married his wife, Carolyn, and took a position at a General Electric factory. Later he and Carolyn became students at Western Carolina University. They graduated in 1974, she with a Bachelor of Science in early childhood education and he with a Bachelor of Science degree in psychology and sociology.

A lifelong Episcopalian, he became intentional about the Christian faith during his undergraduate years when he began to sense a call to ordained ministry. After graduation while completing the ordination exploration discernment process in the Diocese of Western North Carolina, he worked for a Department of Labor affiliate as field director for two federal programs: Neighborhood Youth Corps and Operation Mainstream, a program for perennially unemployable disadvantaged adults. Later that year he commenced his initial theological studies at the Seminary of the Southwest in Austin, Texas, where he received a master of divinity degree in 1977.

Bishop Magness returned to North Carolina to serve in parish ministry in Edneyville and Flat Rock, N.C. During that time, he also joined the Naval Reserve as a chaplain. Three years later he returned to active duty in the Navy as a Chaplain Corp officer. In 1981 he completed a one-year clinical pastoral education residency year at Walter Reed Army Medical Center. Later on he spent two years in an exchange program with the British Royal Navy, working as a chaplain and priest for the Church of England. In 1999, he earned a Doctor of Ministry degree with a concentration in Christian leadership from Gordon Conwell Theological Seminary. In 2012 the Seminary of the Southwest awarded him the degree of Doctor of Divinity.

He has been married to his wife, Carolyn for over 40 years. During their relaxing moments he and Carolyn enjoy dancing the Carolina Shag. Jay also has a fondness for restoring classic cars, fly fishing and road running. They have two married daughters, Laurel and Rebekah, both of whom reside in Virginia.

**DISCLOSURE FORM FOR WITNESSES
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION**

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(5), of the Rules of the U.S. House of Representatives for the 113th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Committee on Armed Services in complying with the House rule. Please note that a copy of these statements, with appropriate redactions to protect the witness's personal privacy (including home address and phone number) will be made publicly available in electronic form not later than one day after the witness's appearance before the committee.

Witness name: The Rt. Rev. James B. Magness

Capacity in which appearing: (check one)

Individual

Representative

If appearing in a representative capacity, name of the company, association or other entity being represented:

FISCAL YEAR 2013

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
none			

FISCAL YEAR 2012

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
none			

FISCAL YEAR 2011

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
none			

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2013): none ;
 Fiscal year 2012: none ;
 Fiscal year 2011: none .

Federal agencies with which federal contracts are held:

Current fiscal year (2013): none ;
 Fiscal year 2012: none ;
 Fiscal year 2011: none .

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2013): none ;
 Fiscal year 2012: none ;
 Fiscal year 2011: none .

Aggregate dollar value of federal contracts held:

Current fiscal year (2013): none ;
 Fiscal year 2012: none ;
 Fiscal year 2011: none .

Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2013): none ;
Fiscal year 2012: none ;
Fiscal year 2011: none .

Federal agencies with which federal grants are held:

Current fiscal year (2013): none ;
Fiscal year 2012: none ;
Fiscal year 2011: none .

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2013): none ;
Fiscal year 2012: none ;
Fiscal year 2011: none .

Aggregate dollar value of federal grants held:

Current fiscal year (2013): none ;
Fiscal year 2012: none ;
Fiscal year 2011: none .

DOCUMENTS SUBMITTED FOR THE RECORD

JANUARY 29, 2014

Remarks By Chaplain (Major General) Douglas L. Carver, USA, Retired
Military Personnel Subcommittee On Armed Services, Washington, DC
January 29, 2014

Chairman Wilson, Ranking Member Smith, and distinguished members of the House Armed Services Military Personnel Subcommittee, thank you for the opportunity to testify today on the subject of Religious Accommodations in the Armed Forces. As a former United States Army Chief of Chaplains, and former Chairman of the Department of Defense Armed Forces Chaplain's Board, I speak today with extensive professional experience on this important topic and with a passionate obligation to ensure the unencumbered religious liberty of the members of the Armed Forces as guaranteed by the First Amendment to the United States Constitution.

I had the humble privilege of serving as an Army Chaplain for over 30 years, following in the proud tradition of our Nation's uniformed clergy who, for the past 239 years, have remained the greatest champions of religious freedom in support of our men and women in uniform.

I speak today in the rich legacy of military chaplains like Army Chaplain Emil J. Kapaun, a true servant of God, who was presented posthumously the Medal of Honor by President Obama on April 11, 2013, for his heroic actions in a North Korean Prisoner of War camp on November 1-2, 1950. For seven months, Chaplain Kapaun poured himself out in sacrificial and selfless service on behalf of his fellow prisoners without regard to their race, color, creed or religious beliefs. Denied

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medical care for his critical condition, he nursed the sick and wounded until he succumbed to his own wounds. Chaplain Kapaun's unselfish actions exemplified the important role military chaplains play as passionate advocates of religious liberty and religious accommodation for every service member under a chaplain's personal and pastoral care, regardless of their faith group.

To set the framework for my remarks today, I would like to share a few thoughts on the military chaplaincy in general; then, a few observations on the importance of religious accommodation; and finally, I would like to pose a few comments regarding the perceived state of religious accommodations and religions in today's Armed Services.

The United States Military Chaplaincy was birthed out of the American Revolution. Civilian clergy answered the Nation's call to duty, shedding their clerical robes and donning the uniform of the Continental Army, serving alongside troops from their surrounding communities. They provided their soldiers' weekly religious services, promoted their morale and morality, and were often called in to explain to them the sacred value of their political rights and liberties. General George Washington, Commander of the Continental Army, a staunch supporter of the chaplaincy and an advocate of "general, non-sectarian religion", argued for religious diversity among his chaplains to avoid theological disputes and religious discrimination. The concern for religious liberty within the Continental Army and the Nation was settled by the first two clauses of the First Amendment to the

Constitution: "Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof."

Since the establishment of the Armed Forces in 1775, military chaplains have successfully performed their religious duties within the constant tension of the Establishment and Free Exercise clauses. Military chaplains have effectively performed, provided, or facilitated religious services for all faith groups, advised military leadership on religious accommodations issues, and remained passionate advocates of religious diversity and freedom of religious conscience for our troops and their families, while balancing the tension between establishment and free exercise. That's 239 years of defending religious liberty in the Armed Services!

The Chaplaincy's success in this area is due in part by the way chaplains are appointed to military service. While the Department of Defense establishes appointment criteria for chaplains, denominational faith groups and ecclesiastical endorsing agencies credential and certify professional religious leaders they deem qualified for the unique ministry within a military environment. These religious leaders, in turn, consent to supporting the pluralistic requirements of the Armed Services while, at the same time, maintaining their respective faith group teachings and practices.

Military chaplains live in the constant tension of supporting the military's religious support mission to all members of the Armed Forces, and that of their respective endorsing agency. As commissioned officers, chaplains are accountable to the same military standards, the Code of Conduct, and the Uniform Code of

Military Justice as any service member. Additionally, they must also remain faithful to the tenets and ecclesiastical standards of their sponsoring faith group.

As the Executive Director of Chaplaincy for the North American Mission Board of the Southern Baptist Convention, I have the responsibility of ensuring that our approximately 1500 Southern Baptist military chaplains meet the standards for military service. At the same time, our denomination of over 14 million members and 45,000 churches expect the Armed Services to honor, respect, and defend the religious liberty and conscience of our pastors in uniform we have entrusted into their temporary care.

In regards to religious accommodation in the Armed Forces, it was my personal experience of 38 years as a commissioned Army officer that the military placed the highest value on ensuring the religious liberty of our troops that they had the complete freedom, in conjunction with the military mission, to observe the beliefs, rites, sacraments and practices of their individual religious experience or tradition. The Department of Defense has historically, although sometimes too lengthy and cautiously, taken extraordinary measures to approve religious accommodation requests unless the accommodation would have an adverse effect on unit readiness, individual combat readiness, unit cohesion, morale, discipline, safety and/or health. Our troops, and most Americans, understand the tension that exists between the religious needs of a service member versus military necessity. I applaud the Department of Defense's policy update on religious accommodation that was published last week. This new guidance will no doubt greatly assist our

military leadership in promoting religious diversity while reducing a perception of discrimination towards those whose religious practices or expressions are less familiar to our troops and the chain of command.

Obviously, a number of guiding principles are necessary to ensure the success DoD's religious accommodation policy in support of our troops. First, military commanders, who are primarily responsible for the religious support mission within their ranks, must remain vigilant, and knowledgeable, regarding any freedom of religion issue. Chaplains play a critical advisory role to their command and staff regarding all matters of religion. The chaplain is the only staff officer in a military organization that has the education, experience, and exposure to religious beliefs, practices, and cultural worldviews to properly advise military leadership in this foundational right as a service member and American citizen.

Second, service members of all ranks, including chaplains, must have the assurance that they may freely exercise their religious liberty, and that they are afforded religious accommodation, within the bounds of military necessity.

Third, military leaders should never use their position or authority to coerce or apply undue command influence in the area of religious liberty. DoD owes to every service member's faith group or religious tradition the protection, respect, and dignity it deserves and as guaranteed by the First Amendment. Further, no ecclesiastical group or denomination should be favored by the Armed Services more than others.

Fourth, military chaplains serve our Armed Forces primarily to perform or facilitate religious services for our troops. Chaplains should be encouraged and expected to preach, teach, pray, and counsel in accordance with their personal religious beliefs and in accordance with the dictates of their ecclesiastical organization or agency.

I conclude my remarks today with a plea for this committee to continue to protect and promote legislative efforts to ensure the freedom of religion, religious expression, and the religious conscience of the members of the Armed Services. Seventeenth Century theologian Roger Williams, and founder of the Providence Plantation colony, which provided a refuge for religious minorities in America, was a staunch proponent of “soul liberty” – the belief that every human being has the right to speak, hold, change, exercise, and share what you believe based on the dictates of one’s own conscience. I am concerned about the perceived tension, misinformation, and suspicion regarding an individual’s free exercise of religion and conscience while serving as a member of the Armed Services. Media reports over the last year would suggest that there exists within the Armed Forces a growing ignorance, insensitivity, or intolerance regarding matters of religion and its importance within the life of our troops and the organization. Even more disconcerting is the fact that one’s ignorance on such important matters as religious beliefs can quickly lead to misunderstanding, wrong perceptions, intolerance, and hostility towards those who act and think differently than the majority of the community. In the words of Os Guinness, in his book, The Global Square: Religious

Freedom and The Making of a World Safe for Diversity, “how we deal with our differences in public life, especially those regarding religion, will be a real defining issue for the future of our Nation – and humanity.” Religious liberty, in thought and expression, is the key to a strong and virtuous Armed Forces, a civil society, and social harmony. May we continue to respect, celebrate, and defend the religious liberty established by our Founding Fathers. And, may we strive to always maintain an environment within the Armed Services where our troops have the liberty to be intensely religious and, at the same time, religiously free.

CHAPLAIN (MG) DOUGLAS L. CARVER, USA, RETIRED

Chaplain (Major General) Douglas L. Carver, United States Army, Retired, left the active duty Army in September 2011 after serving 38 years of military service on behalf of our country. His last duty position was as the 22nd Army Chief of Chaplains at the Pentagon in Washington, DC, serving over 2900 chaplains who support the religious and pastoral needs of our 1.2 million soldiers and families. Appointed by the President of the United States to this assignment on July 12, 2007, he was the first Southern Baptist chaplain to be promoted to the position of Chief of Chaplains in more than 50 years. Chaplain Carver has served at every level of the Army, from Platoon to the Department of the Army Staff. As Command Chaplain of V Corps, United States Army- Europe, he deployed with the Corps to Iraq in 2003 where he served as the senior military chaplain in the combat theater.

A Distinguished Military Graduate from the University of Tennessee-Knoxville, he holds a Master of Divinity Degree from the Southern Baptist Theological Seminary in Louisville, Kentucky and a Master of Strategic Studies Degree from the United States Army War College in Carlisle, Pennsylvania. Additionally, he has been awarded honorary Doctorate degrees from Southwest Baptist University in Bolivar, Missouri and Shorter University in Rome, Georgia for his many years of distinguished service to our military and nation. Chaplain Carver is a member of the Order of Saint Barbara, an honorary military society of artillerymen. He is also a recipient of the Honorable Order of Kentucky Colonel.

Chaplain Carver currently serves as Executive Director of Chaplaincy Services for the North American Mission Board, providing professional and pastoral support to 3900 Southern Baptist Chaplains who minister in various institutional settings around the world. He also serves as a member of the Task Force on Conscience Protection at the Witherspoon Institute in Princeton, New Jersey, an independent research center that works to enhance public understanding of the religious foundations of free and democratic societies.

A native of Rome, Georgia, he and his wife, Sunny, have been married for over 38 years. They currently reside in Waxhaw, North Carolina near their two daughters and four grandchildren.

Chaplain (COL) Ronald A. Crews, USA (Ret.)
Chaplain (BG) Douglas E. Lee, USA (Ret.)
Chaplain Alliance for Religious Liberty
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House Armed Services Committee
2120 Raeburn House Office Building
Washington, DC

January 28 2014

RE: Religious Liberty in Today's Military

Thank you for the opportunity to present testimony concerning the impact of recent Department of Defense policies on religious liberty for service members in general and evangelical chaplains in particular.

By way of introduction, the Chaplain Alliance for Religious Liberty ("CALL") is a private, non-profit association that exists to protect religious liberty by ensuring that chaplains remain empowered to provide for the freedom of religion and conscience that the U.S. Constitution guarantees to all chaplains and those whom they serve. We speak on behalf of more than 2,700 uniformed chaplains, more than one half of all uniformed chaplains, across all branches of the military.

The military is a unique State institution that may, by law and by necessity, make uniquely comprehensive demands over individual service members that it cannot make over any other free member of society. The demands that the State is empowered to make can and often do infringe service members' liberties, including their constitutionally protected religious liberty. Our Nation has a history, though, of working hard to protect and accommodate military religious liberty, a tradition which has limited restrictions on service members' ability to live their faiths. Indeed, the military chaplaincy was established before the founding of our Nation precisely to ensure the free exercise of faith for all service members and their families. Thus, in keeping with the best of our national traditions, our military has long been a place where citizens could, as the Army Chaplain Corps' motto states, serve *Pro Deo et Patria*—for God and Country.

But our government has been retreating from that history of accommodation, enacting new policies without considering the harm to religious liberty and occasionally even taking affirmatively hostile actions toward faith. The vast majority of these blows to religious expression have come in the context of matters of sexual ethics, specifically homosexuality. The Obama Administration has quietly but steadily created a type of sexual orientation non-discrimination requirement for

the military. Further, the Administration has vocally adopted a pro-homosexuality position. Both broad developments have created conflicts with service members and chaplains who hold traditional religious views on marriage and sexuality: that sex is meant for marriage, and marriage means a union between a man and a woman.

Crucially, the conflict for chaplains has not concerned *whom* they serve but *how* they serve. Every chaplain is duty-bound to respectfully provide for the religious needs of all service members, including those who do not share or even oppose their beliefs. But chaplains must, as a matter of both law and conscience, make this provision while remaining distinct representatives of their faith groups, representatives who teach, preach, counsel, and advise in accordance with their faith group's beliefs. While there is no question chaplains will continue to serve all service members, there is increasing reason to be concerned that the government will not allow them the freedom to do that job as the Constitution requires. And that diminution in liberty will in turn harm the rights of those whom chaplains exist to serve: service members.

DISCUSSION

I. The military makes unique demands of its service members and has a unique system to provide for the religious liberty needs of its Service members.

To understand the current threat to military religious liberty, it is necessary to first consider the unique military context and the means by which the military accommodates its members' right to religious liberty.

A. The military's mission creates unique burdens on service members.

As the Supreme Court has explained, "the military is, by necessity, a specialized society separate from civilian society."¹ To accomplish its mission, the military "must insist upon a respect for duty and a discipline without counterpart in civilian life," an insistence that drills into every service member an "instinctive obedience, unity, commitment, and esprit de corps."² Far from the celebration of individual liberty that marks civilian society and our Nation's legal traditions, "the essence of military service 'is the subordination of the desires and interests of the individual to the needs of the service.'"³

¹ *Goldman v. Weinberger*, 475 U.S. 503, 506-07 (1986) (quoting *Parker v. Levy*, 417 U.S. 733, 743 (1974)).

² *Goldman*, 475 U.S. at 507 (internal citations and quotation marks omitted).

³ *Id.* (quoting *Orloff v. Willoughby*, 345 U.S. 83, 94 (1953)).

This military emphasis on service over self and on its vital mission creates unique stressors on service members: short-notice moves, personal stress from following demanding orders, lengthy separations from family, deployments to foreign countries with language and cultural barriers, and, perhaps most significantly, life-or-death decisions and actions.⁴ Further, not only does the military impose special obligations on its members, it also creates a special, set-apart community for them. “[U]nlike virtually all other professions . . . [the military] constitutes a distinct community, providing even in domestic bases virtually all facets of ordinary life: from housing, schools, and healthcare to shopping, recreation, and entertainment.”⁵ This set-apartness of mission and life means that “there is simply not the same [individual] autonomy” in the military “as there is in the larger civilian community.”⁶

An immediate consequence of this diminished autonomy is an attendant diminution in personal liberty, including religious liberty. “The military need not encourage debate or tolerate protest to the extent that such tolerance is required of the civilian state by the First Amendment,” which can mean the military need not accommodate even fairly benign religious conduct such as wearing unobtrusive religious apparel.⁷ Thus, in *Goldman v. Weinberger*, the Supreme Court rejected a Jewish service member’s claim that the Free Exercise Clause required the military to permit him to wear a yarmulke despite regulations to the contrary.⁸

B. The chaplaincy is the means of lifting much of the burden on religious liberty created by military life.

Although the military may, as a part of its mission, diminish some aspects of religious liberty, it may not extinguish it. Indeed, since the military can burden the religious free exercise of service members by, among other things, ordering them to go to regions of the world where their faith communities are not available to them, it is a “crucial imperative” that the government make provision for service members’ religious needs.⁹ And since before its birth, our Nation has admirably addressed this imperative via the establishment of the chaplaincy, a diverse and pluralistic body of

⁴ *Katcoff v. Marsh*, 755 F.2d 223, 226-34, 236-37 (2d Cir. 1985); accord Robert W. Tuttle, *Instruments of Accommodation: The Military Chaplaincy and the Constitution*, 110 W. Va. L. Rev. 89, 119 (2007) (“[T]he military presents service members with a range of stresses . . . that are unique, especially those related to participation in combat”).

⁵ Tuttle, *supra* at n.4, at 119.

⁶ *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005) (quoting *Goldman*, 475 U.S. at 507).

⁷ *Goldman*, 475 U.S. at 507, 509-10.

⁸ *Id.* at 510 (holding superseded in part by Congressional revision of the regulations, 10 U.S.C. § 774).

⁹ *Adair v. England*, 183 F. Supp. 2d 31, 51 (D.D.C. 2002).

officers.¹⁰ Without chaplains, the burdens of military life—particularly being compelled to move “to areas of the world where religion of [service members’] own denomination[] is not available to them”—would infringe service members’ rights secured under the Religion Clauses of the First Amendment.¹¹

To protect these fundamental human rights, chaplains go wherever service members go. They serve on military bases here in the U.S. and around the world. They serve during peace and they serve during wartime on the front lines. They nurture the living, care for the wounded, and honor the dead.¹² Among Army chaplains alone, nearly 300 have lost their lives in service to God and country.¹³

One of those chaplains—Chaplain Emil Kapaun—was posthumously awarded the Medal of Honor just last year for his service and sacrifice during the Korean War. Chaplain Kapaun exposed himself to enemy fire to care for wounded soldiers and drag them to safety; refused opportunities to escape from the enemy so he could continue to provide care; provided spiritual, physical, and moral support to his fellow captives; and continued to do so despite continuous and harsh punishment from his captors.¹⁴ One of Chaplain Kapaun’s last acts was to conduct a forbidden Easter sunrise service.¹⁵

Chaplains have continued that emphasis on providing for our service members through our modern wars today, joining service members in repeat deployments to Iraq and Afghanistan. But although chaplains serve the most religiously diverse organization in the world, they are not generic “religious” officers, but rather representatives of specific faith groups.¹⁶ This is necessary to ensure that service members of specific faith groups have chaplains from those specific faith groups to meet their religious needs.¹⁷ While the military must obtain chaplains to serve the

¹⁰ *Cutter*, 544 U.S. at 722 (identifying military chaplains as the means by which “the Federal Government[] accommodate[es] . . . religious practice by members of the military.”); *Katcoff*, 755 F.2d at 225 (noting that military chaplains have been protecting religious liberty since before our Nation’s founding).

¹¹ *Katcoff*, 755 F.2d at 234.

¹² See Army Field Manual 1-05, Religious Support (October 2012) at 10, available at http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/fm1_05.pdf (last visited April 19, 2013).

¹³ See U.S. Army Webpage on Chaplain (Capt.) Emil J. Kapaun, available at <http://www.army.mil/medalofhonor/kapaun> (last visited April 19, 2013).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *In re England*, 375 F.3d 1169, 1171 (D.C. Cir. 2004) (chaplains serve simultaneously as “a professional representative of a particular religious denomination and as a commissioned [military] officer.”) (citation omitted).

¹⁷ *Katcoff*, 755 F.2d at 232.

many specific faith groups represented within the military, it has neither the authority nor competence to determine whether an individual qualifies as a representative of a particular religious group. As the Supreme Court reiterated last year in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, “civil court[s]” should not “make . . . judgment[s] about church doctrine” and the importance of religious beliefs.¹⁸

Thus, the military must rely upon each specific faith group to endorse particular chaplains to act as its representative to the members of that faith group serving in the Armed Forces.¹⁹ If a chaplain ever ceases to faithfully represent his religious organization, the faith group can rescind its endorsement, at which point he ceases to be a chaplain and must generally be separated from the military.²⁰

To protect a chaplain’s role as a faith group representative, and thereby the chaplain’s usefulness to the military, Congress and the military have crafted safeguards to keep chaplains from being forced to engage in ministry activities that violate their faith group’s beliefs.²¹ For instance, Jewish chaplains need not (and cannot) conduct Mass for Catholic service members. That commitment to protecting the ability of service members and chaplains to serve their country without denying their faith was embodied recently in the passage of a law mandating the broad accommodation of religious belief.²²

¹⁸ 132 S. Ct. 694, 715 (2012) (Alito, J., concurring). See also *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1 n.31 (1947) (rejecting the notion that “the Civil Magistrate is a competent Judge of Religious truth” (quoting James Madison, *Memorial and Remonstrance Against Religious Assessments* (1785))).

¹⁹See DOD Instruction 1304.28, Guidance for the Appointment of Chaplains for the Military Departments (“DOD Instruction 1304.28”), Enclosure 2, § E2.1.7 (emphasis added).

²⁰See DOD Instruction 1304.28 at § 6.5 (stating that the process for separating the chaplain from service begins “immediately” upon the endorser’s withdrawal of endorsement).

²¹See, e.g., 10 U.S.C. § 6031(a) (“An officer in the Chaplain Corps may conduct public worship according to the manner and forms of the church of which he is a member.”) (statute for Navy chaplains); Air Force Instruction 52-101 § 2.1 (“Chaplains do not perform duties incompatible with their faith group tenets”); Army Reg. 165-1 § 3-5(b) (“Chaplains are authorized to conduct religious services, rites, sacraments, ordinances, and other religious ministrations as required by their respective faith group. Chaplains will not be required to take part in religious services, rites, sacraments, ordinances, and other religious ministrations when such participation would be at variance with the tenets of their faith.”).

²² See National Defense Authorization Act for Fiscal Year 2013 § 533, Pub. L. No. 112-239 (“§ 533”) (entitled “[p]rotection of rights of conscience of members of the Armed Forces and chaplains of such members.”).

II. Military religious liberty is facing a growing and unprecedented conflict.

Our Nation's effort to accommodate service members' religious needs has been remarkably successful and "follows the best of our traditions."²³ That tradition of accommodation has given wide latitude for religious freedom in the military—a latitude that is necessary to allow the broad practice of religious belief that faith requires. Religious believers exercise their faith "not only [via] belief and profession but [also] the performance of (or abstention from) physical acts," including religious associations, actively sharing religious beliefs with non-believers, and avoiding (or condemning) conduct understood as immoral.²⁴

Engaging in such expressions of faith is often a religious duty, one that particularly extends to protecting the institution of marriage and the family. Under the traditional Christian view, which is broadly supported across other religions, sex is permissible only within the context of marriage, and marriage exists only between a man and a woman. *See, e.g., Genesis 2:24, Matthew 19:5, 1 Corinthians 6:16.* The Supreme Court has both recognized and affirmed that view as "the sure foundation of all that is stable and noble in our civilization."²⁵ Over one hundred religious leaders, including those from CALL's faith groups and from other faith communities that supply the majority of Armed Forces chaplains, recently joined hundreds of thousands of other Americans and publicly acknowledged their firm religious duty to broadly protect that "sure foundation."²⁶

Thus, service members who share and chaplains who represent those beliefs must both live and express their faith group's teaching on the nature of marriage and family. When faced with circumstances that require them to treat any sexual union other than one between a man and a woman as the equivalent of marriage, such service members and chaplains will be required by conscience to abstain. To do anything less would be a failure of their duty to God and, for the chaplains, would destroy their role as religious representatives of their faith groups. But adhering to this basic and long-respected duty to God is growing increasingly difficult in the military.

²³ *Zorach v. Clauson*, 343 U.S. 306, 314 (1952) (praising the State's efforts to accommodate, and thus respect, the "spiritual needs" of citizens).

²⁴ *See Emp't. Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990).

²⁵ *See Murphy v. Ramsey*, 114 U.S. 15, 45 (1885) (lauding "the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony").

²⁶ *See* The Manhattan Declaration at 9, *available at* http://manhattandeclaration.org/man_dec_resources/Manhattan_Declaration_full_text.pdf (last visited Jan. 24, 2013).

A. Service members and chaplains are being punished for expressing their faith on marriage and the family.

Just a few years ago, it would have been unfathomable to discipline a service member or chaplain for respectfully expressing the view that marriage should be between a man and a woman or that sexual behavior should be reserved for marriage. Indeed, those expressions would have been (and in most ways still are) consistent with military, federal, and state constitutional, statutory, and regulatory law. But what was once unfathomable is becoming commonplace. Just in the weeks since this Commission's hearing, CALL has learned of situations where:

- A service member received a severe and possibly career-ending reprimand from his commanding officer for respectfully expressing his faith's religious position about homosexuality in a personal religious blog;
- An enlisted service member received career-ending punishment for sending personal invitations to his promotion party which mentioned that he would be providing food from Chick-fil-a due to his respect for the Defense of Marriage Act;²⁷
- A senior military official at Fort Campbell sent out a lengthy email officially instructing officers to recognize "the religious right in America" as a "domestic hate group" akin to the KKK and Neo-Nazis because of its opposition to homosexual behavior;²⁸
- An Army equal-opportunity officer gave a Power Point training presentation that listed "Evangelical Christians," "Catholics," and "Ultra-Orthodox [Jews]" as "Religious Extremist[s]" alongside the KKK and Al Qaeda.²⁹

Similarly, within the last two years, CALL knows of situations in which:

²⁷ See *Military Under Fire*, Marriage Anti-Defamation Alliance, March 8, 2013, at 3:50 to 4:20 available at <http://marriageada.org/military-under-fire/> (last visited April 17, 2013).

²⁸ See Todd Starnes, *The Army's List of 'Domestic Hate Groups'*, FOX News, April 10, 2013, available at <http://radio.foxnews.com/toddstarnes/top-stories/the-armys-list-of-domestic-hate-groups.html> (last visited April 17, 2013).

²⁹ See Nicola Menzie, *Evangelical Christianity, Catholicism Labeled 'Extremist' in Army Presentation*, The Christian Post, April 6, 2013, available at <http://www.christianpost.com/news/evangelical-christianity-catholicism-labeled-extremist-in-army-presentation-93353/> (last visited April 17, 2013).

- A chaplain was relieved of his command over a military chapel because, consistent with the Defense of Marriage Act's definition of marriage, he could not allow same-sex weddings to take place in the chapel;³⁰
- An enlisted service member was threatened and denied promotion by a senior NCO for expressing—during a personal conversation—his religious belief in support of traditional marriage;
- A chaplain who asked senior military officers whether religious liberty would be protected in the wake of the repeal of the law against open homosexual behavior in the military was told to “get in line” or resign;³¹
- A chaplain was pulled from receiving a previously scheduled career advancement because, during the legislative debate, he forwarded an email respectfully explaining the possible negative ramifications of repealing on the chaplain corps.³²

These attacks on religious liberty may be abated somewhat by the recently enacted statutory protections for service members' and chaplains' rights of conscience. The provision, § 533 of the 2013 National Defense Authorization Act, requires the military to “accommodate the . . . conscience, moral principles, or religious beliefs” of service members and chaplains and prohibits the military from using such beliefs “as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.” Unfortunately, the President has indicated his opposition to the conscience protections,³³ and the Secretary of Defense has only last week issued guidance in obedience to § 533's command that he “issue regulations implementing the protections afforded by this section.” Indeed, at a Congressional hearing last year that addressed military religious liberty concerns, the Secretary of Defense seemed to be entirely unaware of § 533.³⁴

At a minimum, the government must fulfill its statutory duty required by § 533. But even the most robust regulatory enforcement of § 533, and of similar laws guaranteeing military religious liberty, such as the Religious Freedom Restoration Act, will not be enough. As long as orthodox religious believers are being called

³⁰ See CALL Statement, *DADT Repeal Immediately Creates Major Problems*, available at <https://s3.amazonaws.com/media.gracechurches.com/downloads/Chaplain+Alliance/2012-09-17+Chaplain+Alliance+News+Release.pdf> (last visited April 17, 2013).

³¹ *Id.*

³² See *Military Under Fire*, *supra* at n.27, at 4:21 to 4:44.

³³ See Statement on Signing the National Defense Authorization Act for Fiscal Year 2013, 2013 Daily Comp. Pres. Docs. 00004, p. 1 (Jan. 2, 2013).

³⁴ See Todd Starnes, *Pentagon Grilled About Christians in Military*, FOX News, April 12, 2013, available at <http://radio.foxnews.com/toddstarnes/top-stories/pentagon-grilled-about-christians-in-military.html> (last visited April 18, 2013).

“domestic hate groups” and being compared to the KKK and Al Qaeda simply for their faith’s long-held beliefs about marriage and family, the military will be abandoning its duty to protect religious liberty for service members. This kind of poisonous climate—which is often mirrored in the culture at large through implicit and explicit comparisons between traditional religious sexual ethics and racism—should have no place in our military. Its continuation not only offends religious liberty, it threatens the unity and *esprit de corps* that is necessary to a functioning military.

B. The Supreme Court has made matters worse by judicially constitutionalizing same-sex marriage as a fundamental right and sexual orientation as a protected class.

As unacceptable as things have become since the repeal of Don’t Ask, Don’t Tell, since the Supreme Court’s decision that constitutionalized same-sex marriage, the situation has become far worse. Indeed, in requesting that the Supreme Court strike down DOMA based on a broad constitutional sanction of either same-sex marriage or sexual orientation as a suspect class, the United States argued that traditional sexual morality is animus-based, and has explicitly relied on the ruling against anti-miscegenation laws in *Loving v. Virginia*.³⁵

If traditional religious beliefs and practices on marriage and the family become the constitutional equivalent of animus-based racism, service members who order their lives around those beliefs and practices could be forced to choose between their faiths or their careers. Similarly, chaplains who represent CALL’s various faith groups could face tremendous pressure to self-censor when teaching about marriage and family, topics that are vitally important to fully meeting service members’ religious needs.

The reason for this is fairly simple: the military has no tolerance for racists, and so service members who are openly racist are not service members for long.³⁶ If traditional religious views on marriage and family become the constitutional equivalent of racism, the many service members whose traditional religious beliefs shape their lives will likely be forced out of the military.

The harm to military religious liberty would be felt in at least two broad ways. The first would be the weeding out of service members who hold traditional

³⁵ 388 U.S. 1 (1967). See Brief on the Merits for Respondent the Bipartisan Legal Advisory Group of the U.S. House of Representatives at 13, noting that the United States has argued that DOMA was enacted based on “animus.”

³⁶See, e.g., Sec’y of the Air Force Memorandum at 1 (condemning as intolerable discrimination on the basis of, *inter alia*, race, and instructing Airmen to oppose it); available at <http://www.af.mil/shared/media/document/AFD-110510-017.pdf> (last visited Jan. 24, 2013).

religious beliefs about marriage and the family. Service members are evaluated for promotion and retention via processes, such as Officer Evaluation Reports, which specifically ask whether the service member under consideration promotes the military's equal opportunity policy.³⁷ That inquiry may, for the first time, prove toxic for many devoutly religious service members since the Supreme Court held that traditional religious beliefs about marriage are irrational and impolitic. Even if nothing directly negative was put into such Reports, the lack of the superlative commendations that are necessary for advancement may be enough to permanently stall a service member's career. And in the military, if a service member is not on the way up, he is on the way out.³⁸ Thus, traditional religious service members and chaplains may slowly find their promotion ceilings decreasing, their range of service possibilities shrinking, and their careers ending.

The second form of negative pressure on religious may arise from situations where a service member's or, more often, a chaplain's military duty will force him into a direct conflict with his religious beliefs. The military's marriage-building programs stand out as particularly problematic for both commanding officers and chaplains. Congress authorized these programs to provide chaplain-led support for the marital relationship between active duty service members and their spouses.³⁹ Thus, for instance, the Army chaplaincy provides, with the full support of commanding officers, a marriage enrichment program known as Strong Bonds.⁴⁰ Strong Bonds courses instruct married couples on how to strengthen and renew their marital bonds. While Strong Bonds is not a religious program, its marital instruction is currently congruent with traditional religious beliefs about marriage as the union of one man and one woman, and Strong Bonds is protected by DOMA from having to run contrary to those beliefs.⁴¹ But that may almost certainly have to change since the Supreme Court forced same-sex marriage on the country. If marriage programs like Strong Bonds are bluntly restructured by this broad constitutional mandate to treat same-sex unions as the equivalent of marriages, many chaplains and commanding officers who personally administer the programs may face a direct conflict with their faith.

³⁷See Army Officer Evaluation Report at 2 (asking whether the evaluated officer "promotes dignity, consideration, fairness, and EO [i.e., equal opportunity]," available at http://armypubs.army.mil/eforms/pdf/A67_9.PDF (last visited Jan. 25, 2013); see generally Army Regulation 623-3, Evaluation Reporting System.

³⁸ See 10 U.S.C. § 632 (providing that, in most instances, an officer who twice fails to be selected for promotion must be discharged).

³⁹ See 10 U.S.C. § 1789.

⁴⁰See Army Strong Bonds Home Page, available at <http://www.strongbonds.org/skins/strongbonds/home.aspx> (last visited Jan. 24, 2013).

⁴¹See Rachel Swans, *Military Rules Leave Gay Spouses Out in Cold*, N.Y. Times, Jan. 19, 2013, http://www.nytimes.com/2013/01/20/us/gay-spouses-face-a-fight-for-acceptance-in-the-military.html?pagewanted=1&_r=1 (last visited Jan. 25, 2013).

This conflict illustrates a chaplain's complete willingness to serve whoever needs care, but not however the military demands. Chaplains represented by CALL want to minister to service members who are in same-sex sexual relationships on any number of issues, but they cannot treat those relationships as the equivalent of marriage without violating both their conscience and their endorsement.⁴² Since the constitution is now interpreted to mandate same-sex marriage, the military will probably be required to do the same with its marriage enrichment programs, with a likely result of forcing CALL's chaplains and those of faith groups with similar beliefs—together, half of military chaplains—out of an entire category of chaplaincy service.

Because their military and religious duties call them to express their religious beliefs regularly and in a number of different ways, chaplains may likely face a number of similar direct conflicts. For instance, chaplains may be disciplined for refusing to turn their worship services over to individuals who unrepentantly engage in sexual behaviors that the chaplains' faith group understands as immoral.⁴³ Chaplains may be punished for declining to privately counsel same-sex couples on certain matters relating to a couple's relationship⁴⁴ or for counseling them according to their faith group's traditional religious beliefs on marriage.⁴⁵ Chaplains with traditional religious beliefs who, as is commonplace now, are

⁴²See, e.g., Southern Baptist Endorsed Chaplains/Counselors in Ministry, Statement Regarding Ministry Expectations at 2, available at <http://www.namb.net/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=8590121959&libID=8590121973> (last visited Jan. 24, 2013) (statement by the NAMB, the military's largest endorser, that its chaplains may not participate in "marriage enrichment . . . training" if doing so would "endorse[] . . . homosexuality.") (last visited Jan. 24, 2013); *accord* Manhattan Declaration, *supra* at n.6 (confirming that religious believers cannot treat same-sex sexual unions as the equivalent of marriage).

⁴³See *Akridge v. Wilkinson*, 178 F. App'x. 474 (6th Cir. 2006) (upholding a prison's punishment of a prison chaplain for refusing to allow an openly homosexual prisoner to lead a worship service); *accord Phelps v. Dunn*, 965 F.2d 93 (6th Cir. 1992) (allowing a volunteer prison chaplain to be sued for refusing to permit an openly homosexual prison inmate to take a leadership role in chapel services).

⁴⁴See *Ward v. Polite*, 667 F.3d 727 (6th Cir. 2012) (addressing a government university's requirement that a counseling student violate her religious beliefs and affirm homosexual relationships); *Keeton v. Anderson-Wiley*, 664 F.3d 865 (11th Cir.2011) (same).

⁴⁵See Daniel Blomberg, *Mounting Religious Liberty Concerns*, Daily Caller, Aug. 6, 2010, <http://dailycaller.com/2010/08/06/mounting-religious-liberty-concerns-in-dont-ask-dont-tell-attack-grow-with-new-revelations-from-active-duty-chaplain/> (last visited Jan. 24, 2013) (recounting the experience of a U.S. military chaplain serving in a foreign military that recognizes same-sex marriage; the chaplain, after a private and amicable counseling discussion with one service member that briefly discussed the chaplain's religious beliefs on homosexuality, was threatened with punishment by a senior officer for expressing those beliefs).

required to advise their commander about questions of sexual ethics or to teach ethics courses at military schools, may be punished for expressing their convictions in those capacities. Chaplains, who are often entrusted with hiring civilians for military ministry positions such as Sunday School, may be punished if they continue to allow their religious beliefs to inform their hiring choices.

Even in the context of chaplains' performing religious services, where statutory and regulatory protections of religious liberty are at their height, it remains to be seen what would happen if the Commander-in-Chief decides to ban chaplains from sharing traditional religious views on marriage and family, as the Clinton administration did on the topic of partial-birth abortion.⁴⁶ Currently, such a restriction would violate the chaplains' free exercise and free speech rights guaranteed by a plethora of constitutional, statutory, and regulatory provisions. Yet after a sea change as fundamental as the constitutional redefinition of marriage, it is unclear whether those protections for religious liberty could trump what may be seen as the legal equivalent of racism.⁴⁷

Each of these direct conflicts injures not only chaplains, but also—and more importantly—those whom they serve. It cannot be overemphasized: *restrictions on chaplains are restrictions on the service members whom chaplains exist to serve*. If chaplains representing faith groups with traditional religious beliefs on marriage and family are removed from or kept from roles that, after a constitutional redefinition of marriage, would be prone to experiencing conflict—such as administering the Strong Bonds program—then they, the faith groups they represent, and the service members whose religious beliefs they serve will all see that as direct government hostility to their faiths. The Federal Government would effectively establish preferred religions or religious beliefs within the military.⁴⁸

This broad harm to military religious liberty is emphatically a result of judicially constitutionalizing a radical redefinition of marriage and family. By contrast, when CALL, along with numerous veteran chaplains and many other endorsing

⁴⁶In *Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997), the court held unconstitutional the Executive's attempt to censor chaplain sermons encouraging congregants to write Congress about pending legislation on partial-birth abortion.

⁴⁷Notably, in each of these instances where chaplains may face conflict, commanding officers may also be subject to punishment if chaplains cross the newly created constitutional lines. This is because it is commanders who are ultimately responsible for protecting the free exercise rights of service members under their command, and they use chaplains to fulfill that responsibility. See Army Reg. 165-1 §§ 1-6(c), 1-9. Indeed, to limit any vulnerability to perceived constitutional line-crossing by their chaplain-agents, some commanders may feel pressured to restrict chaplains even more than the constitutional rules require.

⁴⁸*Rigdon*, 962 F. Supp. at 164 (finding that a military policy allowing Catholics of one belief on abortion to share that belief while ordering Catholics of a contrary belief to remain silent impermissibly “sanctioned one view of Catholicism . . . over another.”).

organizations, raised similar religious liberty concerns during the debate about repealing 10 U.S.C. § 654,⁴⁹ Congress and the military had the capacity to respond with solutions. First, they determined that sexual orientation should not be treated as a protected class akin to race.⁵⁰ Second, Congress passed a statute ensuring that religious liberty must be protected and accommodated in the post-repeal military.⁵¹ Since the Supreme Court has declared same-sex marriage the law of the land, we are concerned that such compromise measures will be lost, as will the capacity for democratically derived protections of religious liberty in this area of the law.

C. One other issue: Meaning of Evangelize and ability of service members to share their faith

Last May the Department of Defense issued very troubling statements suggesting “proselytizing” by service members is impermissible harassment, without ever defining the term, “proselytize”. While the DoD eventually backed off, admitting that “evangelizing” is permissible; the Air Force never clarified a statement that making someone “uncomfortable” is a sufficient basis for shutting down “evangelizing.” Chaplains, as well as all service members who come from “Evangelical Traditions”, hold an obligation to share the “Good News” (the basic meaning of the word, Gospel) with others. While it is understood that respect for others and common decency of when to share and when to be silent must be followed, we remain concerned about this issue and await further guidance from the services on the meaning of these key words.

⁴⁹See Letter from Sixty-Six Veteran Chaplains on Religious Liberty Concerns with Repeal of 10 U.S.C. § 654, http://adfwebadmin.com/userfiles/file/DADTletter%209_16_10.pdf (last visited Jan. 24, 2013) (letter to President, Congress, and military from sixty-six veteran chaplains raising religious liberty concerns with repeal and urging adoption of broad religious liberty protections); see also Letter from Chaplain Endorsers on Hosting Same-Sex Weddings in Military Chapels <http://oldsite.alliancedefensefund.org/userdocs/ChaplainEndorsersLetter.pdf> (last visited Jan. 24, 2013) (letter from endorsing agents to Chiefs of Chaplains urging adoption of broad religious liberty protections in wake of repeal).

⁵⁰See, e.g., Report of the Comprehensive Review of the Issues Associated with a Repeal of “Don’t Ask, Don’t Tell” at 137, *available at* [http://www.defense.gov/home/features/2010/0610_dadt/DADTReport_FINAL_20101130\(sec-ure-hires\).pdf](http://www.defense.gov/home/features/2010/0610_dadt/DADTReport_FINAL_20101130(sec-ure-hires).pdf) (last visited Jan. 25, 2013) (“[I]n the event of repeal, we do *not* recommend that the Department of Defense place sexual orientation alongside race, color, religion, sex, and national origin as a [protected] class”).

⁵¹ See National Defense Authorization Act for Fiscal Year 2013 § 533, Pub. L. No. 112-239.

CONCLUSION

Our nation has a long and admirable history of celebrating and protecting the religious liberty of those who give their lives to protect ours. We must not abandon that heritage now. The military is duty-bound to take steps to remedy the current unfavorable climate for religious liberty. We ask the House Armed Services Committee to continue to advocate for religious liberty protections for chaplains and those they serve.

Respectfully,



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Chaplain Alliance for Religious Liberty



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Chaplain Alliance for Religious Liberty

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Written Statement

of

Maggie Garrett
Legislative Director

on Behalf of

Americans United for Separation of Church and State

Submitted to the

Military Personnel Subcommittee
of the
United States House Committee on Armed Services

for the Hearing on

“Religious Accommodations in the Armed Services”

January 29, 2014

On behalf of Americans United for Separation of Church and State (Americans United), we submit this written statement for inclusion into the record for the Military Personnel Subcommittee hearing on "Religious Accommodations in the Armed Services." We thank you for the opportunity to submit this testimony and for your consideration of our views.

Founded in 1947, Americans United is a nonpartisan educational organization dedicated to preserving the constitutional principle of church-state separation as the only way to ensure true religious freedom for all Americans. We fight to protect the right of individuals and religious communities to worship as they see fit without government interference, compulsion, support, or disparagement. Americans United has more than 120,000 members and supporters across the country.

Americans United fully appreciates the need and value of religious accommodations in the Armed Services. Yet, even as we support religious accommodations, we recognize the equally important and coextensive need to ensure that service members are not subject to coercive religious practices or unwanted proselytizing. Religious freedom means both the right to practice religion and the right to be free from government endorsement and coercion.

Today's hearing will investigate religious accommodations in the military. We believe that current laws, regulations, and policies are generally effective in this area.

Current Accommodation Policies Are Generally Effective

The Armed Services have long had policies governing the issues of religious accommodations. These policies have generally been effective at balancing service members' right to observe the tenets of their religion or of no religion at all; the requirements of military readiness, military cohesion, and good order and discipline; and the right of service members to be free from the government endorsement of religion. They have allowed service members of different religious beliefs and none at all, to serve together with respect and dignity.

In most situations where access to religious accommodations is denied, systematic changes and Congressional action are not needed. First, many recent high profile reports that the government has violated the religious exercise rights of service members are factually inaccurate or exaggerated. They range from debunked claims that the military plans to court martial service members who exercise their religion¹ to false claims that service members have been penalized for their views on marriage.² These false allegations are nothing more than political posturing and are both a disservice to the men and women who serve this country and a trivialization of their right to real religious accommodations. None of these questionable anecdotes justify systematic change to current policy.

Many of the other denials of religious accommodations are matters of the failure to enforce current policy rather than a defect in the policy itself. For example, there have been disturbing reports that some service members in same sex relationships have been denied access to the counseling, relationship education, and skills training for married couples that chaplains provide

¹ "Bloggers Say Pentagon May Court-Martial Christian Soldiers: Mostly False," available at <http://www.politifact.com/truth-o-meter/statements/2013/may/06/blog-posting/bloggers-say-pentagon-may-court-martial-christian-/>; "Court-Martialed for Sharing Religious Faith?" available at <http://www.factcheck.org/2013/05/court-martialed-for-sharing-religious-faith/>.

² Oriana Pawlyk, "AF: Religious intolerance claim unsubstantiated," *Military Times*, Oct. 11, 2013, available at <http://www.militarytimes.com/article/20131011/NEWS/310110013/AF-Religious-intolerance-claim-unsubstantiated>.

for other married couples.³ Under current military policy, chaplains may refuse to provide these services if prohibited by their endorsing agency; however, these chaplains must coordinate with another chaplain or qualified individual to provide these services in his or her place. But at some installations, the military is providing service members with no chaplain who can perform these services, denying same sex couples this important religious accommodation. Again, this specific concern does not require revising current policy, but rather ensuring that current policy is properly followed.

This is not to say that no systematic changes have been or are currently needed regarding religious accommodations. For example, a 2005 U.S. Air Force Academy report⁴ identified a troubling climate of religious intolerance and proselytizing. The Air Force worked through this problem by adopting new policies and mandating training to create a more welcoming and respectful atmosphere. We remain optimistic that, as additional problems of religious intolerance or endorsement are identified, they too can be resolved by working through them with the military.

Recent and Proposed Policy Changes

Religion in the military has been a hot topic in Congress recently. In the last two years, Congress has debated and adopted several provisions regarding religious accommodations, and the military has taken steps to implement some of the adopted measures.

Often these debates have been initiated by arguments that service members do not have enough opportunity to express, practice, and otherwise act upon their religion in the military. Unfortunately, the discussions often fail to consider the effect that overly permissive rules would have on the mission of the military and on other service members. The military teaches soldiers to respect their leaders and discourages challenging their orders.⁵ By necessity, dissent and debate have no role in the military.⁶ This atmosphere "presents particular dangers of coerced religious activities and the perception of religious endorsement."⁷

The Religious Accommodation Provision for Services Members in Section 533

In 2012, Congress adopted Section 533, "Protection of Rights of Conscience of Members of the Armed Forces and Chaplains of Such Members," which created a new law to govern religious accommodations in the military.⁸ In 2013—the very next year and before the 2012 law was even implemented—Congress amended this new standard by adopting Section 532.⁹ As it now reads, the provision requires the military to accommodate religious practice "unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline."¹⁰ This provision appears to strike a reasonable balance: it recognizes the realities of military service, the importance of accommodating religion, and the need to protect service members from coercive and unwanted proselytization.

³ Joe Gould, "Fort Irwin Backtracks on Denying Retreat to Same-Sex Couple," *Army Times*, available at <http://www.armytimes.com/article/20131122/NEWS/311220025/Fort-Irwin-backtracks-denying-retreat-same-sex-couple>.

⁴ U.S. Air Force, The Report for the Headquarters Review Group Concerning the Religious Climate at the U.S. Air Force Academy (June 22, 2005).

⁵ William J. Dobosh, Jr., *Coercion in the Ranks: The Establishment Clause Implications of Chaplain-Led Prayers at Mandatory Army Events*, 2006 Wis. L. Rev. 1493, 1525.

⁶ *Id.*

⁷ *Id.* at 1527-28.

⁸ Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, Section 533.

⁹ National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, Section 532.

¹⁰ *Id.* at Sec. 332.

Just last week, the Department of Defense (DOD) issued a new instruction to implement this language.¹¹ Response to the language relating to Section 532 from organizations that argued for this new "conscience provision" was generally positive. For example, the Family Research Council said that the "intent" of 533 "was to protect service members' freedom to practice and express their faith" and that the new instruction is "an important step forward in the effort to strengthen religious liberty protections in the military."¹²

Even though Congress has amended military policy in this area twice in the last two years and the groups that agued for its adoption are satisfied with the policy, there has already been discussion about changing this provision again this year. These proposals include language that would demand the accomodation of religious activity even at the cost of unit cohesion, good order, and discipline. Congress should not entertain these changes, as they would negatively affect unit cohesion and military goals.

Furthermore, changing this policy before allowing the military to actually effectuate it would be unwise. Rewriting the statutory language each year adds more confusion than clarity to the matter. And, it would be premature for Congress to act before the Inspector General of the DOD completes the congressionally mandated investigation regarding the implementation of the provision.¹³

Military Chaplains

Providing service members with military chaplains is one of the most prominent and important ways in which the military accommodates the religious practice of service members. Because of the nature of the military, service members without access to military chaplains might otherwise be denied the ability to practice their religion. But, also because of the nature of the military, it is important to ensure that chaplains do not subject service members to unwanted proselytizing or coercion to participate in religious services or activities. The role of a chaplain is to serve and facilitate a soldier's voluntary and desired religious practice. It is not to proselytize to or force religion onto service members. Chaplaincy is meant to support the faith of the service members, not the faith of the chaplain.

Military chaplains serve the dual role of providing worship services for their faith group and facilitating and serving the more diverse religious population in the military. Each service member has an equal right to practice his or her religion, yet the vast religious diversity in the military (nearly one-third of all members identify as non-Christian¹⁴) means that it is likely that a service member's assigned chaplain will not be of his or her exact faith community. Thus, military chaplains must agree that they will "serve a religiously diverse population,"¹⁵ "function in a pluralistic environment," and "support directly and indirectly the free exercise of religion by all members of the Military Service, their family members, and other persons authorized to be served by the military chaplaincies."¹⁶ Allowing chaplains to pick and choose who to serve is not only degrading to those whom the chaplain refuses to serve, but also denies them the

¹¹ Department of Defense Instruction No. 1300.17: Accommodation of Religious Practices Within the Military Services, (Jan. 22, 2014), *available at* <http://www.dtic.mil/whs/directives/corres/pdf/130017p.pdf>.

¹² Press Release Family Research Council, FRC Cautiously Optimistic on DOD's Instruction on Religious Expression (Jan. 23, 2014), *available at* <http://www.frc.org/newsroom/frc-cautiously-optimistic-on-dods-instruction-on-religious-expression>.

¹³ National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66.

¹⁴ Religious Diversity in the U.S. Military, Military Leadership Diversity Commission, Issue Paper No. 22, June 2010.

¹⁵ Department of Defense Instruction No. 1304.19: Appointment of Chaplains for the Military Departments, Sec. 4.2 (April 23, 2007).

¹⁶ Department of Defense Instruction No. 1304.28: Guidance for the Appointment of Chaplains for the Military Departments, Sec. 6.1.2, (Jan. 19, 2012).

opportunity to access religious services. Furthermore, such behavior threatens unit cohesion and good order.

This is not to suggest that military chaplains have no religious freedom rights of their own. The First Amendment and federal law offer them protection. And just last year, Congress passed a law making clear 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."¹⁷ Furthermore, current military policy allows chaplains to refuse to act in a way that violates their endorsing agency's rules of conduct. But when chaplains cannot perform certain services, they are expected to work cooperatively with other chaplains to ensure that the religious needs of these soldiers are met.

Recognizing this important dual role, military chaplains have fostered a reputation of putting the needs of their troops above themselves. The trust and respect what they've earned is based on the fact that they dutifully fulfill their special responsibilities without seeking to enlarge their own role or advance their own rights at the expense of others.

Unfortunately, there are efforts to disrupt the chaplain/service member relationship by allowing individual chaplains to proselytize and engage in sectarian activities ahead of the interests, rights, and needs of soldiers they are there to serve. This not only violates the Establishment Clause, but also threatens the unity and cohesion necessary for military effectiveness.

Sectarian Prayer at Public Meetings

The most obvious threat is the current efforts to allow chaplains to give sectarian prayers at official military events and ceremonies. Under current law and regulations, military chaplains are permitted to pray in a manner fitting their individual religious tradition in the worship services they lead for armed services members. But public prayers at compulsory events are different. Clergy do not have the right to proselytize to a captive military audience. Nor does requiring these prayers to be nonsectarian and inclusive burden the chaplains' religion, as chaplains can decline any invitation to give the prayer at these public events. But allowing such prayers would violate the constitutional rights of the service members whose attendance is required at these events. Service members have the right to attend such meetings, events, and ceremonies without unwanted proselytizing and coerced religious practices. Furthermore, requiring the prayers to be inclusive—rather than sectarian—respects military values: It respects the diverse religious views of our service members and facilitates unit cohesion.

Religious Diversity of the Chaplain Corps

Lack of diversity is another issue currently facing the Chaplain Corps. Although chaplains are required to serve all service members regardless of religion, the military should make efforts to provide a more diverse clergy corps in order to increase the possibility that a service member will have access to a chaplain of his or her own religion. As explained above, chaplains also oversee worship services. Increasing the diversity of chaplains would also increase the opportunities for those of minority faiths to engage in worship services or receive fellowship from a chaplain sharing their own faith.

Grooming and Appearance

Part of the new DOD Instruction implementing Section 532, discussed above, also included a process to allow service members to request accommodations for grooming and appearance

¹⁷ Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, Sec. 533.

requirements.¹⁸ According to the U.S. Commission on Civil Rights, the previous policy could “result in the unnecessary exclusion of Sikh Americans and Americans of other religious faiths from military service based on their religious beliefs manifested in their dress and grooming.”¹⁹ Others have voiced concern that the prior policy, in part, led to a shortage of Jewish chaplains in the military.²⁰ Accordingly, many have reacted with appreciation that a uniform policy was adopted. Yet many, including Americans United, are disappointed that too many obstacles still remain for these service members.²¹

The formalized process remains lengthy and, as each request will be decided upon a case-by-case basis, uncertain. It is also problematic that service members must apply for an accommodation upon each new assignment, transfer of duty stations, or other significant change in circumstances, including deployment.²² Also, the instruction states that those who make the request must “refrain . . . from beginning unauthorized grooming and appearance practices, [or] wearing unauthorized apparel . . . until the request is approved.”²³ But most service members needing such an accommodation cannot refrain from their religious practice while waiting for approval.

In the end, this policy will still fail to properly and practically accommodate many service members who need an appearance and grooming accommodation, preventing them from serving their country. The DOD should address these concerns so that Sikhs, observant Jews, and other adherents of minority faiths can serve their nation.

Conclusion

As explained above, ensuring religious freedom for service members is vitally important. The military must permit service members to exercise their religion yet also protect them from unwanted proselytizing and religious coercion. Many of the most vocal calls for increased accommodations need not be addressed by Congress at this moment. Instead, recent changes should be allowed to be given effect. Many of the other matters are likely to be resolved by the military itself. To be clear, there are some areas that do still need to be addressed by the military—protecting service members from religious coercion and proselytizing, ensuring that current policies are enforced, increasing the diversity of the Chaplain Corps, and improving policies regarding religious accommodations for grooming and appearance. But further efforts to expanding the newly adopted conscience clause and or allow chaplains to give sectarian prayers at meetings should be rejected.

¹⁸ Department of Defense Instruction No. 1300.17, *supra* note 11.

¹⁹ Letter from the U.S. Commission on Civil Rights to Secretary of Defense, Chuck Hagel, Dec. 3, 2013, *available at* http://www.usccr.gov/pubs/Letter_Sikh-Military-Service.pdf.

²⁰ Chris Carroll, “Pentagon Eases Rules on Waivers for Religious Grooming,” *Stars and Stripes*, Jan. 22, 2014, *available at* <http://www.stripes.com/news/pentagon-eases-rules-on-waivers-for-religious-grooming-1.263435>.

²¹ See e.g., Press Release, Sikh Coalition, Sikh Coalition Press Release (Jan. 22, 2013), *available at* <http://www.sikhcoalition.org>.

²² Department of Defense Instruction No. 1300.17, *supra* note 11.

²³ *Id.*



Written Statement of the American Civil Liberties Union

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Submitted to the House of Representatives
Subcommittee on Military Personnel
Committee on Armed Services

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Religious Accommodations in the Armed Services

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 thank you for giving us the opportunity to submit this statement for the record on “Religious Accommodations in the Armed Services.”

The goal of the ACLU’s work on freedom of religion and belief is to guarantee that all are free to follow and practice their faith, or no faith at all, without governmental influence or interference. Through litigation, public education, and advocacy, the ACLU promotes religious freedom and works to ensure that government neither prefers religion over non-religion, nor favors any faith.

The ACLU vigorously advances and defends religious freedom, which includes two mutually reinforcing protections: the right to religious belief and expression, and a guarantee that the government neither promotes nor disparages religion or any particular faith. Because of these protections, we are all free to believe, or not believe, according to the dictates of our conscience. Just in the last decade, the ACLU has brought over 100 cases defending the rights of individuals to exercise their religions freely. While over half of these cases were brought on behalf of those who are Christians, our work in this area knows no preference, just as the government’s should not.¹ The ACLU also advocates for laws that heighten protections for religious exercise.²

The hearing will examine an important topic facing the military today—religious accommodations. Laws and policies, including the newly revised “Accommodation of Religious Practices Within the Military Services,”³ guarantee religious liberty and allow for appropriate religious accommodations. As a result, religious liberty in the military is and remains protected.

Religious Accommodations in the Military

Religious liberty is one of our nation’s most cherished liberties. It guarantees us the freedom to hold any belief we choose and the right to act on our religious beliefs, unless those actions harm others. This is true for all Americans—including service members. The First Amendment to the Constitution protects service members’ religious liberty and they are all free to hold their sincerely held religious beliefs and can face no adverse consequences for those beliefs.

Longstanding policies and regulations have provided guidance on how to carry out these constitutional protections. Under these policies, people of different religious beliefs and none at all have served together in the military and treated one another with dignity and respect. They all share, and honorably uphold, their duty to protect and defend our nation.

Over the past two years, Congress has weighed in on the way the military has successfully navigated this issue for decades.

¹ ACLU Defense of Religious Practice and Expression, <http://www.aclu.org/aclu-defense-religious-practice-and-expression>.

² Examples of legislation we have supported include the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc – cc-5, and the Workplace Religious Freedom Act, S. 3686 (2012).

³ Dep’t of Defense Instruction 1300.17, “Accommodation of Religious Practices Within the Military Services.”

The Fiscal Year 2013 National Defense Authorization Act, as amended,⁴ put into effect in relevant part by the Department of Defense’s “Accommodation of Religious Practices Within the Military Services,” like most laws and regulations on accommodating religious practices, calls for an assessment of an accommodation and the effect it would have on important military objectives. The revised policy, implementing the provisions in the defense authorization bill, calls for an accommodation unless it could have an adverse impact on mission accomplishment, including military readiness, unit cohesion, good order, discipline, health, and safety. This necessarily includes an assessment of whether any particular accommodation of religious belief or conscience could result in discrimination or harm to others.⁵ Religious liberty—in the civilian and military context—has never been without limits, nor should it be. The recently enacted laws and revised policy embody this constitutional reality.

Some have called for accommodating religious practices unless doing so would actually harm military objectives. This kind of standard, though, would obviously undermine good order and discipline by tying commanders’ hands and prohibiting them from addressing threats to unit cohesion that any accommodation might create. This sort of standard would erect personal, social, and institutional barriers from which the military should be free and make it very difficult for commanders to remove such barriers when they do arise.

As with all laws and policies on accommodating religious practice, people affected may occasionally disagree with the assessment and the resulting denial or grant of an accommodation. Congressional attention on this issue over the last few years seems to have arisen out of reports asserting that some service members’ religious exercise has been curbed. But for every story on one side, there are stories on the other about service members being subject to unwanted proselytizing. Some of these anecdotes may indeed have been a result of overly broad or overly narrow religious accommodation. Often, though, these stories are misreported and sensationalized for other purposes.⁶

Yet, there have been systemic problems in the military with regard to religion and the military has responded by implementing important policy changes. One example is the Air Force Academy’s response to a report documenting an environment of religious intolerance and inappropriate proselytizing.⁷ The Academy has worked with outside experts to create a better

⁴ National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 533(a) (2013), amended by National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, § 532 (2013).

⁵ See Dep’t of Defense Instruction 1300.17 §4.h. (requiring consideration of “the importance . . . of putting unit before self” and “the effect on unit cohesion”).

⁶ See, e.g., Oriana Pawlyk, “AF: Religious Intolerance Claim Unsubstantiated,” *Military Times*, Oct. 11, 2013, available at <http://www.militarytimes.com/article/20131011/NEWS/310110013/AF-Religious-intolerance-claim-unsubstantiated>.

⁷ *Report of the Headquarters Review Group Concerning the Religious Climate at the U.S. Air Force Academy*, U.S. Air Force (June 22, 2005).

environment, including implementing mandatory training for cadets on religious respect and creating more inclusive worship spaces.⁸

One systemic issue the revised religious accommodation policy addresses is the difficulty some religious minorities face when volunteering to protect and defend our country. They have often been asked to give up obeying the requirements of their faith in order to serve. The military is stronger when service members can abide by the requirements of their faith—wearing, for instance, head coverings or a neat beard if obligated by their faith—when doing so does not undermine safety or other necessary objectives. The prior policy had permitted these sorts of accommodations, but attaining them has been extraordinarily difficult, sometimes requiring years of work.⁹ Under the revised policy, for the first time, there is a formal process for granting these religious minorities an accommodation to wear their articles of faith.¹⁰ The revised policy also contemplates that accommodations will be made for grooming, appearance, and body art, in addition to religious apparel previously covered by the policy.¹¹ We are, however, concerned that immediate commanders may not be able to grant requests for an accommodation,¹² that the revised policy’s heavy emphasis on “maintaining uniform military grooming and appearance standards”¹³ may unduly limit such accommodations, and that an accommodation granted is not valid for a service member’s entire commitment and must be resubmitted upon a new assignment or transfer of duty station.¹⁴ These aspects of the revised policy may continue to serve as hurdles for some religious minorities to serve their country.

Finally, the military has just revised its religious accommodation policy to reflect changes Congress has made over the last two years. This year’s defense authorization bill¹⁵ calls for an Inspector General report in eighteen months on the effect of the revisions. Congress should allow the military time to fully implement its revised policy and study how it works.

Military Chaplains

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. This is

⁸ *E.g.*, 2009/2010 Cadet & Perm Party Climate Assessment Survey, U.S. Air Force Academy (Oct. 29, 2010) available at <http://www.usafa.af.mil/shared/media/document/AFD-101029-013.pdf>; Don Branum, “Academy Air Officers Commanding Conduct Religious Respect Training,” *Academy Spirit*, Oct. 18, 2013, available at <http://www.usafa.af.mil/news/story.asp?id=123367610>; Dan Elliott, “Air Force Academy Calls Its Religious Climate Improved,” *Associated Press*, Dec. 17, 009, available at http://www.boston.com/news/nation/articles/2009/12/17/air_force_academy_calls_its_religious_climate_improved/.

⁹ *See, e.g.*, James Dao, “Taking On Rules to Ease Sikhs’ Path to the Army,” *N.Y. Times* at A9, July 8, 2013, available at <http://www.nytimes.com/2013/07/08/us/taking-on-rules-so-other-sikhs-join-the-army.html?pagewanted=1&adxnnl=1&adxnnlx=1390071647-SYe4hP7agr2sadWtwf/FgQ>; *see also* “Why Do Sikhs Want To Serve In The Military?” Interview with Maj. Kamaljeet Kalsi, Tell Me More, Nat’l Public Radio, Aug. 16, 2013, available at <http://www.npr.org/templates/story/story.php?storyId=212603796>.

¹⁰ Dep’t of Defense Instruction 1300.17 §4.f.1. – .2.

¹¹ *Id.*, §3.b. – .d.

¹² *Id.*, §4. f.1. – .2.

¹³ *E.g., id.*, §4.c.

¹⁴ *Id.*, §4.j.

¹⁵ National Defense Authorization Act for Fiscal Year 2014, § 533.

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.¹⁶

Military chaplains have two separate duties and attendant responsibilities. Chaplains must fulfill the duty to serve this religiously diverse population and must care for and facilitate the religious requirements of service members and their families who come from all faiths and none.¹⁷ This is in addition to serving as members of the clergy for their faith groups. All denominations and faiths that sponsor military chaplains agree to provide chaplains who will honorably fulfill the office's dual responsibilities.¹⁸

Chaplains' free exercise rights are, of course, protected by the First Amendment and federal law.¹⁹ Chaplains are not required to engage in practices that are contrary to their religious beliefs when performing their religious services. What this means for prayers, which have needlessly become controversial over the years, is that chaplains may close prayers according to their faith traditions when performing their religious services. Moreover, chaplains cannot be forced to violate their conscience in matters regarding their religious ministry and can refuse, for example, to perform prayers or marriage ceremonies that violate their religious beliefs.

But these laws do not give chaplains an affirmative right to ignore their other duties to serve equally all service members and their families. For more than two hundred years, military chaplains fostered a reputation for putting the needs of service members first. The trust in and respect for chaplains is based on their upholding their duty to serve fellow service members and not seeking to take advantage of their role by infringing on the rights of those they serve.

In recent years, there have been attempts by some to interfere with chaplains' roles and responsibilities. Allowing chaplains to proselytize and engage in sectarian prayer when carrying out their duty to care for and facilitate the religious requirements of all service members and their families would put the desires of individual chaplains ahead of the interests, rights, and needs of those they are required to serve. These efforts demonstrate a lack of respect for service members and the diversity of religious beliefs in our military.

When chaplains are performing their religious services, they have an almost unlimited opportunity to pray according to their own conscience and faith. Command functions, such as non-routine military ceremonies or events of special importance, are not, however, religious services. Commanders are constitutionally obligated to ensure that such functions are neutral with regard to religion and not used as an occasion to promote or disparage any religious belief. Service members attending non-voluntary events should not be forced to participate in sectarian prayers given by a chaplain.²⁰ Changes to chaplains' roles and responsibilities would interfere with commanders' obligation to ensure command functions are neutral with regard to religion.

¹⁶ *Religious Diversity in the U.S. Military*. Military Leadership Diversity Comm'n, Issue Paper No. 22 (June 2010).

¹⁷ *E.g.*, Dep't of Defense Directive 1304.19, "Appointment of Chaplains for the Military Departments," § 4.2.

¹⁸ *E.g.*, Dep't of Defense Instruction 1304.28, "Guidance for the Appointment of Chaplains for the Military Departments," § E.2.1.5.

¹⁹ *E.g.*, National Defense Authorization Act for Fiscal Year 2013, § 533(b) (2013); National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 544 (2011).

²⁰ See Bishop James Magness, "Military Chaplains: Religious Freedom in the Public Square," *Huffington Post*, Sept. 9, 2013, http://www.huffingtonpost.com/bishop-james-magness/military-chaplains-religi_b_3893789.html.

Indeed, religious liberty is alive and well in this country precisely because our government cannot tell us how or even whether to worship. Permitting military chaplains to proselytize and conduct sectarian prayer at all times would, thus, harm religious liberty and violate the Constitution.²¹

An ongoing concern regarding chaplains is the lack of training and resources available to enable them to serve one of the largest (and growing) groups of service members, non-theists and the religiously unaffiliated, or “nones.”²² Chaplains have the duty to serve everyone, even those of no faith.²³ In addition, because chaplains must advise the chain of command on matters of religious practice and accommodation,²⁴ they must thoroughly understand the belief systems of all service members they serve (just as they do for religious traditions other than their own).

A second concern regarding chaplains is whether there is adequate correlation between the religions of those serving as chaplains and the religions and belief systems of service members and their families.²⁵ Currently the Armed Forces contract for some chaplains and have no chaplains from some of the religions or beliefs held by the largest segments of service members and their families. While a perfect match will never be attained, in order to best serve service members and their families, undertaking efforts to recruit and approve those who seek to be chaplains from under-represented religions and belief systems would be greatly beneficial.

Lesbian, Gay, and Bisexual Service Members and Their Families

More than three years ago, the discriminatory “Don’t Ask, Don’t Tell” policy was repealed. Prior to its repeal, many argued that ending DADT would somehow harm service members and weaken military readiness and unit cohesion. That has not come to pass. In 2012, General James Amos, Commandant of the Marine Corps, said repeal had not been an issue²⁶ and according to a study, authored by professors at the U.S. Military Academy, U.S. Naval Academy, U.S. Air Force Academy, and U.S. Marine Corps War College, open service for lesbian, gay, and bisexual members of the Armed Forces “has had no overall negative impact on

²¹ See generally Robert W. Tuttle and Ira C. Lupu, *Instruments of Accommodation: The Military Chaplaincy and the Establishment Clause*, 110 W. Va. L. Rev. 87 (2007).

²² See *Religious Diversity in the U.S. Military* (finding Humanists (which included atheists and agnostics) comprised 3.61% of service members and 25.5% of service members identified as having no religious preference, with higher numbers among younger service members); Defense Manpower Data Center, “Pay Grade and Religion of Active Duty Personnel by Service (no Coast Guard)” (2009), http://www.dod.mil/pubs/foi/Personnel_and_Personnel_Readiness/Personnel/09-F-1173ActiveDuty_Religion_andPayGrade_byService_as_of_May_31_09.pdf (showing a larger number of atheists and agnostics than all those who listed minority faiths and all but a few Christian denominations; those identifying no religious preference constituted 20% of the total).

²³ The newly revised Department of Defense Instruction 1300.17 §4.a. states, “The DoD places a high value on the rights of members of the Military Services to observe the tenets of their respective religion or *to observe no religion at all.*” (emphasis added).

²⁴ E.g., Dep’t of Defense Directive 1304.19 § 4.1.

²⁵ The ACLU is concerned about the current structure of the chaplaincy itself, but broader reforms are outside the scope of this hearing. This paragraph, instead, recommends improvements to the current structure.

²⁶ E.g., Sydney J. Freedberg Jr., “Marines Must Live With ‘Good Enough’ As Budget Shrinks: Amos,” *Breaking Defense*, Aug. 28, 2012, <http://breakingdefense.com/2012/08/marines-must-live-with-good-enough-as-budget-shrinks-amos/>.

military readiness or its component dimensions, including cohesion, recruitment, retention, assaults, harassment or morale.”²⁷

There were also dire predictions about the chaplain corps—that vast numbers of chaplains would leave the military. A 2012 article reported, however, that only two or three active-duty chaplains left in the wake of DADT repeal.²⁸

In June 2013, Secretary of Defense Chuck Hagel recognized the important contributions of LGB service members:

Our nation has always benefited from the service of gay and lesbian soldiers, sailors, airmen, and coast guardsmen, and Marines. Now they can serve openly, with full honor, integrity and respect. This makes our military and our nation stronger, much stronger. The Department of Defense is very proud of its contributions to our nation's security. We're very proud of everything the gay and lesbian community have contributed and continue to contribute. With their service, we are moving closer to fulfilling the country's founding vision, that all of us are created equal.²⁹

In an August 13, 2013, memorandum, Secretary Hagel stated that “all spousal and family benefits . . . will be made available to same-sex spouses”³⁰ as required by the Supreme Court’s ruling striking down section three of the Defense of Marriage Act. In a memorandum from the same date, Acting Under Secretary of Defense for Personnel and Readiness Jessica Wright explained that the “Department will work to make the same benefits available to all spouses, regardless of whether they are in same-sex or opposite-sex marriages.”³¹

One benefit is the counseling, relationship education, and skills training for married couples (such as Strong Bonds in the Army). These programs are chaplain-led on behalf of commanders in order to build relationship resiliency.³² On September 5, 2013, the Chief of Chaplains of the Army issued guidance on implementation of the Strong Bonds program. Reiterating that the “Chaplain Corps upholds the Army Values and treats all Soldiers and Family Members with

²⁷ *One Year Out: An Assessment of DADT Repeal's Impact on Military Readiness*, Palm Center, Sept. 20, 2012, available at http://www.palmcenter.org/files/One%20Year%20Out_0.pdf.

²⁸ David Crary, “Air Force Chaplains Adjust to Gays Serving Openly,” *Associated Press*, July 5, 2012, available at <http://www.standard.net/stories/2012/07/05/air-force-chaplains-adjust-gays-serving-openly>.

²⁹ Remarks by Secretary Hagel at the Lesbian, Gay, Bisexual, Transgender Pride Month Event in the Pentagon Auditorium, June 15, 2013, <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=5262>.

³⁰ Sec’y of Defense, “Extending Benefits to the Same-Sex Spouses of Military Members,” Aug. 13, 2013, available at <http://www.defense.gov/home/features/2013/docs/Extending-Benefits-to-Same-Sex-Spouses-of-Military-Members.pdf>.

³¹ Under Sec’y of Defense for Personnel and Readiness, “Further Guidance on Extending Benefits to Same-Sex Spouses of Military Members,” Aug. 13, 2013, available at <http://www.defense.gov/home/features/2013/docs/Further-Guidance-on-Extending-Benefits-to-Same-Sex-Spouses-of-Military-M.pdf>.

³² E.g., Chaplain (LTC) Birch Carleton, “What Is Strong Bonds,” *Army News Service*, Dec. 16, 2010, http://www.strongbonds.org/skins/strongbonds/display.aspx?CategoryID=425d7e3b-254f-4a3b-bfd6-bf574faa967a&ObjectID=87957844-3dbc-4b70-af49-b60faa74ccdc&Action=display_user_object&Mode=user&ModuleID=f6c229ca-03ae-4c81-8d0a-81a5a0c208f9.

dignity and respect,” the guidance explained that “Soldiers and Family members may participate in Army programs without any restriction on the basis of sexual orientation, including Chaplain-led programs such as Strong Bonds.”³³

Following the Department of Defense announcement that spousal benefits must be available equally, some chaplains’ endorsing organizations have prohibited their chaplains from facilitating this benefit for same-sex married couples. The Army guidance says that if this happens, “the chaplain should coordinate with another chaplain or qualified individual who is conducting a Strong Bonds event that would include same-sex couples.”³⁴ There have been reports, however, that at one installation, no chaplains are able to conduct these events and that at other installations, couples have faced difficulty participating.

Counseling and relationship education assist commanders in building individual resiliency and increasing readiness of individual soldiers and their families. Thus, it must be available to all soldiers and their families equally. If chaplains cannot or will not lead the programs, it is the obligation of the command to ensure that the programs are available to all couples who want to attend. The military should address this issue sooner rather than later to avoid problems and ensure that this important program, which contributes to readiness, is available to all service members and their families.

Army Equal Opportunity Trainings

Over the past year, there have been a series of reports about presentations given by Army Equal Opportunity staff that contained information about “hate groups” and “religious extremism” that was unnecessary and potentially harmful to both civil liberties in the military and morale. The presentations attempted to describe what constitutes a “hate group” and “religious extremism” but identified numerous groups, religions, and causes, some of which may be controversial, but are entirely lawful and receive full constitutional protection. To the extent these trainings served to dissuade personnel from engaging in lawful associational or expressive activities, they raised serious concerns under the First Amendment.

On October 18, 2013, Secretary of the Army John McHugh issued a “Memorandum on Standardization of Equal Opportunity Training within the Army.”³⁵ We strongly support standardizing these programs of instruction and training plans, which we believe will help avoid the concerns that prompted the memorandum.

Soldiers reflect the great diversity of our nation—coming from myriad backgrounds with varied experiences and holding a multitude of political and religious beliefs. Army policies promote honorable service and a corps that treats all personnel with dignity and respect. Equal Opportunity training is a valuable means of accomplishing this. It is a way the Army can share its goals, beliefs, and values, including fair treatment and equal opportunity for all soldiers. It

³³ Army Chief of Chaplains, “Strong Bonds Events and Same-Sex Couples,” Sept. 5, 2013, *available at* <http://militaryatheists.org/news/wp-content/uploads/2013/09/OCCH-strongbonds-DOMA.pdf>.

³⁴ *Id.*

³⁵ Sec’y of the Army, “Memorandum on Standardization of Equal Opportunity Training within the Army,” Oct. 18, 2013, *available at* <http://downloads.frc.org/EF/EF13J55.pdf>.

also helps eliminate discriminatory behaviors or practices that undermine mutual respect and trust. But by presenting incorrect information that prompts criticism, the laudable goals of the entire Equal Opportunity program are unnecessarily put at risk.

Rather than rely on inconsistent material prepared through haphazard research, produced without command oversight or approval, the better course will be standardized programs of instruction and training plans. These should be developed in consultation with the General Counsel and experts inside and outside the military. This will further ensure that the presentations are not just consistent and carefully prepared, but that they are legally accurate, and as a result, better serve the Army's goals.

We believe the Army should consider three issues as it moves to standardize its training.

- First, when conducting Equal Opportunity trainings, especially regarding the Army's policy on participation in "extremist organizations and activities,"³⁶ it is essential to include specific instruction on the First Amendment rights of soldiers. Soldiers have a First Amendment right to associate freely, and the Army must be diligent to prevent interference with that right. To be sure, certain affinity groups espouse objectionable views. In practice, however, labeling an organization as a "hate group" or "extremist" is subjective and the results could be troublingly over-inclusive. The inherent vagueness of the terms will invariably sweep in organizations on both the left and right engaged in what some may view as controversial, but lawful and constitutionally protected, advocacy and association.³⁷ It also invites discriminatory and selective discipline by commanders, regardless of political or religious viewpoint, who object to the ideological or religious views of their subordinates.

Just as troubling, it necessitates a searching inquiry by commanders into the associational and expressive activities of their troops. To the extent an individual soldier's actions harm good order and discipline, interfere with mission accomplishment, or are criminal, the Uniform Code of Military Justice is well suited to address the issue. But no soldier

³⁶ Army Regulations define these terms as ones that "advocate racial, gender or ethnic hatred or intolerance; advocate, create, or engage in illegal discrimination based on race, color, gender, religion, or national origin, or advocate the use of force or violence or unlawful means to deprive individuals of their rights under the United States Constitution or the laws of the United States, or any State by unlawful means." U.S. Dep't of Army, Reg. 600-20, "Army Command Policy," §4-12(a).

³⁷ For instance, critics refer to groups advocating for religious liberty, including the separation of church and state as "hate groups." See Matt Schneider, "Tea Party Nation President: NAACP, DHS and ACLU are 'Liberal Hate Groups'," *Mediaite*, Dec. 30, 2010, <http://www.mediaite.com/online/tea-party-nation-president-naacp-dhs-and-aclu-are-liberal-hate-groups/>; Judson Phillips, "The Top Five Liberal Hate Groups," *Tea Party Nation*, Dec. 29, 2010, <http://www.teaparty.com/forum/topics/the-top-five-liberal-hate>; "Coulter: ACLU is 'America's Leading Anti-Christian Hate Group,'" *Media Matters*, Dec. 16, 2009, <http://mediamatters.org/video/2009/12/16/coulter-aclu-is-america-leading-anti-christian/158199>; Steve Bussey, "Religious Bigots & Hate Groups Attack Gov. Perry," Steve Bussey, Aug. 6, 2011, <http://bit.ly/16twhWG> (identifying the Secular Coalition for America and Americans United for Separation of Church and State as hate groups). Similar claims are frequently levied against some organizations, including Christian organizations, because of opposition to religious pluralism and religiously informed positions on issues like abortion or LGBT equality. The label is applied all too freely to disfavored and controversial groups, especially on the internet, which is why the soldiers' reliance on internet research that may be biased, disputed, or inaccurate as a primary source for content was particularly troubling.

should be punished for mere thought, no matter how deplorable, or membership in a lawful group, no matter how controversial.³⁸

- Second, the Army should take steps to ensure the presentation of information about religions, beliefs, and practices is done with sensitivity, objectivity, and a commitment to accuracy. According to reports, at least one of the presentations³⁹ mischaracterized and maligned religions and religious practices. This is just one in a series of examples of inaccuracy in military and law enforcement trainings⁴⁰ wherein some have even suggested that all adherents of a particular faith are the enemy.⁴¹ This undermines the goals of the Army's Equal Opportunity program. Indeed, the inclusion of inaccurate information undermines the opportunity in these trainings to inform commanders of their responsibility to provide appropriate accommodations of religious practices, such as time off for religious observance and allowances for dietary practices and wearing articles of faith.
- Third, we fear that the unnecessary and negative attention created by presenting inaccurate information jeopardizes other important Army goals and values. The Army strives to maximize human potential and to ensure fair treatment and equal opportunity for all persons based solely on merit, fitness, and capability in support of readiness. It seeks to eliminate personal, social, and institutional barriers that prevent anyone from rising to the highest level of responsibility possible. It also endeavors to maintain an environment that fosters dignity, mutual respect, and trust. The Armed Forces successfully transitioned to open service for lesbian, gay, and bisexual soldiers in the fall of 2011. Thus, in order to ensure that the goals of fair treatment and equal opportunity are inclusive of and apply equally to all soldiers, the Army should now explicitly add sexual orientation to its non-discrimination standards.⁴²

* * *

³⁸ When the Department of Defense first promulgated its policy permitting service members' membership, but limiting their participation, in "hate groups," the ACLU expressed concern that the policy may be overly broad. See "A.C.L.U. Criticizes Pentagon 'Hate' Group Policy," *U.P.I.*, Oct. 30, 1986, available at <http://www.nytimes.com/1986/10/30/us/aclu-criticizes-pentagon-hate-group-policy.html>.

³⁹ See presentation on "Extremism and Extremist Organizations," <http://www.adfmedia.org/files/ExtremismPresentation.pdf>.

⁴⁰ E.g., Spencer Ackerman, "FBI 'Islam 101' Guide Depicted Muslims as 7th-Century Simpletons," *Wired Danger Room*, July 27, 2011, <http://www.wired.com/dangerroom/2011/07/fbi-islam-101-guide/>.

⁴¹ E.g., Noah Schachtman & Spencer Ackerman, "U.S. Military Taught Officers: Use 'Hiroshima' Tactics for 'Total War' on Islam," *Wired Danger Room*, May 10, 2012, <http://www.wired.com/dangerroom/2012/05/total-war-islam/>.

⁴² This recommendation applies equally to all branches of the military and we urge that sexual orientation be added to the list of enumerated characteristics protected from discrimination under the Military Equal Opportunity Program.

Religious freedom in the United States—including in the military—includes two protections: the right to religious belief and expression, and a guarantee that the government neither promotes nor disparages religion or any particular faith. Because of these protections, we are all free to believe, or not believe, according to the dictates of our conscience. We must guard against using these freedoms and protected beliefs for political gain. Rather, we should cherish and safeguard them.

Please contact Legislative Counsel Dena Sher, 202-715-0829, dsher@aclu.org, for comment or questions.

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January 27, 2014

The Honorable Joe Wilson
 Chair
 Military Personnel Subcommittee
 House Armed Services Committee
 US House of Representatives
 Washington, D.C. 20515

Imagine a World Without Hate™

The Honorable Susan A. Davis
 Ranking Member
 Military Personnel Subcommittee
 House Armed Services Committee
 US House of Representatives
 Washington, DC 20515

Dear Chairman Wilson and Ranking Member Davis:

In advance of the January 29 House Military Personnel Subcommittee hearings on "Religious Accommodations in the Armed Services," we write to provide the views of the Anti-Defamation League (ADL) on this important issue. We would ask that this statement be included as part of the official hearings record.

The Anti-Defamation League

For more than a century, the Anti-Defamation League has been an active advocate for religious freedom for all Americans – whether in the majority or minority. The League has been a leading national organization promoting interfaith cooperation and intergroup understanding. Among ADL's core beliefs is strict adherence to the separation of church and state effectuated through both the Establishment Clause and Free Exercise Clause of the First Amendment. We believe a high wall of separation between government and religion is essential to the continued flourishing of religious practice and belief in America, and to the protection of all religions and their adherents.

To this end, ADL has filed an *amicus* brief in every major religious freedom case before the U.S. Supreme Court since 1947, as well as numerous briefs in lower appellate and trial courts. In Congress, we have played a lead role in working to enact significant religious freedom protection legislation, such as the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act. ADL is also one of the leading providers of diversity education in the United States, having impacted approximately 58 million students and educators, teaching them to respect – not just tolerate – differences.

Religious Freedom in the Armed Forces

The First Amendment guarantees every American the right to practice his or her religion freely without government interference. As one of the essential institutions in American society, it is critically important that America's military be especially attentive to ensuring the religious freedom of its servicemen and women. Our military is a prime example of how Americans of many faiths can come together to serve and protect America, regardless of their differences. One dramatic illustration of the extraordinary religious diversity in the military is the listing of more than 50 "Available Emblems of Beliefs for Placement on Government Headstones and Markers" (included at the end of this statement) available to the families and friends of fallen soldiers at the Web site of the Arlington National Cemetery.^[1] During their years of military service, therefore, we certainly should be equally committed to honoring the religious beliefs and practices of our soldiers, sailors, and airmen.

¹ <http://www.cem.va.gov/cem/docs/emblems.pdf>

Members of the US Armed Services must not be discriminated against on the basis of their religion. And our nation's honored military training universities – the US Air Force Academy, West Point, and the Naval Academy – bear a special responsibility to avoid religious coercion and to respect the rights of religious minorities guaranteed by the Constitution. Further, our military academies have an important opportunity and responsibility to instill in our service personnel core democratic values, including those embodied in the First Amendment's religious freedom clauses.

Charges of religious harassment and unwelcome proselytizing are especially disturbing in the context of the command structure within the military and our nation's service academies. Instructors, officers, and upper class cadets have virtually absolute command authority over their students and subordinates, creating a unique potential for undue pressure on an individual to conform in order not to jeopardize his or her military career. Officers must find a way to reconcile their personal religious views with their leadership responsibilities. They should not abuse their command positions to advance or favor their own religious views or religion generally. Americans who choose military service should have the freedom to practice their religion – or no religion – without pressure to conform to the belief system of their commanding officers in order to gain acceptance or promotions up the ranks.

In recent years, there have been periodic problems with proselytizing and the appearance of official government sponsorship of one particular religious perspective by military officials. One egregious example occurred in 2007 when a promotional video produced by the Washington-based evangelical organization Christian Embassy came to light. The video featured effusive endorsements of the evangelizing work of the Christian Embassy staff by a number of high-ranking military officials who appeared on camera in their uniforms – some apparently in their Pentagon offices. This promotional video gave the appearance of government endorsement of these evangelical Christian views and suggested, at least, Pentagon cooperation with Christian Embassy evangelizing work.

A July 20 2007 report by the Department of Defense Inspector General [2] found that seven military officers violated various military regulations in connection with their appearance in the video:

The seven officers participated in interviews with Christian Embassy, excerpts of which were also included in the promotional video. The officers were filmed during the duty day, in uniform with rank clearly displayed, in official and often identifiable Pentagon locations. Their remarks conferred approval of and support to Christian Embassy, and the remarks of some officers implied they spoke for a group of senior military leaders rather than just for themselves. None of the officers sought or received approval to participate in the interview in an official capacity or in uniform. The overall circumstances of the interviews emphasized the speakers' military status and affiliation and implied they were acting within the scope of their official positions as DoD spokespersons. Based on these circumstances, we concluded the officers violated JER Sections 2635.702(b), "Appearance of governmental sanction," and 3-300.a. on personal participation in non-Federal entities; DoD Directive (DoDD) 1334.1, "Wearing of the Uniform"; and Army and Air Force uniform standards.

Military Chaplains

Over the past decade, the issue of permissible prayer by military chaplains has become, needlessly, a highly partisan and divisive issue. In the past two years, legislative proposals by some Members were prompted by disputed assertions about the effect the repeal of the military's ill-conceived and discriminatory "Don't Ask, Don't Tell (DADT)" policy would have on service members and chaplains with dissenting religious views.

We have also witnessed efforts by some Members to enact legislative language to promote and facilitate explicitly sectarian prayer by chaplains at official military ceremonies and events, including those at which attendance is mandatory. Such efforts show a lack of respect for the diversity of religious beliefs in our military and threaten to erode unit cohesion. As Holly Holtman, General Counsel for the Baptist Joint Committee for Religious Liberty, has written, "...an important corollary of the military's duty to

2 http://www.dodig.mil/FOIA/ERR/Xtian_Embassy_072707.pdf

accommodate service members' rights to exercise religion is its obligation to protect members from religious coercion."^[3] Members of Congress should not seek to encourage military chaplains to disregard First Amendment protections guaranteed by the Constitution.

Military chaplains most often minister to those of their own faith, but they are also called upon to the support the activities of service members and their families who come from other faith traditions, beliefs, and backgrounds. Under current law and regulations, military chaplains are already absolutely permitted to pray in whatever manner they choose privately or while performing the divine worship services they lead for their own faith adherents where attendance is voluntary. There are also, properly, no restrictions whatsoever on chaplains offering their personal faith to service members who come to them, seeking their support, guidance, and counsel. On rare occasions when a chaplain is called upon to solemnize a large-group setting or "command ceremony" where attendance by military personnel of many different faiths – or no faith – may not be voluntary however, chaplains should pray in a more inclusive manner. If an individual chaplain does not feel comfortable offering a non-sectarian, inclusive prayer in such a setting, he or she should have the right to refuse to participate without negative consequences.

Although there have been periodic problems, the vast majority of chaplains clearly recognize that it is common courtesy to pray in as inclusive a manner as one's faith tradition permits when praying during a non-religious multi-faith gathering, particularly when attendance is compulsory.

Legislation approved by Congress earlier this year appears to strike the right balance. The 2014 Department of Defense Authorization measure ^[4] updates and strengthens current law on conscience rights for military personnel.

Section 532 of the new law, "Enhancement of Protection of Rights of Conscience of Members of the Armed Forces and Chaplains of Such Members," sets out an appropriately-balanced religious accommodation standard:

Unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate individual expressions of belief of a member of the armed forces reflecting the sincerely held conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such expressions of belief as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.

The new law also includes a welcome provision, Section 533, requiring the Department of Defense Inspector General to investigate and report on adverse personnel action based on conscience, moral principles, or religious beliefs. In the midst of conflicting assertions on the nature and magnitude of alleged restrictions of this kind, this report should be helpful. Another clarifying provision in the new law, Section 534, requires the Secretary of Defense to conduct a survey of a statistically valid sample of military chaplains to assess whether the reasonable restrictions placed on sectarian prayers offered by chaplains for public or non-religious ceremonies or events have prevented them from exercising the tenets of their faith.

Support for Progress Towards Full Equality for LGBT Servicemen and Women.

We welcome the very significant progress the military has made toward full LGBT equality following the repeal of the detrimental and exclusionary "Don't Ask, Don't Tell" (DADT) policy against gay and lesbian Americans.

³ Hollman Report, Report from the Capital: July/August 2013 Vol. 68 No. 7
http://www.biconline.org/index.php?option=com_docman&task=cat_view&gid=32&dir=DESC&order=date&Itemid=76&limit=6&limitstart=0

⁴ <http://www.gpo.gov/fdsys/pkg/BILLS-113hr3304enr/pdf/BILLS-113hr3304enr.pdf>

Despite oft-repeated, dire claims that repeal would dramatically impact recruitment, retention, mission readiness, and religious freedom in the military, the most in-depth and authoritative scholarly study [5] of the first year after repeal documents that the repeal of DADT "... has had no overall negative impact on military readiness or its component dimensions, including cohesion, recruitment, retention, assaults, harassment or morale..... In fact, greater openness and honesty resulting from repeal seem to have promoted increased understanding, respect and acceptance."

Secretary of Defense Chuck Hagel deserves praise for his leadership in this transition time. ADL was especially pleased that Secretary Hagel announced his directive to ensure that same-sex spouses at National Guard facilities would be extended the same benefits as other married military families at ADL's annual meeting and Centennial celebration on October 31, 2013 in New York City. [6] Responding to efforts by several states to refuse to issue Department of Defense ID cards, and the benefits that come with them, to same-sex spouses at National Guard facilities in violation of those states' obligations under federal law, Secretary Hagel directed the chief of the National Guard Bureau to take immediate action and meet with Adjutants General from those states where benefits are being denied to ensure that all comply with the new policy.

Spotlight on a Case: Religious Coercion and Harassment at the US Air Force Academy (USAFA)
The Anti-Defamation League has been most active in investigating and responding to what was described as a climate of religious intolerance for members of minority religions at USAFA which came to light in 2004 and 2005. The Air Force opened an investigation and its June 22, 2005 "Report of the Headquarters Review Group Concerning the Religious Climate at the U.S. Air Force Academy" [7] confirmed many of ADL's concerns and those raised by cadets, staff chaplains, civilian observers, and military personnel – finding that a persistent pattern of religious intolerance existed at the Academy, and that change was necessary. The Review Group report clearly recognized that a "religious climate" and "perception of religious intolerance" existed at the Academy, and that that climate has festered as a result of a "lack of awareness over where the line is drawn between permissible and impermissible expression of beliefs."

Importantly, beyond identifying then-existing problems at the Academy, the report offered substantive recommendations for reform, including the establishment of clear policy guidelines for commanders and supervisors regarding inappropriate religious expression, a plan to promote increased awareness of and respect for cultural and religious differences, and internal controls and corrective actions to ensure that the Air Force provides a climate of religious tolerance for all staff and cadets. The report and recommendations were not limited to USAFA, but were applicable to the entire Air Force.

The House Armed Services Subcommittee on Military Personnel held hearings on the religious climate at the U.S. Air Force Academy on June 28, 2005, [8] and the League submitted a statement for the record, raising concerns about instances of inappropriate proselytizing at USAFA and making several recommendations that USAFA, other military service academies, the U.S. Air Force, and all branches of the military should take to address these issues.

Our statement described the fact that ADL's own research into the climate at the USAFA over many months revealed complaints of a pervasive presence of undue proselytizing and religious harassment, endorsed or at least tolerated by the members of the USAFA administration and command structure. We had received strong evidence of an ongoing problem of inappropriate evangelizing and entanglement of

5 One Year Out: An Assessment of DADT Repeal's Impact on Military Readiness, Palm Center, September 20, 2012 http://www.palmcenter.org/files/One%20Year%20Out_0.pdf

6 http://www.adl.org/press-center/c/remarks-by-secretary-of-defense-hagel.html#.UnPSq_msiSo

7 http://www.foxnews.com/projects/pdf/HQ_Review_Group_Report.pdf

8 http://commdocs.house.gov/committees/security/has179020_000/has179020_0.htm

religion and training at the Academy. In addition, we described complaints our office had received about insensitivity to Jewish dietary observances and religious holidays, and instances of religious slurs and anti-Semitism directed to Jewish cadets.

And our statement clearly indicated what was at stake:

Today's cadets are America's officers of tomorrow, who will be commanding troops from a variety of religious backgrounds. US military officers are representatives of our nation, and it is vital that they understand that our country does not promote any particular religion. As American officers, they must model our nation's respect for minority faiths and beliefs and uphold the Constitution's protection for freedom of religion.

Finally, we offered our assistance to USAFA to provide our unique expertise in anti-bias education and training and in addressing church-state separation and religious liberty issues as it implemented programs to help ensure a respectful and inclusive environment on campus. We stated that, if implemented effectively, the USAFA programs promoting religious respect and appreciation for religious diversity among all cadets and staff members could provide a model for the entire U.S. military.

And that is exactly what has happened.

The League's concerns led to meetings with then-Superintendent Lt. Gen. John W. Rosa Jr. at the Academy and top Air Force and Department of Defense officials in Washington. When Lt. General Rosa addressed ADL's National Executive Committee in Denver in June 2005, he acknowledged that a problem of religious intolerance existed and pledged that the Academy was working toward a "culture change" through education and training. ^[9]

Our offer of assistance was accepted by then-Superintendent Rosa – and each successive Superintendent has demonstrated a commitment to improve the religious climate for cadets and permanent staff at USAFA. ADL's partnership work with USAFA has been based on the belief that the best way to address many of the religious respect issues is through education and training. To that end, ADL has worked with chaplains and Judge Advocates General at USAFA to develop and deliver training and resources to cadets to help promote understanding about their rights and responsibilities related to religious freedom and on ways to avoid future problems. ADL and the chaplain's office continue to work on developing other sessions on different aspects of religious respect for cadets in each year of their education at USAFA.

While there is still work to be done, with the assistance of ADL and others, we believe the religious climate at USAFA has greatly improved. Since 2005, the Academy has taken a number of positive, productive steps to address the religious climate, including:

- > developing a campus-wide calendar listing religious holidays and explaining what accommodations may be needed for cadets and staff members who observe those holidays;
- > convening conferences on religious respect, as a way of receiving input from non-military representatives of a variety of religious groups;
- > creating a Commander's Tool Kit to address issues of religious respect and accommodation that may arise in their unique command setting; and
- > working with ADL and other organizations to develop and implement religious respect training, with a focus on recognizing First Amendment rights and the need for religious accommodation, which is delivered to all cadets during each of their four years at USAFA.

⁹ http://www.adl.org/misc/gen_speech.asp

Importantly, in the years since the original proselytizing and religious coercion allegations at USAFA, Air Force officials have, understandably, paid considerable attention to crafting clear guidance on these issues for Airmen. In August 2012, the Secretary of the Air Force incorporated thoughtful and comprehensive guidance into a directive, Air Force Instructions 1-1, [10] highlighting Air Force core values, culture, and policy regarding the "professionalism and standards expected of all Airmen."

2.11. Government Neutrality Regarding Religion. Leaders at all levels must balance constitutional protections for an individual's free exercise of religion or other personal beliefs and the constitutional prohibition against governmental establishment of religion. For example, they must avoid the actual or apparent use of their position to promote their personal religious beliefs to their subordinates or to extend preferential treatment for any religion. Commanders or supervisors who engage in such behavior may cause members to doubt their impartiality and objectivity. The potential result is a degradation of the unit's morale, good order, and discipline. Airmen, especially commanders and supervisors, must ensure that in exercising their right of religious free expression, they do not degrade morale, good order, and discipline in the Air Force or degrade the trust and confidence that the public has in the United States Air Force.

2.12. Free Exercise of Religion and Religious Accommodation. Supporting the right of free exercise of religion relates directly to the Air Force core values and the ability to maintain an effective team.

2.12.1. All Airmen are able to choose to practice their particular religion, or subscribe to no religious belief at all. You should confidently practice your own beliefs while respecting others whose viewpoints differ from your own.

2.12.2. Your right to practice your religious beliefs does not excuse you from complying with directives, instructions, and lawful orders; however, you may request religious accommodation. Requests can be denied based on military necessity. Commanders and supervisors at all levels are expected to ensure that requests for religious accommodation are dealt with fairly.

All service branches should adopt strong guidance on government neutrality towards religion and religious accommodation.

New Department of Defense Instruction on Religious Accommodation

On January 22, 2014, the Department of Defense published updated and revised Instructions on "Accommodation of Religious Practices Within the Military Services." [11] The new guidance describes policy, procedures, and responsibilities for the accommodation of religious practices in the Armed Forces, stating:

The DoD places a high value on the rights of members of the Military Services to observe the tenets of their respective religions or to observe no religion at all.

The guidance appropriately provides broad protection for an individual's religious speech and expression:

In so far as practicable, a Service member's expression of sincerely held beliefs (conscience, moral principles, or religious beliefs) may not be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.

¹⁰ <https://app.box.com/s/lf5j2wnjafp9hbf0uig8>

¹¹ <http://www.dtic.mil/whs/directives/corres/pdf/130017p.pdf>

And the guidance properly states that a request for religious accommodation should promptly be granted if it will not affect mission accomplishment:

Requests for religious accommodation will be resolved in a timely manner and will be approved when accommodation would not adversely affect mission accomplishment, including military readiness, unit cohesion, good order, discipline, health and safety, or any other military requirement.

While we appreciate the attempt, the guidance is disappointing and we urge that it be amended. It falls short in not providing a sufficient accommodation for some fundamental aspects of minority religious practice of some aspiring soldiers, including observant Jews and Sikhs. For example, the guidance lays out a formal process so that Jewish and Sikh soldiers, for example, may request an accommodation for their required head coverings – a kippah or a turban – and incorporates grooming standards that provide a path for approval of their beards. However, each soldier must still request an individual, case-by-case accommodation under the guidance – a daunting prospect for some, with an uncertain outcome. In the name of "...maintaining uniform military grooming and appearance standards," the effect is to exclude some who would otherwise welcome the opportunity to serve their country in the military. These observant individuals do not have the option to "refrain...from beginning unauthorized grooming and appearance practices, [or] wearing unauthorized apparel" during the pendency of the authorization approval process.

Further, the guidance requires a repeat of the accommodation request for every "new assignment, transfer of duty stations, or other significant change in circumstances." While we appreciate the fact that the Jewish yarmulke is explicitly used as an example of apparel that "may be worn with the uniform whenever a military cap, hat, or other headgear is not prescribed," it would be better to presumptively permit these grooming and garb accommodations, or to substantially streamline the approval process, with decisions *not* to accommodate being the exception.

This presumptive approval process is much more in line with the requirements of Section 508 of Public Law 100-180, "Wearing of Religious Apparel by Members of the Armed Forces While in Uniform," which presumptively permits "neat and conservative" items of religious apparel unless the wearing of the item "would interfere with the performance of the member's military duties."

The promulgation of this guidance does provide an important opportunity for the Department of Defense and all the service branches to make their religious accommodation guidance uniform.

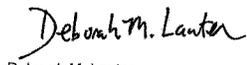
Conclusion

Safeguarding religious freedom requires constant vigilance, and it is especially important to guard against one group or sect seeking to impose its religious doctrine or views on others. As George Washington wrote in his famous letter to the Touro Synagogue in 1790, in this country "all possess alike liberty of conscience." He concluded: "It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support."

The same command structure that provides unique pressure to conform within the military – and potential for inappropriate proselytizing and religious coercion – also makes the direct involvement of the Pentagon's leadership in promoting effective, uniform guidance and solutions to this problem critically important.

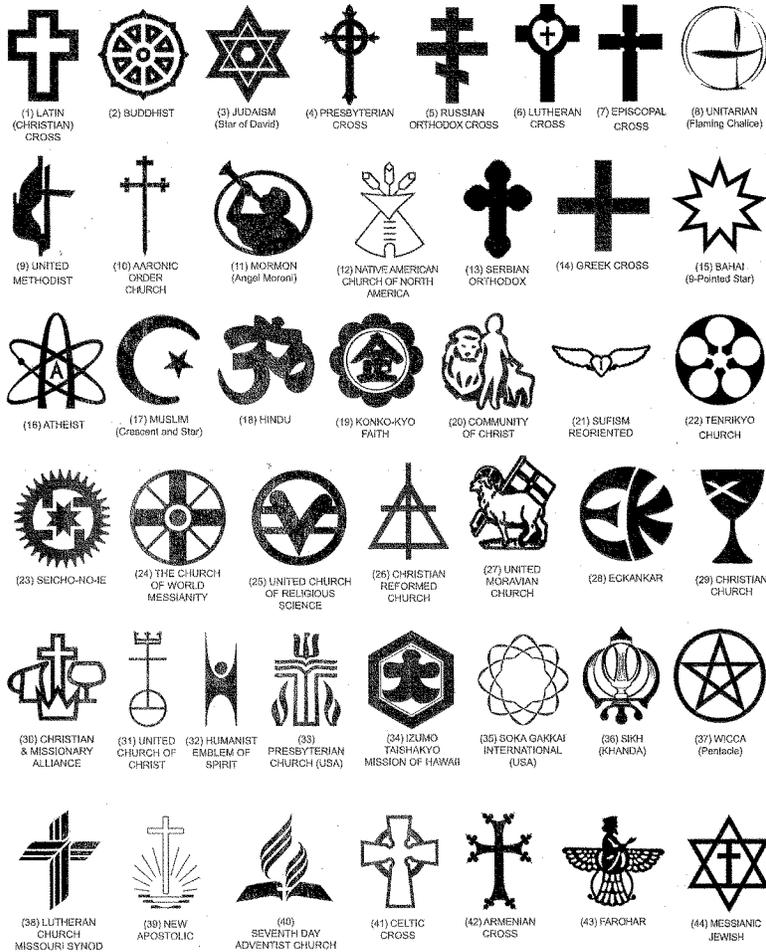
Thank you for conducting these important hearings and for your consideration of the views of the Anti-Defamation League. We welcome the opportunity to provide further information and resources on this issue of high priority to our organization.

Sincerely,

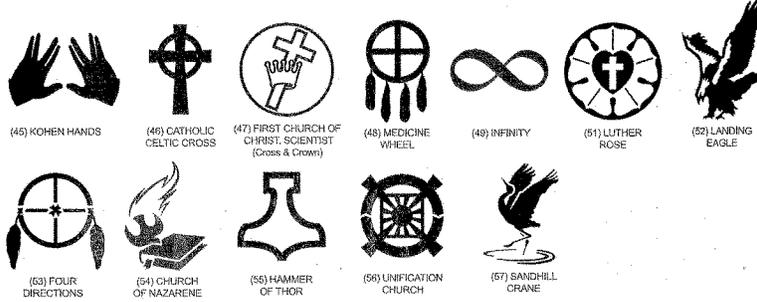

Deborah M. Lauter
Director, Civil Rights


Michael Lieberman
Washington Counsel

AVAILABLE EMBLEMS OF BELIEF FOR PLACEMENT
ON GOVERNMENT HEADSTONES AND MARKERS



AVAILABLE EMBLEMS OF BELIEF (CONTINUED)



Emblem (98) MUSLIM (Islamic 5-Pointed Star) is not shown due to copyright.

July 2013



**Statement for the Record from the Sikh Coalition
House Armed Services Committee
Subcommittee on Military Personnel
U.S. House of Representatives
Hearing on Religious Accommodations in the Armed Services**

January 27, 2014

The Honorable Joe Wilson
Chairman
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Washington, D.C. 20515

The Honorable Susan A. Davis
Ranking Member
Military Personnel Subcommittee
House Armed Services Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Wilson and Ranking Member Davis:

The Sikh Coalition respectfully submits this statement for the record in connection with the above-referenced hearing before the House Armed Services Committee, Subcommittee on Military Personnel. We request that this statement be included as part of the official hearing record.

By way of background, the Sikh Coalition is the largest Sikh American civil rights organization in the United States. We were constituted in the aftermath of 9/11 to address hate violence and discrimination against Sikhs throughout the United States. The Sikh religion was founded by Guru Nanak over five centuries ago in South Asia and is presently the fifth largest world religion, with more than 25 million adherents worldwide and approximately 500,000 followers in the United States. At core, Sikhs believe that there is one God and that all human beings are created equal, regardless of distinctions such as their religion, race, sex, or caste. Devout Sikhs are distinguished by visible religious articles, including religiously-mandated turbans and unshorn hair, including unshorn facial hair.

While the Sikh faith is committed to upholding freedom, justice, and dignity for all people, Sikhs in the United States have been subjected to unusually high rates of hate crimes, school violence, and employment discrimination. In addition, devout Sikhs are presumptively barred from service in the U.S. military.

For this reason, we welcome the U.S. Department of Defense's openness to revising Instruction Number 1300.17 to better accommodate the religious practices of its Service members.¹ Nonetheless, the Sikh American community is deeply concerned that the revisions – while recognizing the importance of religious liberty to our nation's Service members – still retain a presumptive ban on Sikh articles of faith in the U.S. Armed Services and will therefore continue to have a chilling effect on religious liberty for aspiring Sikh American Service members.

We respectfully request that the U.S. Armed Services fully demonstrate its commitment to religious freedom by further revising the Department of Defense Instruction and/or issuing implementing regulations to **presumptively allow Sikhs to serve with their articles of faith.**

In this statement, we provide information on Sikhs, the history of Sikh Service members and their achievements in the U.S. Armed Forces, the history of military policies regarding religious accommodations as applied to Sikhs, and our concerns about the amended Instruction.

I. Sikh Articles of Faith

Sikhism is a monotheistic religion with over 25 million followers worldwide. It is the fifth largest religion in the world, founded by Guru Nanak over 500 years ago in Punjab, South Asia. Sikhism preaches a message of devotion, remembrance of God at all times, truthful living, equality between all human beings, and social justice.

Sikhs wear an external uniform to bind them to the beliefs of the religion. Unlike some other faiths, where only the clergy maintain religious articles on their person, all Sikhs are required to wear external articles of faith. These articles of faith, such as unshorn hair and the turban, distinguish a Sikh and have deep spiritual significance. Maintaining uncut hair, including an unshorn beard, is an essential part of the Sikh way of life; one cannot be a practicing Sikh without it. The Sikh Code of Conduct, called the Rehat Maryada, outlines the requirements for practicing the Sikh way of life. The text prohibits the removal of hair from the body as one of four major taboos, another being adultery. The fact that cutting one's hair is a moral transgression as serious as committing adultery speaks to the immense significance of uncut hair to the Sikh religion. The Rehat Maryada also mandates that Sikhs wear a turban.² Unlike a hat, a turban must always cover a Sikh's head. The turban reminds a Sikh of his or her duty to maintain and uphold the core beliefs of the Sikh faith, which include working hard and honestly, sharing with the needy, and promoting equality and justice for all. When a Sikh ties a turban, the turban ceases to be simply a piece of cloth and becomes one and the same with the Sikh's head. It is a religious commitment without which the believer ceases to be a Sikh.

Historically, uncut hair and turbans have been central features of the Sikh identity. In the 18th century, Sikhs in South Asia were persecuted and forced to convert their religion; the method of conversion was to remove a Sikh's turban and cut off his hair. Since then, denying a Sikh the right to wear a turban and maintain unshorn hair have symbolized denying that person the right to belong to the Sikh faith, and is perceived by followers as the most humiliating and hurtful physical injury that can be inflicted upon a Sikh.

II. Sikhs in the U.S. Armed Services

The Sikh community has a long and robust tradition of military service, from the time of the religion's founding in the early 16th century to the present. Tales of Sikh courage and valor date back at least as far as their defeat of the Afghan Pathans in 1813 at the Battle of Attock.³ Sikh soldiers famously defeated the British at the Battle of Chillianwala in 1849 before being overpowered six weeks later by superior British weapons.⁴ Sikh soldiers soon became "among the sturdiest and trustiest men of the British army,"⁵ with a group of 21 Sikhs famously repulsing an attack by thousands of Afghans for six hours at the Battle of Saragarhi in 1897,⁶ and with approximately 100,000 Sikhs – a disproportionately high number among Indian

volunteer soldiers – fighting for the British in World War I.⁷ More than 83,000 Sikh soldiers died, and over 109,000 were wounded for the Allied cause during both World Wars.⁸ Five Sikhs were awarded the Victoria Cross for their bravery in these wars.⁹ Observant Sikhs still serve with their articles of faith intact in militaries around the world, most notably in India, Canada, and the United Kingdom.

The first observant Sikh on record to serve in the U.S. Army, Bhagat Singh Thind, was recruited in 1918 to fight in World War I.¹⁰ He was discharged honorably and given an “excellent” character rating.

Later in the 20th century, observant Sikhs served in the U.S. Armed Services in the Vietnam, Korean and Persian Gulf Wars.¹¹ Sergeant Kirinbir Grewal served from 1977 to 1984 at the E6 level as a Nuclear, Biological, and Chemical NCO and instructed companies on how to survive nuclear and biological attacks. Sergeant Sevak Singh Kroesen served from 1976 to 1991 with the Signal Company, 11th Special Forces Group, where he completed paratrooper, Radio Teletype Transmission Operator, and Special Forces Qualification training as well as serving overseas.

Major Parbhur Singh Brar is an ophthalmologist who served in the U.S. Army from December 1978 to October 1981. He was commissioned as a Reserve Officer, but then moved to Active Duty and was stationed at Ft. Eustis in Newport News, Virginia.

Colonel Gopal S. Khalsa joined the Army as a private in 1976 and continues serving in the Reserves. While on active duty, Colonel Khalsa served in the Special Forces Unit for 10 years on Parachute Status, and as a Battalion Commander overseeing an 800-person intelligence group. He received a Meritorious Service Medal with Silver Oak Leaf Cluster Award, among many other honors.

Colonel Gurbhajan Singh, a dentist, served from 1979 until 2007. During his 28-year tenure, Colonel Singh was stationed across the United States as well as in Korea. He was awarded several honors, including the “A” Prefix, the U.S. Army Medical Department’s highest award for professional excellence.

Colonel Arjinderpal Singh Sekhon, a medical doctor, served from 1984 until 2009. During his 25 years of commissioned service, Colonel Sekhon was stationed across the country. During the First Persian Gulf War, he was called to active duty and served stateside as a doctor at the United States Army Hospital in California. He rose through the ranks to Colonel and was given a Battalion Commander position, through which he oversaw a unit of 600-700 soldiers. Before retiring from service, he was decorated with various awards, including a Presidential Unit Citation, Joint Meritorious Unit Award, and an Army Flight Surgeon Badge.

In 1981, the Department of Defense changed its uniform and grooming policies, which effectively prohibited turbaned and bearded Sikhs from serving in our military. Despite this, in 2009, Major Kamaljeet Singh Kalsi, a physician specializing in emergency and disaster medicine, became the first Sikh to receive a religious accommodation for his articles of faith since the policy change. Major Kalsi joined the U.S. Army Reserves in 2001 and began active duty in July 2010 and then deployed to Afghanistan in 2011. He was awarded a Bronze Star Medal and promoted upon his return. In support of the award, an official recommendation

from Major Kalsi's superiors cited his resuscitation back to life of two patients who were clinically dead on arrival; his expert emergency care of over 750 soldiers and civilians; coordination of five mass casualty exercises; and his general "commitment and leadership above and beyond that of his general duties."¹² Upon returning stateside, Major Kalsi served as medical director to the largest stateside EMS directorate in the Department of Defense at Fort Bragg, North Carolina.

Captain Tejdeep Singh Rattan, a dentist, entered active duty in January of 2010 after receiving a religious accommodation. In 2011, he was deployed to Afghanistan where he volunteered to serve in a remote forward operating base. While deployed, he accounted for approximately 25% of all dental procedures performed throughout the 673rd Dental Company. He was awarded an Army Commendation Medal for his "outstanding performance, technical expertise, and unwavering commitment to mission accomplishment in a hostile environment," and a NATO Medal for defusing a tense confrontation with Afghan civilians.

Corporal Simran Preet Singh Lamba began active duty in August 2010. Fluent in Punjabi and Hindi, he was recruited for his cultural and language skills. He serves in a medical battalion as a Soldier Medic. Corporal Lamba is known for his dedication, enthusiasm, and initiative. One of his superiors noted that "he has been instrumental in helping others to accomplish their own personal and professional goals by setting the example for others to emulate." In recognition of his excellent service thus far, in September 2013, he received what the media called a "rare" promotion from Specialist to Corporal.¹³

All of these Sikhs served or are serving honorably in the U.S. Army with their articles of faith, including their turbans and unshorn hair and beards, intact. Their articles of faith did not in any way prevent them from accomplishing their military and professional objectives, nor did they interfere with the forging of strong bonds with their fellow soldiers and supervisors. To the contrary, these soldiers have been recognized for their superior service to their country.

III. The Military's Approach to Religious Accommodations for Sikh Service Members

Sikhs were allowed to serve with their turbans and unshorn hair and beards through the 1970s in the U.S. Army¹⁴ But in 1981, the Army reversed its policy and removed the exemption for Sikhs and other religions, citing "slippery slope" concerns with allowing exemptions to the uniform policy for multiple religious groups.¹⁵

The issue of religious exemptions to Army headwear and facial hair regulations was litigated at least twice after the 1981 policy change – one suit was brought by an Orthodox Jewish rabbi, and the other by a practicing Sikh. In *Khalsa v. Weinberger*, the Ninth Circuit Court of Appeals agreed that forcing a Sikh man to cut his hair constituted a significant burden on the free exercise of his religion.¹⁶ However, the court determined that the question of Army appearance regulations was nonjusticiable, noting that "Appellant expresses understandable concern that if the Army prevents him from enlisting and the courts refuse to review that decision, he will be deprived of any means whatsoever of challenging the Army's appearance regulations. It is true that his only recourse may be through the political process..."¹⁷

The following year, the Supreme Court held in *Goldman v. Weinberger* that military policy prohibiting the wearing of a yarmulke under military headgear was not subject to strict

scrutiny, despite the First Amendment issue clearly raised by the prohibition.¹⁸ Similar to the Army's current concerns with allowing observant Sikhs to serve, the Court expressed its concern with overriding the military's determination of what is necessary to "foster instinctive obedience, unity, commitment, and esprit de corps."¹⁹

Given that the judiciary has deferred the issue of religious exemptions to the other branches of the government, respect for religious freedom within the military must either come from within the military itself or be encouraged by congressional statute. In response to the decision in *Goldman v. Weinberger*, 10 U.S.C.A. § 774 was enacted into law, permitting military Service members to wear religious apparel that is "neat and conservative" and that does not "interfere with the performance of the member's military duties."

Following political pressure and congressional action that provided for the wearing of religious apparel with military uniforms, the Department of Defense issued a Directive in 1988 to ensure accommodation of religious apparel in all branches of the military.

The Directive, which has now been replaced by the Amended Instruction as of January 22, 2014, allowed members of some faiths to remain faithful to their religious practices while in uniform, but they did not allow observant Sikhs to serve with their articles of faith intact.²⁰ The former Directive allowed selected Service members to "wear visible items of religious apparel while in uniform, except under circumstances in which an item is not neat and conservative or its wearing shall interfere with the performance of the member's military duties."²¹ "Religious apparel" was defined as "articles of clothing worn as part of the doctrinal or traditional observance of the religious faith practiced by the member."²² However, the Directive did not include "[h]air and grooming practices required or observed by religious groups" in its definition of "religious apparel" or anywhere in the document.²³

Under this former Directive, only three practicing Sikhs were granted revocable and limited religious accommodations to serve in the U.S. Army with their Sikh articles of faith – and only after significant advocacy, pro bono legal representation, and Congressional support.

IV. The Revised Department of Defense Instruction

The Department of Defense revised its Instruction with respect to religious accommodations on January 22, 2014. The revised Instruction addresses some of the gaps in its predecessor. For instance, under the revised Instruction, Service members may now officially request accommodations to religious grooming and appearance practices, including hair, unless the accommodation will "adversely affect military readiness, unit cohesion, good order, discipline, health and safety, individually and on the unit level."²⁴

While the amended Instruction indicates a new openness to accommodating religious articles of faith, it nevertheless fails to provide adequate accommodations to Sikh Service members and will continue to deter new Sikh recruits.

For instance, the amended Instruction does not presumptively allow Sikh and many other types of religious headwear and beards, but instead provides that all religious accommodation requests be handled on a strict case-by-case basis. The new Instruction provides that if an accommodation request adversely affects military readiness, unit cohesion, good order,

discipline, health and safety – both individually and on the unit level – the government may deny the request if there is a compelling governmental interest, the policy, practice, or duty is the least intrusive means of furthering this compelling governmental interest, and the Service member has not demonstrated the accommodation request substantially burdens his rights.

The revised Instruction lists the following factors for consideration by the Secretary of the Military Department concerned:

- effect, if any, of approval or disapproval on any compelling governmental interest;
- the importance of uniformity and adhering to standards, of putting unit before self;
- unit cohesion (highlighted as particularly important and defined in part “as establishing and maintaining uniform military grooming and appearance standards”);
- unique facts of the request;
- nature of the requested religious accommodation;
- effect of approval or denial on the Service member’s exercise of religion; and
- effect of approval or denial on mission accomplishment, including unit cohesion.

Even if approved by the Secretary or his or her delegate, the accommodation will not be granted for the entire military service commitment. At the Secretary’s discretion, the Service member may have to re-apply for an accommodation if he receives a new assignment, is transferred to another duty station, and/or faces a significant change in circumstances, including deployment. The revised Instruction also requires that a Service member abide by military policy, practice, and duty while awaiting resolution of a religious accommodation request.

For the reasons outlined below, the amended Instruction simply fails to meet its objective of meeting the religious needs of its Service members or potential recruits.

A. Case by Case Accommodations Are Not Sufficient

Under the revised Instruction, Service members may only receive accommodations to changes in uniform and grooming standards on a strict case-by-case basis. These individual accommodations are highly problematic for Sikh Service members, however. Under this highly discretionary policy, Sikh Service members continue to lack certainty regarding how their accommodation will be handled and on what basis it will be decided. Accommodations may also be rescinded at any time, and a Service member is required to submit a new request for an accommodation every time he receives a different assignment. The amended Instruction simply provides no guarantee that a Service member will not be made to choose between his religion and his career at some point during his military service; therefore, the Instruction, instead of opening the doors to religious minorities, effectively deters new Sikh recruits.

Further, by making accommodations the exception instead of the presumptive rule, there is no guarantee that a turbaned and bearded Sikh soldier will be granted approval, even though past and current Sikh Service members have repeatedly proved that their religious articles of faith,

including turbans and beards, do not interfere with their ability to perform their military duties.

B. The New Instruction Should Be Amended to Presumptively Allow Sikh Turbans and Beards

Under the revised Instruction, Sikh turbans and beards remain categorically prohibited, which is a significant deterrent for potential Sikh American Service members. Observant Sikhs who served in the U.S. Armed Services before 1981 – when Sikh articles of faith were presumptively allowed – and those who are currently serving with religious accommodations have posed no disruption to troop morale, esprit de corps, or unit cohesion and discipline. To the contrary, they have served alongside their fellow Americans and encouraged camaraderie and respect for the diversity of the U.S. Army. It is clear that the military’s need for uniformity has in no way been undermined by allowing observant Sikhs to serve with their turbans and unshorn hair and beards intact. As a matter of principle, allowing more Sikhs to serve – without having to request individualized accommodations – would not affect military interests any differently.²⁵

As mentioned earlier, after the Supreme Court’s decision in *Goldman v. Weinberger*, Congress passed 10 U.S.C.A. § 774, which permits military Service members to wear religious apparel that is “neat and conservative” and that does not “interfere with the performance of the member’s military duties.”²⁶ Since the passage of this statute, observant Jewish Service members have been allowed to wear yarmulkes – indeed the Instruction specifically allows it – but Sikh turbans remain presumptively prohibited.²⁷

Given that a yarmulke serves as a religious identifier to the same extent that a Sikh turban does, banning turbans while allowing yarmulkes both reflects inconsistency in military policy regarding respect for the religious practices of all service members, and indicates that claims of interference with uniformity and unit cohesion are unfounded. Additionally, given that grooming regulations allow for moustaches, and the U.S. Army, for instance, routinely allows exemptions to the facial hair policy for service men with pseudo-folliculitis barbae and other medical conditions that make shaving difficult, the presence of facial hair itself cannot be said to be so distracting as to warrant a categorical prohibition.²⁸

The Instruction and other rules and regulations governing military uniform and grooming should be amended to presumptively allow Sikh turbans and beards, similar to yarmulkes, and only deny accommodations when an individual cannot comply with safety requirements or successfully perform their military duties.

1. *Sikh Articles of Faith Comply With Neatness Standards*

Major Kalsi, Captain Rattan and Corporal Lamba, while serving in the U.S. Army, have used standard-issue Army cloth to develop turbans that conform with Army uniform requirements – including Army Combat Uniform (camouflage) headwear and turbans with their Army flash (insignia patch). Major Kalsi has even had the opportunity to provide information to Army leadership on “the proper wear of the turban with the Army uniform.”²⁹ The Sikh soldiers currently serving in the U.S. Army have also been commended for adhering to the uniform standards of neatness and conservativeness.³⁰

Speaking of Captain Rattan, Capt. John Lopez, Company A, 187th Medical Battalion, has said, **“From day one, Captain Rattan has been an ideal individual... He has done everything in his power to keep within the regulation (AR 160-1), and I sometimes have a hard time getting other Soldiers to follow it... I wish some other Soldiers had the personal pride and willingness to go the extra mile as he does, so those young Soldiers have someone to look up to.”**³¹

2. *Sikh Articles of Faith Do Not Adversely Affect Unit Cohesion or Morale*

The revised Instruction places heavy importance on “unit cohesion” in determining whether to grant accommodations. Unit cohesion is defined as “establishing and maintaining uniform military grooming and appearance standards.” While unit cohesion and morale are integral to the proper functioning of the military, these factors should not be used as reasons to restrict Army enlistment of members of a disfavored minority; similar concerns were historically cited to justify the exclusion of women, racial minorities, and homosexuals in the U.S. Armed Services.³² The U.S. Army has made great progress in opening up its ranks to previously-excluded sections of American society. LGBT service members can now serve openly in the U.S. Armed Services.³³ By 2016, women will be able to serve in all Army units and in every military occupational specialty.³⁴ The Army has recognized that allowing these traditionally disfavored demographic groups to serve does not negatively impact morale or esprit de corps. It should also recognize that presumptively allowing observant Sikhs to serve with their articles of faith intact will not lead to a breakdown in discipline, morale, or unit readiness.

Although the Joint Service Study Group on Religious Practice, established by the Department of Defense in 1984, indicated that “it is possible that non-uniformity can ‘create an impression that [an] individual is unwilling to subordinate personal desires to traditional military values,’” the same Study Group also found that this impression is less likely when the individual is known to the other group members.³⁵ **The fact that a Sikh who is an integral member of an Army unit will not be perceived as ‘outside of regulations’ has been borne out by the careers of the Sikh Service members who served in previous generations, those who were grandfathered in after the policy change in 1981, and more recently by Major Kalsi, Captain Rattan and Corporal Lamba.**

Specifically, any concerns about assimilation have been allayed by these soldiers’ performance during training and in the field. Sgt. 1st Class Michael Hildebrand, who oversaw Corporal Lamba’s training while he was a Specialist, noted that not only did he integrate well into the unit and excel in his training, but “the other Soldiers in the platoon actually love [then] Spc. Lamba. Their family members have found out that we have a Sikh Soldier, and they have asked if they could write to Spc. Lamba to find out more about where he comes from. There has been no negativity expressed by the Soldiers toward Spc. Lamba.”³⁶ As has been demonstrated with the inclusion of women, racial minorities, and LGBT people in the armed forces, embracing diverse individuals within the military strengthens our military force, rather than weakening it. Similarly, in discussing Captain Rattan, Col. Roger Fiedler, Fort Drum DENTAC commander, noted that, “while his dental skills are the same as any other dentist, his unique status as a practicing Sikh U.S. Soldier and dental provider add to the diversity that makes our military so strong.”³⁷

3. *Sikh Service Members Are Able to Comply With Protective Mask and Helmet Requirements*

Closely linked with unit cohesion is the question of combat readiness. It is important to note that after the change of military policy in 1981, Sikhs who were already in the Army were grandfathered in.³⁸ The justification for the policy change, presumably, was that allowing religious accommodations in the U.S. Armed Forces would send the military down the “slippery slope” to excessive individualization and a breakdown of discipline within the ranks.³⁹ More recently, the Army has expressed concern that Sikh soldiers’ unshorn beards will prevent an effective seal from forming on gas masks, and that their turbans will not fit under helmets. Both of these concerns have been disproved by Sikhs serving in militaries around the world, as well as in the preparedness tests that Major Kalsi, Captain Rattan, and Corporal Lamba had to undergo during training and their service.

The notion that an effective gas mask seal cannot be created without clean-shaven skin is a fallacy. The three observant Sikhs who currently serve in the U.S. Army have undergone rigorous safety testing, including being placed in a chamber filled with gas, to determine whether their protective masks form an effective seal with their beards and religious headwear intact. Not only did they pass these tests with flying colors along with their fellow soldiers, but they have also demonstrated that helmets and other safety gear can be worn safely over a *patka* (a smaller turban). This comports with the results of gas mask tests for firefighters, in which candidates with beards have been able to repeatedly create an effective seal, while many with clean-shaven faces were repeatedly unable to do so.⁴⁰ Sikhs serve in combat positions in armies around the world, including in the militaries of Great Britain, Canada, and India. Sikhs fought with the Allies in both World Wars, and they served in the U.S. Armed Services in Vietnam and Operation Desert Storm.⁴¹ Sikhs have also recently served alongside the U.S. Armed Services as UN Peacekeepers in Iraq and Afghanistan.⁴²

When Under Secretary of the Army Joseph W. Westphal visited the Joint Readiness Training Center at Fort Polk in October, 2012, where Major Kalsi was participating in combat training, he specifically noted that he was “absolutely impressed with [the soldiers’] intellect, their knowledge, and their easy disposition” and that the Army was on “good footing” with its readiness training.⁴³ **Capt. John Lopez, Company A, 187th Medical Battalion, who was Captain Rattan’s commanding officer during training, said that Captain Rattan “knows what he is doing and he’s doing a phenomenal job. I’d go to battle with him.”⁴⁴**

Soldiers of the Sikh faith currently serving in the U.S. Army have proven that Sikhs not only can comply with all safety regulations with their turbans and unshorn hair and beards intact but can also do so in the most difficult of duty stations, and have served their country courageously in overseas deployment. Allowing other Sikh Americans to make the same commitment to serve their country while keeping their articles of faith intact would indicate the Army’s respect for the service of those who have already demonstrated their willingness to lay down their lives for their country.

4. *Sikh Service Members Promote Health and Safety in Overseas Deployment*

In units that serve overseas, having service members who are familiar with other languages and cultures – particularly those of South Asia – can only benefit the Army’s understanding of local context and engagement with local people. This cultural understanding has already

proven to be an asset in the case of Captain Rattan, whose NATO Medal was granted specifically for his defusing the situation with the Afghan locals.

C. The Revised Instruction Creates a Catch-22 for Sikh Service Members

The Revised Instruction requires that a Service member abide by military policy, practice, and duty while awaiting resolution of a religious accommodation request. For a Sikh, who is unable to cut his or her hair and wears a religious turban instead of a uniform cap, this is an impossible request. This section literally requires Service members to put their religious practices on hold while their accommodation requests are pending. If Sikhs are asked to violate the very practices for which accommodations are being sought, we are concerned this will have a chilling effect on their ability to join the U.S. Armed Services in the first place.

This requirement is particularly alarming because a similar issue arose over twenty-five years ago with respect to the Jewish community.⁴⁵ When a previous version of the Instruction was issued by the Department of Defense, it contained a similar "Catch-22" that Jewish personnel could wear headcoverings (kipot/yarmulkes), but not for initial training, including boot camp for enlisted personnel and officer accession for officer candidates. An appeal was made to the Secretary of Defense, based on the exact issues that we raise in this section, and the Department of Defense immediately deleted this provision.⁴⁶ The appeal noted that allowing Jewish Service members to practice their religion at some points, but not others, "would undermine, if not eliminate, the effect of the religious apparel amendment."⁴⁷

Similarly, the new Instruction should be amended so that it does not serve as a barrier to Sikh Service members and other religious minorities.

In summary, despite the proven ability to comply with safety requirements and perform their military duties with excellence, Sikhs who maintain their religiously-mandated turbans, unshorn hair, and beards in a neat and conservative manner will nevertheless continue to experience significant difficulty obtaining highly discretionary and revocable accommodations under the new Instruction. Sikh Service members remain effectively barred as long as (1) Sikh articles of faith are presumptively disallowed; (2) the process for obtaining an accommodation is cumbersome and requires constant renewal and approval by the highest chains of military command; and (3) Sikhs have to violate their religion while accommodation requests are pending.

We respectfully request that the Department of Defense revise its new Instruction and uniform guidelines to presumptively allow observant Sikhs to serve in the U.S. Armed Services. Not only would this demonstrate the military's commitment to upholding one of the most fundamental and precious values of this country – freedom of religion – but would demonstrate its commitment to abiding by the military policy established under President Truman, which demands "equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin."⁴⁸ If the Department of Defense continues to disallow religious exemptions from certain aspects of the uniform policy, it perpetuates a

discriminatory mechanism inconsistent with the spirit of religious accommodation and will continue to preclude observant Americans of other faiths from serving their country. Where religious practices do not interfere with the service or safety of the individual or unit concerned, such prohibitions serve only as an invidious means of limiting the military participation of members of disfavored minorities.

The Department of Defense regulations should be revised to allow soldiers to presumptively wear and maintain Sikh articles of faith, which are tailored to conform with uniform style and color, and which do not interfere with the functioning of safety equipment such as a helmet and gas mask. In the case of observant Sikh soldiers, the military can look to the uniform standards of other militaries⁴⁹ in which Sikhs are presumptively allowed to serve for examples of how to provide for standard-issue, uniform turbans. The Sikh soldiers currently serving in the U.S. Army have already laid down the groundwork for such a uniform standard by developing headwear that closely resembles standard-issue Army headgear, thereby allowing them to comply with both their religious obligations and the Army's requirements for good order and discipline through established uniform requirements.

Our nation's military leadership should modernize its regulations without delay so that operational excellence becomes the principal criterion by which soldiers are judged.

We thank the Department of Defense for holding this important hearing and working diligently to safeguard the civil rights of all Americans who wish to serve or have served in the U.S. Armed Forces, including Sikh Americans.

Respectfully,

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Endnotes

- ¹ Department of Defense, Revised Instruction, "Accommodation of Religious Practices Within the Military Services," available at <http://www.dtic.mil/whs/directives/corres/pdf/130017p.pdf> (Eff. Jan. 22, 2014).
- ² When engaging in physical activity, Sikhs may instead wear a patka, which is a smaller piece of cloth, to cover their heads. The intent of a turban is to ensure that Sikhs cover their heads at all times.
- ³ Pico Iyer, *The Lions of Punjab*, TIME, Nov. 12 1984, at 53, discussed in Rajdeep Singh Jolly, *The Application of the Religious Freedom Restoration Act to Appearance Regulations That Presumptively Prohibit Observant Sikh Lawyers From Joining the U.S. Army Judge Advocate General Corps*, 11 CHAPMAN LAW REVIEW 155, 157 n.13 (2008).
- ⁴ *Id.*
- ⁵ *Id.*
- ⁶ *Sikhs Prove Their Valor, Twenty-one Men Hold Sarhargarti Police Post Against 1,000 Orakzais Over Six Hours*, New York Times (Sept. 14, 1897), available at <http://query.nytimes.com/mem/archive-free/pdf?res=F60C1EFA355D11738DDAD0994D1405B8785F0D3>.
- ⁷ Jolly, *supra* note 1, at 157.
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ Sikh Coalition, *Sikhs in the U.S. Army*, <http://www.sikhcoalition.org/army-campaign/sikhs-in-the-us-army>.
- ¹¹ For more information, see *id.*
- ¹² See *id.*
- ¹³ Adam Ashton, "Army's only enlisted Sikh soldier earns rare promotion at JBLM," The New Tribune (September 28, 2013) <http://www.thenewtribune.com/2013/09/28/2809640/sikh-earns-rare-promotion-to-corporal.html>.
- ¹⁴ Captain Thomas R. Folk, *Military Appearance Requirements and Free Exercise of Religion*, 98 MIL. L. REV. 53, 62 (1982), discussed in Jolly, *supra* n. 1, at 158 n.21.
- ¹⁵ See *Khalsa v. Weinberger*, 759 F.2d 1411, 1412 (9th Cir. 1985).
- ¹⁶ *Khalsa v. Weinberger*, 759 F.2d 1411, 1416 (9th Cir. 1985).
- ¹⁷ *Id.* at 1417.
- ¹⁸ *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986).
- ¹⁹ *Id.*
- ²⁰ Department of Defense Directive Number 1300.17, Feb. 3, 1988 [hereinafter Former DoD Directive]; Army Regulation 670-20.
- ²¹ Former DoD Directive; see also Jolly, *supra* note 1, at 165.
- ²² Former DoD Directive.
- ²³ *Id.*
- ²⁴ Department of Defense Instruction Number 1300.17 (Eff. Jan. 22, 2014).
- ²⁵ Jolly, *supra* note 1, at 176.
- ²⁶ 10 U.S.C.A. § 774 (2006).
- ²⁷ Dawinder S. Sidhu & Neha Singh Gohil, CIVIL RIGHTS IN WARTIME: THE POST-9/11 SIKH EXPERIENCE 139, Ashgate Publishing, Ltd., 2009.

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- ²⁸ Army Regulation 670-1, Ch. 1-8 2(c); Jolly, *supra* note 1, at 177.
- ²⁹ Steve Elliott, *Second Sikh Doctor Allowed to Wear Articles of Faith; Enlisted Soldier in Training*, Official Homepage of the United States Army, Sept. 9, 2010, <http://www.army.mil/article/44944>.
- ³⁰ Army Regulation 670-1, Ch. 1-7(a).
- ³¹ Steve Elliott, *Sikh Soldiers Allowed to Serve, Retain Their Articles of Faith*, Official Homepage of the United States Army, Mar. 25, 2010, <http://www.army.mil/article/36339>.
- ³² Sidhu & Gohil, *supra* note 25, at 140.
- ³³ Tina Ray, *Fort Bragg Gay Soldiers Serve Openly*, Official Homepage of the United States Army, Feb. 8, 2013, [http://www.army.mil/article/96139/Fort Bragg gay Soldiers serve openly](http://www.army.mil/article/96139/Fort_Bragg_gay_soldiers_serve_openly).
- ³⁴ C. Todd Lopez & Julia Henning, *Army Describes Plans for Integrating Women into Combat*, Official Homepage of the United States Army, June 18, 2013, [http://www.army.mil/article/105814/Army describes plans for integrating women into combat](http://www.army.mil/article/105814/Army_describes_plans_for_integrating_women_into_combat).
- ³⁵ Jolly, *supra* note 1, at 159 & n.38.
- ³⁶ Susanne Kappler, *Keeping Faith: Sikh Soldier Graduates Basic Training*, Official Homepage of the United States Army, Nov. 10, 2010, <http://www.army.mil/article/47924/keeping-faith-sikh-soldier-graduates-basic-training>.
- ³⁷ Paul Steven Ghiringhelli, *Traditional Sikh Serves as Army Dentist on Fort Drum*, Official Homepage of the United States Army, May 20, 2010, <http://www.army.mil/article/39536>.
- ³⁸ Sidhu & Gohil, *supra* note 25, at 137.
- ³⁹ *Id.*
- ⁴⁰ *Id.* at 140.
- ⁴¹ *Id.* at 137.
- ⁴² *Id.*
- ⁴³ C. Todd Lopez, *JRTC Rotation Demonstrates Force of Future*, Official Homepage of the United States Army, Oct. 20, 2012, <http://www.army.mil/article/89623>.
- ⁴⁴ Elliott, *Sikh Soldiers Allowed to Serve, Retain Their Articles of Faith*, *supra* note 29.
- ⁴⁵ "Pentagon Rescinds Directive Limiting of Yarmulkes," available at <http://www.jta.org/1988/10/06/archive/pentagon-rescinds-directive-limiting-wearing-of-yarmulkes> (Oct. 6, 1988).
- ⁴⁶ *Id.*
- ⁴⁷ *Id.*
- ⁴⁸ President Harry Truman, Executive Order 9981, July 26, 1948, available at <http://www.trumanlibrary.org/9981a.htm>
- ⁴⁹ United Kingdom and Canada Military Policies Regarding Sikhs, available at [http://salsa.wiredforchange.com/o/1607/images/Canadian Army Sikh Appearance Policy.pdf](http://salsa.wiredforchange.com/o/1607/images/Canadian_Army_Sikh_Appearance_Policy.pdf) and [http://salsa.wiredforchange.com/o/1607/images/UK Army Religious Dress Policy.pdf](http://salsa.wiredforchange.com/o/1607/images/UK_Army_Religious_Dress_Policy.pdf).

Statement for the Record from Major Kamaljeet Singh Kalsi
House Armed Services Committee
Subcommittee on Military Personnel
U.S. House of Representatives
Hearing on Religious Accommodations in the Armed Services
January 29, 2014

My name is Major Kamaljeet Singh Kalsi. I am grateful for the opportunity to submit this statement and respectfully request its inclusion in the official hearing record. In 2009, the U.S. Army made history by granting me an accommodation to maintain my religiously-mandated turban, unshorn hair, and beard while serving as a proud American Soldier. I am enclosing my written statement from a May 2013 hearing organized by the U.S. Commission on Civil Rights, where I discussed my successful deployment to Afghanistan; the successful accommodations and achievements of fellow Sikh American Soldiers Captain Tejdeep Singh Rattan and Corporal Simran Preet Singh Lamba; and our collective efforts to overcome the presumptive ban on Sikh articles of faith in the U.S. military.

On January 22, 2014, the U.S. Department of Defense issued revisions to Instruction Number 1300.17 (*Accommodation of Religious Practices Within the Military Services*). Although the revisions are a step in the right direction for recognizing the importance of religious liberty to our nation's Soldiers, the Instruction still retains a presumptive ban on Sikh articles of faith in the U.S. military and may therefore have a chilling effect on religious liberty for aspiring Sikh American Soldiers.

I hope that the Instruction is fine-tuned and implemented in ways that give Sikh Americans a fair chance to serve in the U.S. military. Sikhs are not asking for a blank check, but we believe the Instruction can be significantly improved in ways that respect both military necessity and religious liberty. My Sikh articles of faith did not prevent me from excelling as an American Soldier. If a Sikh American Soldier can graduate from boot camp; comply with requirements relating to helmets and protective masks; and promote unit cohesion by performing military duties with excellence, we should not force that American Soldier to choose between religious liberty and a military career. Thank you for your consideration.



DEPARTMENT OF THE ARMY
WOMACK ARMY MEDICAL CENTER
FORT BRAGG, NORTH CAROLINA 28310

REPLY TO
ATTENTION OF

31 May 2013

MEMORANDUM FOR RECORD

SUBJECT: **Personal Statement¹ Before the United States Commission on Civil Rights**

I am thankful to the United States Commission on Civil Rights for providing me this opportunity to appear before you today.

I also applaud the Commission for seeking to protect the civil rights of those who like me proudly serve and have served the military of our great country.

My name is Major Kamaljeet Singh Kalsi. I was born into a family with three generations of military service before me and raised to cherish loyalty, duty, respect, service, honor, integrity and courage as a citizen in the United States of America. I began my career in the U.S. Army as a First Lieutenant in 2001, and continue to serve with tremendous pride. I am presently on active duty as the Emergency Medical Services Director at Fort Bragg in North Carolina. After two deployments, I am also the grateful recipient of the Bronze Star Medal for my service in Afghanistan.

While my experiences as a service member are among the most exhilarating and memorable experiences of my life, my journey to service had its share of challenges.

In 2009, the United States Army made history by granting me and another Sikh American soldier, Captain Tejdeep Singh Rattan, an accommodation to maintain our religiously-mandated turbans, unshorn hair, and beards while serving the country we love. It was the first-time in over a generation that a new Sikh American soldier had been granted such an accommodation.

¹ The views expressed herein represent only my personal view and not the views of the Department of Defense, the Department of the Army or Womack Army Medical Center. I am the point of contact for this memorandum.

At first, I was told that I could not serve my country unless I gave up my Sikh articles of faith pursuant to a US military policy that existed since 1981. Led by the Sikh Coalition, it took over 15,000 Americans to petition the Army and support from over 50 Members of Congress before my request for accommodation was granted.

Thankfully and wisely, our military looked to the military of our allies in Great Britain, Canada, and India, who all accommodate Sikh soldiers, for guidance. The military also reviewed the previous history of Sikh service in our military. Since the early 1900's, Sikhs have served honorably and with distinction in the U.S. military. In fact, more than 80,000 Sikh soldiers died fighting alongside allied forces during the World Wars before we reversed course as a country and closed the door on Sikh American service in 1981.

Army officials asked smart and pragmatic questions about the Sikh faith. They learned that Sikhs have a glorious and storied tradition of military service throughout the world that is tied uniquely to our articles of faith. They also learned that Sikh soldiers can wear helmets and make airtight seals with gas masks.

In short, as we all expect since its mission is so sacred, our military did their homework. As result in 2009, while our military did not open its doors to all patriotic Sikhs, it at least opened its doors to me and Captain Rattan, allowing us to maintain our Sikh articles of faith while serving the country we love.

I would humbly say that it was the right decision and I believe my fellow soldiers, as detailed in the over a dozen attached letters of support, would agree.

On my first day of active duty at Officer Basic Training in July 2010, the Sergeant Major assembled us in formation, pulled me out to stand beside him facing my fellow soldiers and told us that the Army comes in "many shades of green." He then asked if there was a single soldier amongst the hundreds that were there who did not feel the same way. This was the first real test of unit cohesion or *esprit de corps* that I had encountered. Everyone applauded in support.

After training, I deployed to Afghanistan in January 2011 as the Officer-in-Chief of a tented Emergency Room in Helmand province. I also served as the Chief of Disaster Medicine for our entire Forward Operating Base.

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During my tour in Afghanistan, I personally treated over 750 combat casualties and local nationals who suffered from IED blasts, gunshot wounds, and other emergent conditions. I also successfully resuscitated back to life two patients that were clinically dead on arrival, but I remember one particular soldier whose story I would like to share with you.

Let's call him Joe. Our medics radio in that they are bringing in a Marine from an IED blast just outside our main gate. The insurgents had taken advantage of a recent dust storm to bury IEDs all around us. They rushed him into our Emergency Room tent. He was breathing, but was bleeding badly from multiple shrapnel wounds. He was dazed but was able to converse. We worked on him for the next two hours, ordering tests, removing shrapnel, suturing wounds, and stabilizing his vitals. When he was ready for transfer to the admitting wards, our medics began wheeling him away. Joe grabbed my hand with tears in his eyes and said "Thank you brother." That is one of many moments during my service in Afghanistan that I will never forget.

I can tell you with 100% assurance that none of my fellow soldiers or patients could care less that I was wearing a turban or had a beard while I was treating their wounds. All that mattered was whether I was an asset to our mission. Based on my Bronze Star Medal citation which commends my "leadership and dedication to duty" as being "instrumental to the unit's mission during combat operations," I would humbly submit that I was, in fact an asset to our mission.

Like me, Captain Rattan also served in Afghanistan. He received an Army Commendation Medal and a NATO Medal for his service. And in 2010, the US Army agreed to individually accommodate an enlisted Sikh soldier, Specialist Simran Preet Singh Lamba. Together the three of us are the only new Sikh Americans that our military has agreed to accommodate in a generation.

Both Captain Rattan and Specialist Lamba would agree with me that our Sikh articles of faith not only do not interfere with our duties, but are in fact an invaluable asset to our military because their accommodation projects our country's values of freedom and pluralism to the world.

[Type here]

I have been on active duty at Fort Bragg since September 2010. I am currently the Medical Director for the Department of Defense's largest stateside Emergency Medical Services (EMS) system, comprised of over 500 first responders, EMS, police, fire and dispatch agencies. While I'm a bit bashful with making this public, my latest Officer's Evaluation Report states that I have displayed:

"Truly exceptional performance from a tireless Emergency Medicine Physician, scholar, mentor and soldier. MAJ Kalsi works tirelessly to promote academic and clinical excellence. He has been published in premier literature and has lectured at national level conferences. His leadership as Chief of the busiest Ambulance Service in the DoD has been phenomenal, and led to dramatic improvements in the quality and standardization of prehospital care across DoD's largest troop concentration."

While I am grateful for these generous words and even more grateful for the opportunity to serve, it troubles me that my accommodation and that of other Sikh soldiers are simply individual accommodations.

Despite the successful and patriotic service of myself, Captain Rattan, and Specialist Lamba, the rule remains that Sikh Americans cannot serve our military without giving up their articles of faith. I would add here that even the accommodations Captain Rattan, Specialist Lamba, and I have received are not permanent. Despite our service and loyalty, we must reapply for an accommodation every time we are assigned to a new unit or base.

The time has come and passed for our military to openly embrace those Sikhs who want to serve our country by removing the rules that presumptively exclude them.

By making this call to end the presumptive ban on Sikh military service, let me make clear that I would never advocate for anything that would put my fellow soldiers in harm's way. If Sikhs could not wear helmets or gas masks when required, I would never call on my military to accommodate Sikh American soldiers. But that is simply not the case. Sikh soldiers have served on special forces teams. They have jumped out of airplanes as paratroopers, and have deployed in far forward combat operations. We can serve our country and be Sikh at the same time.

[Type here]

To my military, I would say that your prospective Sikh American soldiers are waiting to be embraced by you. We are mindful that our military now fully allows LGBT soldiers to serve, and is beginning to allow female soldiers to serve in forward combat positions – and that the sky has not fallen because of it. In fact, the opposite is happening. We are increasing the pool of Americans willing serve our country, we are advancing our strategic missions, and we are staying to true to the core American principle that it matters not who you are, but what you do.

In closing I would like to quote from a letter that America's First General, General George Washington, wrote to a Jewish congregation in Newport, Rhode Island, in 1791. President Washington wrote that America:

“[G]ives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support.”

Patriotic Sikh Americans are ready to give America its “effectual support.” I humbly plead for our military to accept it.

Thank you.

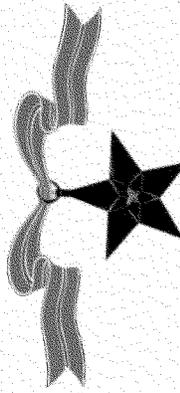
Encl: A1 – A21

Respectfully,



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THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING: THIS IS TO CERTIFY THAT THE PRESIDENT OF THE UNITED STATES OF AMERICA AUTHORIZED BY EXECUTIVE ORDER, 24 AUGUST 1962 HAS AWARDED

THE BRONZE STAR MEDAL

TO

CAPTAIN KAMAJEET S. KALSI

BRAVO COMPANY, 115 COMBAT SUPPORT HOSPITAL

FOR EXCEPTIONALLY MERITORIOUS SERVICE AS AN EMERGENCY MEDICINE PHYSICIAN WHILE DEPLOYED IN SUPPORT OF OPERATION ENDURING FREEDOM. HIS LEADERSHIP AND DEDICATION TO DUTY WERE INSTRUMENTAL TO THE UNIT'S MISSION DURING COMBAT OPERATIONS. CAPTAIN KALSI'S DISTINCTIVE ACCOMPLISHMENTS REFLECT GREAT CREDIT UPON HIMSELF, TASK FORCE 44 MEDICAL, AND THE UNITED STATES ARMY.

FROM 4 JANUARY 2011 TO 17 JULY 2011

GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON
THIS 7th DAY OF AUGUST 2011



Timothy P. McHale

TIMOTHY P. McHALE
Major General, United States Army
Deputy Commander, Support
United States Forces-Afghanistan
Permanent Order # 219-003

John W. McHugh

SECRETARY OF THE ARMY

**Written Testimony of Rev. Dr. C. Welton Gaddy, President of Interfaith Alliance
Submitted to
The House Armed Services Committee,

Subcommittee on Military Personnel
for the Hearing Record on “Religious Accommodations in the Armed Services ”
January 29, 2014**

As a Baptist minister, a patriotic American and the President of Interfaith Alliance, I submit this testimony to The House Armed Services Committee, Subcommittee on Military Personnel for the Hearing Record on “Religious Accommodations in the Armed Services.” A national, non-partisan organization, Interfaith Alliance celebrates religious freedom and is dedicated to protecting faith and freedom with members nationwide who belong to 75 faith traditions as well as those without a faith tradition. Through my work at the Interfaith Alliance I have had numerous opportunities to engage with the military on issues of religious freedom. From my trip to the Air Force Academy to discuss religious freedom concerns on campus, to a Capitol Hill symposium of military chaplains I hosted in 2011 and my organization’s tireless work to repeal Don’t Ask Don’t Tell, I have consistently been impressed by the military’s openness to Interfaith Alliance’s concerns and their willingness to consider the changes we propose.

In my more than fifty years as a minister, I have witnessed time and time again the immense sacrifice that the men and women of the armed services make for our country. Service in the military necessarily comes with some disruption to an individual’s personal and family life, individual freedom and religious community, however there are some sacrifices we should not ask of these men and women.

The U.S. military must strive to protect the personal religious freedom of every one of its service-members. The Interfaith Alliance firmly believes that it is America’s commitment to religious pluralism and the freedom of religious practice that has made American democracy great – certainly these same commitments will make those who defend our democracy great as well. We must ensure that our military, like our nation as a whole, remains open to a wide variety of religious practice and abstains from the public adoption of any one religion.

Where possible, the right of an individual service-member to adhere to religious practices of grooming, garb and personal prayer should not be infringed. It would be unjust to ask a Sikh man, a Muslim woman or an Orthodox Jew, who has already given so much to our military and our country, to give up these religious practices without a compelling military reason. Furthermore, it is critical that these accommodations follow service-members throughout their careers and are not subject to the whims or personal biases of individual military officers.

While the individual right of a service-member to pray is crucial to the promise of religious freedom, the military cannot allow public, communal prayer outside of designated times for religious services. Just as we must respect the religious freedom of those who choose to pray, we must respect the freedom of those who choose not to – and we must prevent the social isolation and harassment that can arise from these situations.

The First Amendment that guarantees the men and women of the armed services their religious freedom also guarantees them the freedom of speech to express these beliefs. This protection is immutable and does not need the supposed reinforcement written into Section 533 of last year's National Defense Authorization Act. While Section 533 purports to protect the freedom of conscience of members, at best it is redundant and at worst it is a subtle attempt to distort the promise of religious freedom to legitimate discrimination and harassment.

The freedom of conscience of service-members and chaplains has never been, and never will be, under threat by the U.S. military's laudable work to include gay and lesbian service-members. What is not protected is hate speech, discrimination or harassment justified under the guise of religion or "deeply held moral beliefs." The right of gay and lesbian service-members to serve in the military openly and free from fear must not be sacrificed in the name of a misunderstood concept of religious freedom. Just as affirming the religious identities of all service-members is integral to building a healthy and cohesive military, so too is affording lesbian and gay service-members the human dignity they deserve.

Military chaplains can play a transformative role in helping guide individual service-members and creating vibrant communities within the ranks of the armed services. As clergy in their private lives, many of these chaplains are entitled to certain liberties that are not afforded them in their role as officers of the U.S. armed forces. There is no facet of American life, the military included, where agents of the state are allowed to discriminate based on religion, proselytize or sanction sectarian prayer. Those are freedoms that chaplains willingly and knowingly relinquish when they enlist. They do not need, nor should they be permitted any "extra protections."

The members of Interfaith Alliance and I recognize that the circumstances faced by the men and women of the U.S. armed forces are often extraordinary. Striking the proper balance between the religious freedom and emotional well being of every service-member and the good order and discipline of the military is not easy. The preceding testimony, however, contains tried and true principles that we believe can help the armed forces maintain that balance.



Rabbi David Saperstein
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Jennifer Brodkey Kaufman, Chair
Commission on Social Action of Reform Judaism

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Testimony of Rabbi David Saperstein
Director and Counsel
Religious Action Center of Reform Judaism
Religious Accommodation in the Armed Services
Wednesday, 01/29/2014
2118 Rayburn House Office Building
House Subcommittee on Military Personnel

On behalf of the Religious Action Center of Reform Judaism, representing the Union for Reform Judaism, whose more than 900 congregations encompass over 1.3 million Reform Jews across North America, and the Central Conference of American Rabbis, which includes more than 2000 Reform rabbis, I write to express our views on the topic of religious accommodations in the U.S. military.

The U.S. military is a representation of our nation and its values – including the foundational commitment to religious freedom. Our service men and women of all faiths and no faith who risk their lives in defense of our country are entitled to the same religious liberty and protections that they defend in uniform.

The free exercise of religion among people of diverse faiths requires a delicate balance between religious liberty and reasonable limitations that ensure the ability of service members to fulfill their responsibilities, precisely because the members of the military are a “captive audience,” not free to walk away to exercise their religion in whatever manner they see fit nor to walk away from endorsements of religion that offend them. Special care must be taken.

If the functionality or safety of a unit is endangered, it is within reason for the commanding officer to consider suspending accommodation. Otherwise, service members must be able to abide by the teachings of their faith. Dietary restrictions, religious garb, observance of holidays, and specific time for prayer are just some of the examples of appropriate and necessary accommodation of religion. For these reasons, we welcomed the changes that the National Defense Authorization Act for Fiscal Year 2014 (H.R. 3304) made to the previous NDAA, remedying legislation that paved the way toward proselytization and religious coercion in the military. Sec. 532 of the new NDAA rightly notes that “Unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate individual expressions of belief...” Additionally, when members of the military are accommodated for certain religious needs, they should not have to re-request the same accommodation each time duties change or the circumstances of their service changes.



The Religious Action Center pursues social justice and religious liberty by mobilizing the Jewish community and serving as its advocate in Washington, D.C. The Center is led by the Commission on Social Action of the Central Conference of American Rabbis and the Union for Reform Judaism (and its affiliates) and is supported by the congregations of the Union.



At the same time, it is never acceptable for those in a position of authority to engage in proselytization; neither ought religious beliefs be a motivation for acts of discrimination. Sectarial prayer at mandatory, official functions is not acceptable.

Military chaplains in particular must be cognizant of the vital and sensitive nature of their sacred work that offers service members comfort even while serving in far-flung places. While military chaplains are free to pray and give counsel according to their faith traditions, no service member must ever be forced to participate in a religious act or service, whether it abides by their chosen faith tradition or not. In addition, with the end of the “don’t ask don’t tell policy,” it must be made clear that although a military chaplain may refuse to perform a marriage ceremony for a same-sex couple because it violates the teaching of his or her faith, a service member may never refuse to serve alongside a fellow soldier because of his or her religious teachings about sexuality.

Although military service requires a unique level of risk and restriction that is wholly separate from civilian life, the Constitution must always be the rule of law. That majority and minority religions could both have flourished in the United States is a testament to the essential underpinnings of the First Amendment, which guarantees not only that “Congress shall make no law respecting an establishment of religion” but also that an individual’s free exercise of religion cannot be infringed upon. It is due to this understanding of the separation of church and state that Judaism, for example, has been able to thrive in this country while historically, and still today, in many parts of the world the Jewish people have faced discrimination and prosecution.

We are inspired by Jewish tradition that teaches, “Do not separate yourself from the community” (*Pirkei Avot 2:4*). As Reform Jews, we support our service members for we are their community, just as they are ours. We are humbled by their sacrifices and those of their families. It is from this place of pride and gratitude that we express our interest in ensuring that our military embodies the religious liberty and protections enshrined in our Constitution for people of all faiths and no faith.

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ADVANCING FAITH, FAMILY AND FREEDOM

Written Statement of Lt. Gen. (Ret.) William G. Boykin
Executive Vice President
Family Research Council

On Behalf of

Family Research Council

Submitted to the U.S. House of Representatives
Subcommittee on Military Personnel
Committee on Armed Services

January 29, 2014

For the Hearing on “Religious Accommodations in the Armed Services”

FAMILY RESEARCH COUNCIL

801 G STREET NW, WASHINGTON, D.C. 20001 • 202-393-2100 • 202-393-2134 fax • (800) 225-4008 order line • www.frc.org

Dear Chairman Wilson and Ranking Member Davis,

Thank you for your leadership in convening a hearing in the House Military Personnel Subcommittee on the important issue of religious freedom in the military. In light of the hearing scheduled for Wednesday, January 29, 2014, the Family Research Council submits the following statement for inclusion in the record.

Religious Freedom: Our First Freedom

Given our nation's history as a country formed in large part by communities fleeing religious persecution, the principle of religious freedom has long stood as a core national ideal, enshrined in the Bill of Rights and guaranteed to all Americans. The freedom to express one's faith publicly and practice one's faith according to conscience sets America apart in a world faced with increasing levels of militant and state-driven religious persecution.¹

Significantly, the historic principle of religious freedom in the United States includes not just the freedom to attend the religious services of one's choice (worship), but also the freedom to apply the teachings of a chosen faith to one's daily life in practical and public ways (exercise) so long as the exercise of faith does not threaten the U.S. Constitution. This freedom has required the cultivation of tolerance and goodwill amongst a citizenry which may hold divergent views on faith. In a pluralistic society, views may be expressed with which a listener does not agree; however, disagreement with a person's beliefs does not afford a listener grounds for a veto over such expression. Rather, religious freedom affords every person the right to exercise their faith at the same time it requires of every person respect for another's beliefs. The values of respect and goodwill thus fostered contribute to the strength of our society and also equip the men and women of our military with values essential for unit cohesion.

The practice of religion contributes to our military in another major way. Given the unique stresses and dangers of military life, a conscious focus on spiritual matters often accompanies military service. The ability to live out one's faith openly with the support of one's peers and the military chaplaincy can afford the comfort, certainty, and security so necessary to service members otherwise faced with serious injury and death on a regular basis. As members of the military cultivate extraordinary levels of self-discipline, it is imperative that they have the ability to draw upon the moral and religious beliefs which sustain them emotionally, mentally, and spiritually. A respect for religious freedom in the military thus means that men and women should be able to access the teachings and support structure of their particular faith, worship with other believers, and be free to apply, exercise, and vocalize their beliefs without fear of reprisal.

Threats to Religious Freedom in the Military

Because the ability to practice and express one's faith is a long-cherished American freedom and is so important for one's wellbeing and morale in the military context, any effort to restrict or penalize a member of the military for religious exercise should be immediately suspect.

Unfortunately, a growing trend in the military reveals a remarkable disregard for what have been assumed as basic religious liberties of service members in the past. The Family Research Council

¹ See *Religious Hostilities Reach Six-Year High*, Pew Research Center, January 14, 2014, available at, <http://www.pewforum.org/2014/01/14/religious-hostilities-reach-six-year-high>.

(FRC), as a non-profit organization dedicated to the defense of the family, faith, and freedom, has grown increasingly concerned as military chaplains and service members share their stories of career reprisals, discriminatory and retaliatory actions, and muzzling of speech all occurring because of particular religious beliefs that others have decided to no longer respect or tolerate.

Rather than encourage mutual respect and understanding, increasingly, military officials have taken on the role of determining what are and are not “acceptable” religious beliefs to be expressed in the military context. This move away from the constitutional baseline of robust religious freedom and towards a controlled canon of officially sanctioned beliefs smacks of state control of religion and marks a distinct turn away from our Constitution’s requirements for upholding liberty.

Because of FRC’s growing concern, we joined a coalition of concerned organizations in forming the “Restore Military Religious Freedom Coalition” in the summer of 2013 to analyze incidents of religious restriction and to aid service members facing career reprisals for expressing their faith while sacrificing to serve their country. Our “A Clear and Present Danger: The Threat to Religious Liberty in the Military” report documents dozens of these examples.² In multiple categories of military life, restrictions have targeted religious speech. For example:

- An Army chaplain’s assistant was ordered by her commander to remove a personal social media post expressing her own religious and moral views on a matter of church teaching, simply because the posted opinion was deemed potentially unfriendly by her commander. Rather than acknowledge this Army chaplain’s assistant right to hold religious beliefs and express those beliefs, the commander instead placed himself in the role of determining what was an “acceptable” religious belief, an authority neither proscribed by the Constitution nor Department of Defense (DOD) policy.
- A chaplain stationed at Joint Base Elmendorf-Richardson (JBER) wrote an essay referencing a simple and historic phrase (“No Atheists in Foxholes”) with the purpose of describing the role chaplains played in World War II. Despite the chaplaincy’s requirement of a belief in God *by very definition*, this chaplain faced an inquiry by his commander and the initial removal of his essay from base posting. Rather than immediately defending the chaplain’s ability to write about the nature of religious faith, JBER’s commander instead defaulted to restraint of religious speech.
- An officer with years of service in the Air Force was instructed to remove a Bible from his desk because of a hypothetical risk of offending someone. Other types of non-religious books or printed materials were not singled out for removal—only a religious book.
- A Senior Master Sergeant in the Air Force was initially relieved of his duties because he did not agree with his commander’s conclusion that voicing a religious objection to homosexuality was grounds for punishment of another Airman. Despite assurances from DOD (in the November 2010 “Support Plan for Implementation” of the repeal of “Don’t Ask, Don’t Tell”) that no service member would be forced to condone homosexuality against their

² See *A Clear and Present Danger—The Threat to Religious Liberty in the Military*, Family Research Council, December 12, 2013, available at <http://frc.org/clearpresentdanger>.

religious or moral beliefs, commanders have punished multiple service members for stating their beliefs about marriage or sexual ethics.

Furthermore, an alarming pattern of labeling incidents in which longstanding religious ministries and organizations have been categorized as “hate groups” and “extremists” by military trainers has occurred in the past two years during military equal opportunity (MEO) training programs. Due to these Christian organizations’ historic and mainstream religious positions regarding the definition of marriage and the moral standards that govern human sexuality, several MEO trainers have dismissed their work as extreme and radical, by extension condemning the views of any service members who share those same religious beliefs.

Even if these troubling occurrences of targeted discrimination against religious service members or religious organizations are later corrected by a commander, lingering consequences for troop morale remain. Because of the military’s unique culture, harsh career consequences for expressing a religious belief, even if reversed later, leave a profoundly chilling effect on the culture of speech and religious exercise that exists within a unit’s social environment. Career reprisals for speaking with a fellow soldier about one’s moral or religious convictions communicate to fellow soldiers that voicing or describing one’s beliefs is unprotected in the military. This conclusion is erroneous, but is being fostered by a command culture that defaults to restriction of religious expression rather than to protection of religious liberty.

Widespread confusion at the command level over a service member’s religious liberty rights has contributed at least in part to the growing culture of restriction in the military. Because of this variance in understanding and protection of religious expression, the Family Research Council supported legislative efforts in both the 112th and 113th Congress to affirm in statute the fundamental requirement to protect religious liberty in the military.

Legislative Response in the Fiscal Year 2013 National Defense Authorization Act

The FY 2013 NDAA (P.L. 112-239) contained a requirement in Section 533(a) to accommodate and protect a service member’s conscience, moral principles, or religious beliefs. Section 533(a) specifically forbade the military from discriminating or taking adverse action against a service member because of their religious beliefs. Due to the unique nature of life in a military setting, common sense exceptions were included in the statute to maintain prohibitions on conduct that were previously proscribed by the Uniform Code of Military Justice (Chapter 47 of Title 10, United States Code) including actions and speech that threaten good order and discipline

Additionally, Section 533(b) required the Armed Forces to protect the liberty of a military chaplain to refuse to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain. Section 533(b) also forbade the Armed Forces from discriminating or taking an adverse action against a chaplain for their refusal to perform a rite, ritual, or ceremony because of conscience, moral principle, or religious belief.

Finally, Section 533(c) required the Secretary of Defense to issue regulations implementing the protections outlined in the above sections. In a blatant disregard for the law and the intent of Congress, the Secretary of Defense failed to comply with Section 533(c) and issue the required regulations despite service members’ continued fear that they would not be allowed to live in

accordance with their religious beliefs. Throughout 2013, the Secretary of Defense continued to ignore the law even in the face of high profile complaints of religious discrimination and a growing threat to troop morale.

While the Secretary of Defense failed to obey the law, one branch, the Air Force, did issue a partial interpretation of Section 533's requirements. The Air Force Judge Advocate General (Air Force TJAG) issued a memorandum in early 2013 distinguishing between religious *beliefs* and *actions or speech* informed by those beliefs: "Section 533 pertains to the accommodation of beliefs . . . [a]ctions and speech, however, are distinct from beliefs, and may serve as bases for administrative and punitive action."

The Air Force TJAG's interpretation of Section 533 not only gutted the concept of religious freedom as historically understood in this country, but contradicted the intent of Congress which was to protect a service member's ability to talk about, verbalize, and apply his or her faith to daily life. Prompted by this highly injurious interpretation of P.L. 112-239, FRC supported additional legislative efforts in the 113th Congress to clarify Congress' intent and to demand greater accountability from the Department of Defense.

Legislative Response in the Fiscal Year 2014 National Defense Authorization Act

Language was introduced in both the House and Senate Armed Services Committees in 2013 to amend Section 533 of P.L. 112-239. Proposed language in both chambers clearly stated Congress' desire to protect religious speech and expression in the military (not just the ability to hold a religious belief) in order that no deliberate or inadvertent misinterpretation of the statute would be possible. Wide margins of bi-partisan support backed the effort, and the FY 2014 NDAA (P.L. 113-66) included Section 532's restatement of Congress' intent to protect religious expression.

Section 532 of P.L. 113-66, as signed into law on December 26, 2013, requires the Armed Forces to "accommodate individual expressions of belief." In addition to allowing service members the ability to exercise their faith, the Armed Forces are prohibited from using such expression of beliefs "as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training or assignment."

Additionally, Congress set clear parameters in Section 532(c) to ensure Administrative compliance with the law's requirements for implementing regulations. Section 532(c) established a ninety day deadline from the date of the law's enactment for the Department of Defense to issue the regulations required by statute (March 26, 2014). Section 532(c) required the Secretary of Defense to "consult with the official military faith-group representatives who endorse military chaplains" in developing regulations on Section 532(a) and (b).

Implementing Regulations Issued January 22, 2014

Given DOD's earlier failure to comply with the requirements of Section 533 of P.L. 112-239, DOD's issuance of DOD Instruction 1300.17 on January 22, 2014 marked a small step forward in the effort to protect the religious liberties of the Armed Forces. Though cautiously optimistic that DOD has taken an initial step to comply with the law, FRC remains concerned with the need for further implementing regulations and further interpretation from the military departments.

DODI 1300.17 contains an expansive update to the former DOD religious accommodation policy in DOD Directive 1300.17 (“Accommodation of Religious Practices Within the Military Services).” As such, DODI 1300.17 establishes new policies, procedures, and definitions on a host of issues related to personal grooming standards, personal apparel and jewelry, and religious body art. While such policies and definitions have been long overdue, DODI 1300.17 did not develop substantive guidelines in accordance with the requirements of Section 533 of P.L. 112-239 (language ignored entirely) or Section 532 of P.L. 113-66 (partial language was referenced in the Instruction without any explanatory guidance to the military departments).

One particular concern is DODI 1300.17’s failure to more clearly define “Exercise of Religion” in Section (3)(f) to include a service member’s ability to talk about, discuss, and share their faith as delineated in the parallel clause in Section (4)(b)’s protection for “expressions of sincerely held beliefs.” While DODI 1300.17 frames religious accommodation as a process that service members must go through to seek approval for wearing a particular piece of jewelry or following a certain grooming standard, it is imperative to distinguish between such practices and the everyday practice of verbalizing one’s moral or religious beliefs in conversation and explanation. A service member should never be required to seek an accommodation in order to talk about their faith. Subsequent clarification must more clearly capture the deference and protection to religious liberty that is required by the Constitution and the FY 2013 and FY 2014 NDAA.

FRC remains deeply concerned that the Secretary of Defense failed to consult with official military faith-group representatives who endorse military chaplains in developing the initial regulations in DODI 1300.17’s Sections (4)(b) and (4)(d). Given the unique challenges faced by military chaplains presently and the unique understanding of religious expression that they offer, the Secretary of Defense’s failure to follow the law is inexcusable. The Secretary of Defense must adhere to all statutory requirements when developing additional regulations and consult with official military faith-group representatives who endorse military chaplains as required by Section 532(c).

Continued Defense of Religious Freedom Necessary

In sum, religious freedom and expression is not something to be given begrudging accommodation. It is a core value of our nation, necessary for strengthening individual troop wellbeing and instilling the values of respect and goodwill. Religious freedom must be celebrated, affirmed, and cherished within our military just as our men and women sacrifice to defend that freedom for those outside the military.

Continued instances of discrimination and retaliation against members of the military for speaking about, sharing, or explaining their faith cannot be tolerated in a free society. Careful phrasing in regulations, while necessary, only goes so far. Unless the new policies required by P.L. 112-239 and P.L. 113-66 are backed by action that is faithful to Congress’ legislative intent, those policies will remain empty words on a piece of paper.

Statement of Congressman Doug Collins (R-GA)
Military Personnel Subcommittee
Religious Accommodation in the Armed Services
January 28, 2014

I would like to thank Chairman Wilson for his dedication to this important issue and for holding this hearing. I appreciate the opportunity to submit a statement for the record.

I've become increasingly concerned about our service members' ability to exercise their freedoms. Over the past twelve months, a number of incidents have caused many to question if the Pentagon and the Department of Veterans Affairs (VA) no longer embrace the religious freedom its soldiers and patients have bled to defend.

A news report came to light just a few months ago of two military chaplains being harassed in a Veterans Affairs chaplain training program in 2012. VA health

programs employ chaplains to minister to patients receiving care. These two seasoned officers were looking to attend to the needs of those in the care of the VA.

The suit claims a VA supervisor repeatedly harassed the chaplains about their Christian beliefs. The supervisor instructed the chaplains not to pray in the name of Jesus, which is an integral component of the Christian faith. Even in the context of a group discussion on faith-based topics, the two chaplains were chastised for reciting Scripture.

The chaplains' spiritual beliefs were belittled on multiple occasions. The harassment by the chaplains' supervisor was so significant that one of them withdrew from the program.

The VA is designed to serve members of the Armed Forces during periods of need and hardship. If the VA bars chaplains from expressing themselves, how can we expect service members suffering from private illnesses to come forward?

Unfortunately, this isn't an isolated event. There are numerous reports of the Department of Defense and the VA permitting open hostility to Christian organizations and those practicing the faith in uniform.

In April of 2013, media sources reported that Army soldiers were being briefed that Christian evangelicals were to be considered extremist organizations in the vein of Al Qaeda. Similar briefings have apparently continued, with a similar incident at Camp Shelby in Alabama last month.

Earlier in 2013, the Southern Baptist Convention's website was blocked from Army, Air Force, Marine, and Navy bases. The Pentagon has subsequently apologized and said there was no intent to restrict service member's access to the site. But when this incident is put into what seems to be a pattern of isolating Christian organizations in the military, an apology alone is not acceptable.

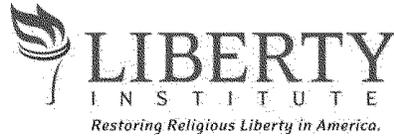
Mikey Weinstein is an ardent critic of Christians practicing in the military. Mr. Weinstein heads the Military Religious Freedom Foundation – but don't let the title of his organization fool you.

Mr. Weinstein believes the phrase "so help me God" should be removed from the US Air Force Academy's honor oath. This same man requested and received time

to speak with top military brass to discuss religious freedom in the military.

This country has fought such tyrants. Freedom of religion has been upheld with the blood, sweat, and tears of the US military. Now there appears to be a strain inside the Pentagon and VA whose mission it is to take away the soul of our fighting force.

Are we now to tiptoe on the very soil that entombs the brave men and women who gave their lives for religious liberty? As a military chaplain myself, I pray not!



Written Statement of Liberty Institute

**Kelly Shackelford
President & CEO**

**Michael Berry
Senior Counsel & Director of Military Affairs**

RELIGIOUS ACCOMMODATION IN THE ARMED FORCES

**Submitted to the House Armed Services Committee
Subcommittee on Military Personnel**

January 28, 2014

To Chairman Wilson and Ranking Member Davis:

My name is Michael Berry and I am Senior Counsel and Director of Military Affairs for Liberty Institute. Liberty Institute is the largest legal organization dedicated to restoring religious liberty in America's churches, schools, the public arena, and within our military. Within the military, Liberty Institute represents service members, veterans, and veterans support organizations. Our clientele include The American Legion, the Veterans of Foreign Wars, the Military Order of the Purple Heart, not to mention scores of individual service member and veterans.

By way of illustration, Liberty Institute currently represents three active duty service members whose religious freedom has been threatened by the military just within the past six months. In each case, our clients—each with years of decorated and honorable service to their credit—simply tried to serve their nation while remaining true to the tenets of their faith. Yet each experienced uncertainty, fear, hostility or outright denial of the right to freely exercise their religious beliefs.

In one instance, an active duty Airman with over nineteen years of dedicated service was relieved of his duties and transferred to a different unit because he did not agree with his lesbian commander's opinion that any religious or moral opposition to same-sex marriage violated Air Force and Department of Defense policy. To be clear, the commander initiated the conversation and asked my client if he agreed with her, to which he respectfully declined to answer. Nevertheless, she relieved him of his duties and transferred him, placing his military retirement and honorable service in jeopardy. Liberty Institute filed a formal complaint alleging religious discrimination. The Air Force responded by accusing my client of lying, initiating a criminal investigation into his conduct, and reading him his Miranda rights. At the conclusion of the investigation, the Air Force took no action and stated it is Air Force policy that, although religious belief is constitutionally protected, religious actions and speech are distinct from belief and may be punished. In other words, it is Air Force policy that Airmen are free to hold whatever religious beliefs they wish, but they are not free to act or speak in accordance with their sincerely-held religious beliefs.

In another case, an active duty Army officer, in a non-public e-mail that was kept within his unit, raised questions and concerns about a new Army policy extending special privileges and benefits to homosexual Soldiers for which heterosexual Soldiers were ineligible. Our client—a decorated combat veteran—also asked whether he, as a commanding officer, would be required to publicly endorse same-sex marriages within his unit, which would violate his religious beliefs. In response, the Army suspended his security clearance and initiated an investigation into his conduct.

In yet another case, an active duty Army Soldier attended a mandatory training event during which an Army equal opportunity advisor instructed the attendees that the American Family Association—a non-profit Christian ministry—was a domestic hate group. Liberty Institute investigated and discovered that all equal opportunity advisors within the Department of Defense are trained at the Defense Equal Opportunity

Management Institute (DEOMI). We obtained copies of DEOMI's training materials and were shocked to discover that DEOMI instructors are taught to provide the following training to service members with respect to extremism in the military:

- The standard hate message has not changed, but it has been packaged differently. Modern extremist groups run the gamut from the politically astute and subtle to the openly violent.
- Nowadays, instead of dressing in sheets or publicly espousing hate messages, many extremists will talk of individual liberties, states' rights, and how to make the world a better place.

Our client, a devout Christian, was deeply offended by what he heard and saw during the equal opportunity training. But because equal opportunity advisors are considered subject-matter authorities on such issues, our client was fearful that his support of the American Family Association would be used against him, and he questioned whether he could continue to support such non-profit ministries. He also feared retaliation by the Army for being a whistle-blower on the incident.

In each of these incidents, the military used existing laws, regulations, or policies to justify its hostility towards religious freedom. Our service members of faith—any faith—are less able to freely express their sincerely-held religious beliefs than at any time in our history. As a result, our men and women in uniform are losing the very constitutional freedoms they swore an oath to protect. And despite what some critics may claim, these incidents are not isolated. There is a real and growing threat that our service members may lose the First Amendment right to freely exercise their religious beliefs.

Each year Liberty Institute conducts a survey of religious hostility in America.¹ We have successfully used this report to rebuff critics who argue that there is no threat to religious liberty in America, and that any reported instances are anecdotal or exaggerated.

Prior to our 2013 survey, we did not have a separate category for instances of religious hostility that directly affect our service members and veterans. But over the past few years, we noticed an alarming spike in the number of such instances. As a result, we were compelled to include threats to religious liberty in our military as a new and separate section. Clearly, instances of religious hostility within the military—including our veterans—have increased in frequency and severity. In full disclosure, we do not represent each instance that is captured in the survey. Nevertheless, we respectfully invite the Committee's attention to the Survey in order to provide an accurate representation of the facts necessary to safeguard the Constitutional rights of our service members.

In light of these incidents, we commend the Department of Defense for its recent changes to Department of Defense Instruction 1300.17. On its face, 1300.17 appears to address past deficiencies with respect to service members' religious liberties. It is critical,

¹ An abridged copy of our Survey is included herein; the unabridged Survey and an Executive Summary are available at: <http://www.libertyinstitute.org/pages/survey-of-religious-hostilities>

however, that the Department of Defense follows this promising start by ensuring that all service members are truly free to exercise their religious beliefs without fear, intimidation, threat, or punishment. Our service members deserve better than lip service paid to the sacrifices they continue to make on behalf of all Americans.

In conclusion, Liberty Institute encourages the Subcommittee to hold the Department of Defense accountable to its promise of religious freedom within the military. We must ensure that the Department of Defense is prohibited from using a service member's sincerely-held religious belief—including actions and speech stemming from such belief—as a basis for adverse or punitive action *unless* there is an actual harm to good order and discipline within the Armed Forces.

Thank you for your valuable time and consideration on this vital issue.

**WITNESS RESPONSES TO QUESTIONS ASKED DURING
THE HEARING**

JANUARY 29, 2014

RESPONSE TO QUESTIONS SUBMITTED BY MR. WITTMAN

Ms. PENROD. DEOMI's website, www.deomi.org, is a wealth of educational, training, and research material for Equal Opportunity and Equal Employment Opportunity practitioners assigned throughout the Department of Defense. The programming of the site allows a usage report to be generated that indicates the traffic flow to each page and the number of training products downloaded from the site.

The site includes a wide selection of relevant human relations Advanced Distributed Learning (ADL) lessons online that anybody can take, anytime, from anywhere. In addition, DEOMI's website is where the Department will house standardized training template lessons on various human relations topics. These templates may be downloaded for use and will be accompanied by usage instructions provided by the Office of Diversity Management and Equal Opportunity. The availability of these standardized lesson templates will be communicated to the Services and Department as they become available through various established DOD communicating vehicles. The template topics include:

- Handling Dissident & Protest Activities
- Religious Accommodation
- Sexual Harassment
- Bystander Intervention
- Communicating Across Differences
- Prejudice & Discrimination
- Cultural Awareness

DEOMI does not endorse the SPLC, or its list of hate groups, nor does DEOMI curriculum currently use any sources of information from the SPLC. In addition, DOD does not publish a list of hate groups.

The DOD does not recognize or endorse any list of extremist or hate groups. EO practitioners will have access to the DOD-approved standardized templates based on the policy outlined in Department of Defense Instruction 1325.06, November 27, 2009, "Handling Dissident and Protest Activities Among Members of the Armed Forces." [See page 16.]

QUESTIONS SUBMITTED BY MEMBERS POST HEARING

JANUARY 29, 2014

QUESTIONS SUBMITTED BY MS. TSONGAS

Ms. TSONGAS. Since 2009, the U.S. Army has allowed three Sikh soldiers to wear turbans and maintain unshorn hair and beards as required by the Sikh religion. It is my understanding that under the Department's new religious accommodation guidelines, service members will need to request individual waivers on a case-by-case basis for each new assignment. Will Sikh service members have to remove their turbans, cut their hair, and shave their beards while their accommodation requests are pending?

Ms. PENROD. The Army has enlisted or appointed several Soldiers in recent years that have been granted exceptions to uniform and grooming policy. Each of these requests was considered on a case by case basis. In August 2013, the Army DSC, G-1 granted exceptions/waivers for six soldiers; three soldiers of the Sikh faith for their beards, unshorn hair and turbans and three soldiers of the Jewish faith for their beards. These accommodation waivers are valid for the length of these soldiers' military service.

However, Service members who are now granted an accommodation waiver retain it according to the specific elements of the respective Service approval. Upon significant changes in a Service member's duty (such as new assignment, transfer of duty station, deployment), at the discretion of the Secretary concerned, continuance of an approved accommodation must be requested. This initial approved accommodation remains in effect during the continuance re-evaluation process. DOD policy clearly supports accommodation in that it directs the Secretaries of the Military Department to disapprove cases only when there is a compelling governmental interest.

QUESTIONS SUBMITTED BY DR. HECK

Dr. HECK. Does the DOD currently have a presumptive ban on Sikhs displaying their articles of faith to include wearing of their religiously mandated turban and unshorn hair and beard?

Ms. PENROD. There is no presumptive ban in DOD-level policy. Military personnel may request accommodation of individual expressions of sincerely held religious beliefs and each such request is determined by the respective Service on a case-by-case basis.

Dr. HECK. While attending IET, are Sikhs required to give up turbans and shave their beards while they are awaiting a religious accommodation waiver? If a waiver is not granted and the Sikh refuses to shave or give up their turban, will they be processed for separation? And if so under what conditions?

Ms. PENROD. While preparing our response, we determined that the Services have differing policies regarding approval of religious accommodations during the enlistment process. We are currently reviewing those policies and recruiting practices with the Services.

Dr. HECK. During the hearing, Ms. Penrod suggested that a religious accommodation waiver was necessary with each new duty assignment in order to consider potential health and safety issues that may arise with each new unit or assignment. However, assuming that a Sikh is provided a religious accommodation while in IET and completes all training, to include MOPP training (properly fitting and sealing of a gas mask), what other health and safety issues are anticipated that necessitate a reconsideration of a religious accommodation waiver?

Ms. PENROD. DOD anticipates that some career fields, such as aircraft maintenance on flight lines, would be included as health and safety issues. Length of hair/beard could be a concern when in close proximity to moving components. Headgear may be excluded on flight line due to a potential foreign object damage (FOD) hazard. Even though turban headgear is permitted, it is excluded on the flight-line.

QUESTIONS SUBMITTED BY DR. FLEMING

Dr. FLEMING. Section 533(b) of the FY2014 NDAA says, "In prescribing such regulations, the Secretary shall consult with the official military faith-group representa-

tives who endorse military chaplains.” While testifying before the committee on January 29, 2014, Ms. Penrod indicated that the DOD was in compliance with the law in issuing the DODI 1300.17 as the official response to the FY2013 and FY2014 NDAA.

Ms. PENROD. Yes, the Department is in compliance with the law.

Dr. FLEMING. Could the DOD please provide the dates, times, names of the groups the DOD met with, topics discussed, and other pertinent details regarding any such meetings DOD had with official military faith-group representatives in revising the 1300.17 DODI?

Ms. PENROD. The revision of Department of Defense Instruction 1300.17, Accommodation of Religious Practices in the Military Departments was briefed during the 2013 Armed Forces Chaplains (AFCB) Board Endorsers Conference. At the January 16, 2014 AFCB Conference, attendees were offered the opportunity to present their concerns to a panel consisting of the Principal Deputy of Military and Personnel Policy and the Service Chiefs of Chaplains.

Topics discussed included: the status of Chaplain Corps ministry in a pluralistic environment; strategic plans for communication with endorsers; the accession and retention of chaplains; and the support and protection of religious freedoms.

American Baptist Home Mission Societies	Episcopal Missionary Church
American Council of Christian Churches	Evangelical Congregational Church
Anglican Church in America, The	Evangelical Lutheran Conference & Ministerium
Assemblies of God, General Council of	Federated Orthodox Catholic Churches International
Assembly of Canonical Orthodox Bishops in North America	First Baptist Church of Kingstowne
Associated Gospel Churches	Free Methodist Church—USA
Bible Fellowship Church (NAE)	Full Gospel Fellowship of Churches and Ministers International
Calvary Baptist Church (All Points Baptist Mission)	Fundamental Baptist Fellowship Int'l (John Vaughn is the endorser)
Calvary Chapel of Costa Mesa	Grace Brethern Churchs, The Fellowship of
Central Conference of American Rabbis (JWB)	Grace Churches Interational
Chaplaincy Full Gospel Churches	International Christian Church (CFGC)
Christian and Missionary Alliance, The	International Church of the Foursquare Gospel
Christian Church (Disciples of Christ)	National Assoc Council Armed Forces
Christian Churches and Churches of Christ	National Association of Evangelicals
Church of God (Cleveland, Tennessee) (NAE)	North American Mission Board (SBC)
Church of God Ministries	Orthodox Anglican Church
Church of God of Prophecy	Orthodox Church in America
Church of Jesus Christ of Latter-Day Saints, The (LDS)	Plymouth Brethren
Church of Lutheran Brethren	Presbyterian and Reformed Commision on Chaplains and Military Personnel
Church of the Nazarene	Presbyterian Church (U.S.A.), The
Coalition of Spirit-Filled Churches Inc.	Regular Baptist Churches
Congregational Methodist Church, The	Russian Orthodox Church Outside Russia
Conservative Baptist Association of America (NAE)	Unitarian Universalist Association, The
Convocation of Anglicans in North America, The (CANA/ACNA)	United Church of Christ
Cooperative Baptist Fellowship, Inc	United Methodist Church, The
	United Pentecostal Church International

Dr. FLEMING. While testifying, Ms. Penrod cited a January 16, 2014, meeting with over 100 military faith group representatives as evidence for DOD compliance with the above-mentioned requirement within the FY2014 NDAA. My understanding of the January 16th meeting, however, is that this was an annual meeting at which the DODI 1300.17 was not discussed nor did the DOD request the input of the faith group representatives in attendance. Please clarify as to how the January 16 meeting, or any other consultations the committee should be aware of, puts the DOD in compliance with the requirement within the FY2014 NDAA.

Ms. PENROD. A panel consisting of the Principal Deputy of Military and Personnel Policy and the Service Chiefs of Chaplains consulted with 132 official military faith-group representatives from over 50 faith group religious organizations and solicited their views concerning the pending changes in policy.

All recommendations from these official military faith-group representatives received before, during and after the conference were considered in the revision of

DODI 1304.28 which pertains to the guidance for the appointment of chaplains and 1300.17, even though no specific issues concerning the latter were expressed by faith group representatives.

Dr. FLEMING. Please clarify the input official military faith-group representatives provided the DOD as it revised the 1300.17 DODI, including examples of the input provided, an explanation of where in the revised DODI such input is reflected, and a description of the process used in incorporating such input into the revised DODI.

Ms. PENROD. The revision of Department of Defense Instruction 1300.17, Accommodation of Religious Practices in the Military Departments was briefed during the 2013 Armed Forces Chaplains Board Endorsers Conference. As part of the registration process for the 2014 Armed Forces Chaplains Board Endorsers Conference, official military faith-group representatives were offered the opportunity to submit any concerns or questions regarding religious issues. They were also offered the opportunity to present their concerns during the panel discussion during the conference. All inputs received from them prior to and during the 2014 conference regarded chaplains and did not directly apply to DODI 1300.17.

Dr. FLEMING. DOD has indicated that DODI 1304.28 regarding chaplains is currently under review and that the revised DODI will incorporate section 533(b), the consultation requirement. Please explain the process DOD will be using to gather the input of official military faith-group representatives and how it will be incorporating such input into the 1304.28 DODI.

Ms. PENROD. DODI 1304.28, Guidance for the Appointment of Chaplains for the Services, provides specific guidance for chaplains. All input received from official military faith-group representatives regarding chaplains, that was received before, during or after the 2014 Armed Forces Chaplains Board Military Chaplain Endorser Conference, were considered in the revision to DODI 1300.28.

Dr. FLEMING. The 1300.17 DODI reads that: "The DOD places a high value on the rights of members of the Military Services to observe the tenets of their respective religions or to observe no religion at all." It also explains the process for a religious accommodation request. Does the Department consider an atheist or humanist request as a legitimate religious accommodation request as defined by the 1300.17 DODI? Please describe how the 1300.17 DODI is able to accommodate the requests filed for those who do not profess any faith, while simultaneously protecting the religious freedom of chaplains and service members who express religious beliefs through speech and practice, on or off duty.

Ms. PENROD. Department of Defense Instruction (DODI) 1300.17, Accommodation of Religious Practices in the Military Departments, does not include guidance for non-religious requests for accommodation. Non-religious requests for accommodation are processed through the chain of command in accordance with the standard for what is religious as defined in DODI 1300.06, Conscientious Objectors.

Dr. FLEMING. Religious expression includes more than just an outward display of clothing, certain grooming practices, or dress; yet, the 1300.17 revised DODI appears to largely focus on religious accommodation for specific clothing or jewelry displayed on one's person. While I appreciate that the Department is taking a close look at these apparel regulations, this Instruction does not address the censorship of religious speech and fear of reprisal for such speech that the FY13 and FY14 NDAA intended to address. Please explain where in this revised DODI protection is provided for a service member's freedom to discuss, explain, mention, and reference their specific faith tenets either in private or in public while completing an official military duty or more broadly as a member of the armed services, as intended by the FY13 and FY14 NDAA?

Ms. PENROD. The most recent publication of Department of Defense Instruction (DODI) 1300.17, Accommodation of Religious Practices in the Military Departments, paragraph 4b, protects this freedom for all Service members and DODI 1304.28, Guidance for the Appointment of Chaplains, paragraphs 5.2.1 and 5.2.2, specifically expands this protection to chaplains while performing their official duties according to the tenets of their faith.

Dr. FLEMING. The intent of Congress in the FY13 and FY14 NDAA was not that religious expression through speech and practice be subject to a request for accommodation, rather that the default position for DOD policy should afford respect for religious expression and religious practice by service members. The reported incidents of censoring speech and religious practice are a DOD problem, not the burden of service members to prove why they should be able to speak or honor their faith both within and outside a chaplain service. The revised 1300.17 DODI further clarifies the process for seeking religious accommodation on matters pertaining to dress and grooming. Is it DOD policy that other aspects of religious expression such as religious or moral speech must also be submitted in a request for accommodation? If so, why?

Ms. PENROD. No, a request for accommodation for religious or moral speech is not required. The First Amendment guarantees freedom of all speech to include religious or moral speech and Title 10, Chapter 47, Uniform Code of Military Justice, Subchapter 10—Punitive Articles defines the parameters associated with inappropriate speech and actions that threaten good order and discipline.

Dr. FLEMING. In the Department's revisions to the 1300.17 DODI, you chose to define "substantial burden" in a way that forces commanders to make theological judgments about the importance of service member's religious practices. Courts have overwhelmingly rejected this approach noting that government officials lack both authority and competence to make such judgments. DOD's definition of "substantial burden" runs contrary to Religious Freedom Restoration Act and the Free Exercise and Establishment Clauses of the First Amendment. The definition will both limit service members' liberty and invite litigation. Can the DOD explain why this definition was rewritten rather than adopting the standard that has been favored by the courts and has protected religious liberty for all Americans for two decades?

Ms. PENROD. Congress used the term "substantially burden" in enacting the Religious Freedom Restoration Act in 1993. Congress did not define the term nor has it done so since enactment. The department's definition of "substantially burden" attempts to give a reasonable interpretation of the term consistent with court opinions. It is possible that the Supreme Court may provide more definitive guidance when it decides *Sebelius v. Hobby Lobby Stores, Inc.*

Dr. FLEMING. A number of media reports have indicated that the religious liberty of service members is being stifled within the services, yet the DOD and the various services have denied that a problem exists. Please describe the process used in reviewing the types of cases being reported in the media. How is the DOD making sure that all relevant facts are being reported up the chain of command? Please provide members of the House Armed Services Committee with pertinent facts and explanations of some of the incidents being reported, including explanations of corrective actions taken.

Ms. PENROD. There are multiple avenues (e.g. Chain of Command, Chaplains, Military Equal Opportunity, Inspector General) of recourse for individual Service members who believe their religious liberty is being limited. Attached are the facts associated with incidents alleged in the Family Research Council, "Clear and Present Danger" report. As you can see from the facts provided, Service leaders champion the protection of religious liberty for all Service members.

Dr. FLEMING. Recent media reports and testimony from outside organizations point toward a trend of a work environment that is hostile against religious expression within the military. What has the Department done to ensure that service members are fully aware of their rights under the First Amendment to express religious beliefs without fear of career reprisals, censorship, reprimands, or action being taken against them under the UCMJ?

Ms. PENROD. The Department published Department of Defense Instructions 1300.17, Accommodation of Religious Practices in the Military Departments, and 1304.28, Guidance for the Appointment of Chaplains, both of which include language regarding individual expressions of religious beliefs. The Military Departments are updating their Service regulations and policies to implement this guidance.

Dr. FLEMING. A number of media reports have indicated that the religious liberty of service members is being stifled within the services, yet the DOD and the various services have denied that a problem exists. As an example, LTC Kenneth Reyes posted an article on the history and context of the phrase "No atheists in foxholes" on the Chaplains Corner blog at Joint Base Elmendorf-Richardson. The article was initially removed from the blog, only later to be reinstated. Please provide the facts surrounding this incident and describe the process used in reviewing this case. In addition, please provide an explanation of the corrective action taken. Was there an acknowledgement from commanders that taking down this blog post was a violation of the First Amendment?

Ms. PENROD. Joint Base Elmendorf-Richardson (JBER) Wing Chaplain, Lt Col Kenneth Reyes, wrote an article for the "Chaplain's Corner" feature of the base newspaper entitled "No atheists in foxholes: Chaplains gave all in World War II." The article was posted on the official base web page on July 17, 2013, and distributed on base via newspaper on July 19, 2013.

On July 23, the 673d Air Base Wing Commander received a complaint regarding the article. In order to ensure the appropriate balance between the author's free exercise of religion and the prohibition against government establishment of religion, the Commander directed the article be removed for review. After reviewing the article, the Commander had the article re-posted on the web page. A disclaimer was added to the web page in order to communicate that all "Chaplain's Corner" fea-

tured articles are those of the author and are not endorsed by the government. The "Chaplain's Corner" continues to be a weekly part of the JBER web page.

Dr. FLEMING. While testifying, Ms. Penrod cited a January 16, 2014, meeting with over 100 military faith group representatives as evidence for DOD compliance with the above-mentioned requirement within the FY2014 NDAA. My understanding of the January 16th meeting, however, is that this was an annual meeting at which the DODI 1300.17 was not discussed nor did the DOD request the input of the faith group representatives in attendance. Please clarify as to how the January 16 meeting, or any other consultations the committee should be aware of, puts the DOD in compliance with the requirement within the FY2014 NDAA.

Admiral TIDD. During the January 16, 2014 meeting, I attended as the Navy Chief of Chaplains and was one of several panel members from the Department of Defense who discussed a range of topics with representatives of various faith groups. However, I respectfully defer to the Office of the Secretary of Defense on explaining how the Department of Defense fulfilled its obligations under the FY2014 NDAA. My personal observation after nearly five years as the Deputy Chief of Chaplains and the Chief of Chaplains, including 18 months as the chair of the Armed Forces Chaplains Board, is that we have a collegial relationship with the ecclesiastical endorsing agents representing our chaplains and that we have had open and productive discussions on religious liberty issues with them.

Dr. FLEMING. A number of media reports have indicated that the religious liberty of service members is being stifled within the services, yet the DOD and the various services have denied that a problem exists. Please describe the process used in reviewing the types of cases being reported in the media. How is the DOD making sure that all relevant facts are being reported up the chain of command? Please provide members of the House Armed Services Committee with pertinent facts and explanations of some of the incidents being reported, including explanations of corrective actions taken.

Admiral TIDD. The investigative approach to any given allegation will generally be driven by the particular facts at issue. For example, some religious liberty matters may be categorized as equal opportunity issues addressed under the Department of Navy's equal opportunity policy or through the complaint of wrongs process. Alternatively, a complaint regarding religious liberty dealing with abuse of command authority might be addressed through a command investigation, through the Navy Inspector General, or, if criminal wrongdoing is alleged or suspected, through the Naval Criminal Investigative Service, depending on the facts of the complaint.

With regard to Navy chaplains, on September 27, 2013, I provided written guidance reminding Navy chaplains that they may contact their senior supervisory chaplains, the Chief of Chaplains office, or their respective ecclesiastical endorsing agents (who have direct access to the Chief of Chaplains), if they feel that they are being required to act in a manner contrary to the tenets of their religious organizations. On October 3, 2013, I provided a copy of that letter to the ecclesiastical endorsing agents. Additionally, at numerous training venues (attended by over 60% of Navy chaplains), my deputy and I have discussed options for resolving religious liberty concerns.

Dr. FLEMING. While testifying, Ms. Penrod cited a January 16, 2014, meeting with over 100 military faith group representatives as evidence for DOD compliance with the above-mentioned requirement within the FY2014 NDAA. My understanding of the January 16th meeting, however, is that this was an annual meeting at which the DODI 1300.17 was not discussed nor did the DOD request the input of the faith group representatives in attendance. Please clarify as to how the January 16 meeting, or any other consultations the committee should be aware of, puts the DOD in compliance with the requirement within the FY2014 NDAA.

General BAILEY. (BG) Bailey was not in attendance at the meeting with Endorsers on January 16, 2014 and therefore is unable to comment on the event. The event was sponsored and facilitated by the Armed Forces Chaplain Board, which falls under the Office of the Secretary of Defense. We are not aware of any other consultations where this issue may have been addressed.

Dr. FLEMING. A number of media reports have indicated that the religious liberty of service members is being stifled within the services, yet the DOD and the various services have denied that a problem exists. Please describe the process used in reviewing the types of cases being reported in the media. How is the DOD making sure that all relevant facts are being reported up the chain of command? Please provide members of the House Armed Services Committee with pertinent facts and explanations of some of the incidents being reported, including explanations of corrective actions taken.

General BAILEY. The Army Office of the Chief of Chaplains routinely monitors the media for reports that are relevant to the Chaplain Corps. If the Chief of Chaplains

becomes aware of media reports of challenges to or violations of religious liberty, religious expression, or religious accommodation, he informs key Army leaders and staff, and requests more information from the installation or unit involved to confirm or deny the report and determine if any action is required from the Chaplain Corps. Commanders are responsible for investigating and responding to any credible reports of misconduct. Pertinent facts and explanations of reported incidents can be provided on a case-by-case basis.

Dr. FLEMING. While testifying, Ms. Penrod cited a January 16, 2014, meeting with over 100 military faith group representatives as evidence for DOD compliance with the above-mentioned requirement within the FY2014 NDAA. My understanding of the January 16th meeting, however, is that this was an annual meeting at which the DODI 1300.17 was not discussed nor did the DOD request the input of the faith group representatives in attendance. Please clarify as to how the January 16 meeting, or any other consultations the committee should be aware of, puts the DOD in compliance with the requirement within the FY2014 NDAA.

General PAGE. A panel consisting of the Principal Deputy of Military and Personnel Policy and the Service Chiefs of Chaplains consulted with 132 official military faith-group representatives from over 50 faith group religious organizations and solicited their views concerning the pending changes in policy.

All recommendations from these official military faith-group representatives received before, during and after the conference were considered in the revision of DODI 1304.28 which pertains to the guidance for the appointment of chaplains and 1300.17, even though no specific issues concerning the latter were expressed by faith group representatives.

Dr. FLEMING. A number of media reports have indicated that the religious liberty of service members is being stifled within the services, yet the DOD and the various services have denied that a problem exists. Please describe the process used in reviewing the types of cases being reported in the media. How is the DOD making sure that all relevant facts are being reported up the chain of command? Please provide members of the House Armed Services Committee with pertinent facts and explanations of some of the incidents being reported, including explanations of corrective actions taken.

General PAGE. There are multiple avenues (e.g. Chain of Command, Chaplains, Military Equal Opportunity, Inspector General) of recourse for individual Service members who believe their religious liberty is being limited. Attached are the facts associated with incidents alleged in the Family Research Council, "Clear and Present Danger" report. As you can see from the facts provided, Service leaders champion the protection of religious liberty for all Service members.

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General PAGE. Chaplain, Lt Colonel, Ken Reyes, Wing Chaplain at Joint Base Elmendorf-Richardson (JBER), wrote an article entitled "No atheists in foxholes: Chaplains gave all in World War II", which was printed in the base newspaper, "The Arctic Warrior," and distributed on July 19, 2013. The same article was posted on the JBER web page on July 17, 2013, in the "Chaplain's Corner" section. The wing commander directed that the article be removed from the website for review after receiving a complaint regarding the article. The wing commander reviewed the content of the article because at that time all information published on the JBER official web page implied the approval and endorsement of the wing commander. The wing commander wanted to ensure the information on the web page was balanced appropriately between the author's free exercise of religion and the possible appearance of the wing commander endorsing a religion.

After thorough review, the wing commander had the article re-posted to the web page with the following disclaimer:

"The 'Chaplain's Corner' offers perspectives to enhance spiritual/religious resiliency in support of Air Force and Army Comprehensive Fitness programs. Comments regarding specific beliefs, practices, or behaviors are strictly those of the author and do not convey endorsement by the U.S. Government, the Department of Defense, the Army, the Air Force, Joint Base Elmendorf-Richardson, or the 673d Air

Base Wing.” The “Chaplain’s Corner” continues to be a weekly part of the JBER web page.

Following this event, the Air Force Chief of Staff (CSAF) directed the Chief of Chaplains to prepare a card to help commanders make a more deliberate response to complaints from outside groups and prevent “knee-jerk” reactions. This card was sent to commanders on December 11, 2013, and is briefed to every wing and group commander course. CSAF also directed the creation of a “help line” commanders can call, if needed, to get answers directly from Air Staff on religious freedom questions. The card provides a checklist and a direct line to a team of chaplains and JAGs who are prepared to answer their questions. It has been well-received by commanders.

In addition, the “Religious Freedom Focus Day” hosted by the CSAF, provided recommendations to the CSAF in four areas: 1) policy, 2) educating the force, 3) handling complaints, 4) strategic messaging. These recommendations were approved by the CSAF and assigned to Offices of Responsibility with suspense dates not later than July 1.

QUESTIONS SUBMITTED BY MR. FORBES

Mr. FORBES. The conscience protections as passed by Congress in § 533 of the NDAA for FY 2013 and amended in the NDAA for FY 2014 read:

Unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate individual expressions of belief of a member of the armed forces reflecting the sincerely held conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such beliefs use such expression of belief as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.

Under current military policy, what meaning, if any, is ascribed to the following phrases: “adverse impact,” “military readiness,” “unit cohesion,” “good order and discipline.”

Ms. PENROD. Congress chose not to define these terms when it enacted, and amended, section 533. Similarly, these terms are not specifically defined in DODI 1300.17. The Department of Defense takes very seriously its responsibility to safeguard the First Amendment rights of all military personnel. We strive to provide accommodations for requests of individual expressions of sincerely held religious beliefs, to include accommodations associated with grooming standards, religious apparel, worship practices, and accommodation of dietary and medical practices, unless such accommodation would have an adverse impact on military readiness, unit cohesion, and good order and discipline. In general, “adverse impact” means having a negative effect on something, “military readiness” means the ability of military forces to fight and also to meet demands of all assigned missions, “unit cohesion” means the relationship among members of a unit that results in the measure of the units efforts being greater than the sum of the efforts of each individual in the unit, and “good order in discipline” means that the members of a unit comply with all orders, rules, policies, etc. in an acceptable manner.

Mr. FORBES. Did President Obama’s signing statement, made on January 3, 2013, on the passage of the NDAA for FY 2013 calling the conscience protections unnecessary and ill-advised, impact DOD’s development of the new regulation? If so, how? If not, why?

Ms. PENROD. The revisions to DODI 1300.17, The Accommodation of Religious Practices Within the Military Services, were not impacted by the President’s statement.

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Ms. PENROD. The revisions to DODI 1300.17, The Accommodation of Religious Practices Within the Military Services, were not impacted by the President’s statement.

Mr. FORBES. Revised DOD Instruction 1300.17, issued on January 22, 2014, incorporates the Religious Freedom Restoration Act (RFRA). However, it undermines the purpose of RFRA by redefining a well-grounded constitutional term of art, “substantial burden.” Why did DOD alter this time-tested standard?

Ms. PENROD. Department of Defense policy protects the civil liberties of its personnel, including religious practices to the greatest extent possible when consistent with military requirements. The definition was rewritten to shift the burden of proof

for justifying the accommodation request from the individual Service member to the commander considering the request. In doing so, the standard for disapproval was limited to only those cases where the commander determines that approval of the request would adversely mission accomplishment.

Mr. FORBES. What avenues of review are available to a service member who believes her expressions of a religious belief have wrongfully be determined to interfere with good order and discipline and is facing administrative or disciplinary action? Is it possible that military culture discourages a service member from challenging a commander's decision in the current channels available to service members? What notice, if any, is provided to the Chiefs of Chaplains when a service member faces administrative or disciplinary action for the expression of religious belief?

Ms. PENROD. Department of Defense and Military Department policies have established standards for appeal by Service members facing administrative and/or disciplinary actions. This process ensures a Service member's right to appeal a commander's decision through their chain of command. The Service Chief of Chaplains may be notified if such actions involve a chaplain within the Service.

