

[H.A.S.C. No. 113-129]

**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

HEARING HELD
NOVEMBER 19, 2014



U.S. GOVERNMENT PUBLISHING OFFICE

91-814

WASHINGTON : 2015

SUBCOMMITTEE ON MILITARY PERSONNEL

JOE WILSON, South Carolina, *Chairman*

WALTER B. JONES, North Carolina

JOSEPH J. HECK, Nevada

AUSTIN SCOTT, Georgia

BRAD R. WENSTRUP, Ohio

JACKIE WALORSKI, Indiana

CHRISTOPHER P. GIBSON, New York

KRISTI L. NOEM, South Dakota

SUSAN A. DAVIS, California

ROBERT A. BRADY, Pennsylvania

MADELEINE Z. BORDALLO, Guam

DAVID LOEBSACK, Iowa

NIKI TSONGAS, Massachusetts

CAROL SHEA-PORTER, New Hampshire

DAVE GIACHETTI, *Professional Staff Member*

CRAIG GREENE, *Professional Staff Member*

COLIN BOSSE, *Clerk*

CONTENTS

CHRONOLOGICAL LIST OF HEARINGS

2014

	Page
HEARING:	
Wednesday, November 19, 2014, Religious Accommodations in the Armed Services	1
APPENDIX:	
Wednesday, November 19, 2014	27

WEDNESDAY, NOVEMBER 19, 2014

RELIGIOUS ACCOMMODATIONS IN THE ARMED SERVICES

STATEMENTS PRESENTED BY MEMBERS OF CONGRESS

Davis, Hon. Susan A., a Representative from California, Ranking Member, Subcommittee on Military Personnel	2
Wilson, Hon. Joe, a Representative from South Carolina, Chairman, Subcommittee on Military Personnel	1

WITNESSES

Berry, Michael, Senior Counsel, Director of Military Affairs, Liberty Institute	3
Crews, Ron, Chaplain Colonel, USA (Ret.), Executive Director, Chaplain Alliance for Religious Liberty	4
Kahn, Rabbi Bruce, D.D., Captain, USN (Ret.)	5
Weber, Travis, Director, Center for Religious Liberty, Family Research Council	6
Weinstein, Michael, President, Military Religious Freedom Foundation	8

APPENDIX

PREPARED STATEMENTS:

Berry, Michael	32
Crews, Ron	55
Kahn, Rabbi Bruce	71
Weber, Travis	82
Weinstein, Michael	93
Wilson, Hon. Joe	31

DOCUMENTS SUBMITTED FOR THE RECORD:

Military Leadership Diversity Commission issue paper #22, "Religious Diversity in the U.S. Military"	169
Rabbi Bruce Kahn, Supplemental Statement for the Record	164
Statements for the Record:	
American Civil Liberties Union	144
American Humanist Association	121
Americans United for Separation of Church and State	137
Anti-Defamation League	153
Associated Gospel Churches	123
Collins, Hon. Doug, a Representative from Georgia	111

IV

	Page
DOCUMENTS SUBMITTED FOR THE RECORD—Continued	
Freedom from Religion Foundation	130
Forum on the Military Chaplaincy	115
Military Association of Atheists & Freethinkers	117
Religious Action Center of Reform Judaism	134
WITNESS RESPONSES TO QUESTIONS ASKED DURING THE HEARING:	
[There were no Questions submitted during the hearing.]	
QUESTIONS SUBMITTED BY MEMBERS POST HEARING:	
Dr. Fleming	183
Mr. Forbes	179

RELIGIOUS ACCOMMODATIONS IN THE ARMED SERVICES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE ON MILITARY PERSONNEL,
Washington, DC, Wednesday, November 19, 2014.

The subcommittee met, pursuant to call, at 2:01 p.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, welcome to a meeting of the Subcommittee on Military Personnel of the House Armed Services Committee. The hearing will come to order.

Today, the subcommittee will hear from several nongovernmental witnesses on their view of the Department of Defense's and services' enactment and enforcement of religious accommodation statutory and regulatory guidance and its impact on the rights of religious expression of our service members.

Historically, the Armed Forces have supported religious freedom and accommodated service members' religious beliefs and practices when possible. I believe we can maintain a proper balance between religious accommodations and military readiness, unit cohesion, and good order and discipline.

One of the strengths of our military is its diversity of belief and mutual respect. As such, it has been important for Congress to ensure that the appropriate statutory and regulatory guidance is in place and that DOD [Department of Defense] and the military services are implementing such guidance in order for the services to meet important spiritual and religious needs of the troops.

Recognizing that there have been challenges to 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 the perception from outside of the Department of Defense on its implementation of the religious accommodations policy and the effect on service members.

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

[The prepared statement of Mr. Wilson can be found in the Appendix on page 31.]

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

Mrs. DAVIS. Thank you. Thank you, Mr. Chairman.

Let me also welcome our witnesses here today.

Our hearing on religious accommodation in the armed services provides us an opportunity to hear from nongovernmental witnesses, some of whom have military backgrounds, on their views of the Department of Defense's implementation and enforcement of laws and policies on religious accommodation.

The balance of the accommodation of religious beliefs of service members and chaplains with the need for commanders to establish and maintain good order, discipline, and readiness has been a topic of concern for this committee over the past several years.

Military chaplains face the unique challenge of providing spiritual care for all of those who serve in the military, regardless of their particular faith or beliefs, and this often requires military chaplains to provide counsel or spiritual support to those of a different faith from themselves. This challenge has often created the perception that the Department is prohibiting chaplains and service members from practicing the tenets of their faith.

Often, in these discussions, what is lost is the recognition that a military chaplain's responsibility is not just to his or her faith and those that follow that specific faith, but it is instead to provide nondenominational and inclusive spiritual support to all those in uniform and their families, regardless of their specific religious belief.

Our Nation, as we all know, is home to individuals who practice every religion the world over, including those who have no belief or religion at all. Our diversity is what makes our country stronger, and our ability to respect different cultures and beliefs, including religious beliefs, is a bedrock of American values. And our Armed Forces is a reflection of our country, and we need to ensure that these values are upheld and protected for all service members and military clergy alike.

So I want to thank you, Mr. Chairman, for having this hearing. I look forward to hearing from our witnesses today.

And, again, welcome to all of you, and thank you for your presence here.

Mr. WILSON. Thank you, Mrs. Davis.

I would like to welcome our distinguished witnesses: Mr. Michael Berry, Senior Counsel, Director of Military Affairs of the Liberty Institute; Dr. Ron Crews, Chaplain, Colonel, U.S. Army, retired, Executive Director of the Chaplain Alliance for Religious Liberty; Rabbi Bruce H. Kahn, D.D., Captain, U.S. Navy, retired; Mr. Travis Weber, Director, Center for Religious Liberty of the Family Research Council; Mr. Michael Weinstein, President, Military Religious Freedom Foundation.

I now ask unanimous consent that Congressman Dr. John Fleming from Louisiana, Congresswoman Vicky Hartzler of Missouri, Congressman Randy Forbes of Virginia, Congressman Tim Huelskamp of Kansas, and Congressman Doug Collins of Georgia be allowed to participate and ask questions after all Members from the subcommittee have had an 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 Forum on the Military Chaplaincy; from the Military Association of Atheists and Freethinkers; from the American Humanist Association; from the Associated Gospel Churches; from the Sikh Coalition; from the Freedom from Religion Foundation; from the Religious Action Center of Reform Judaism; from the Americans United for Separation of Church and State; and from the American Civil Liberties Union.

Without objection, so ordered.

[The information referred to can be found in the Appendix beginning on page 115.][†]

Mr. WILSON. Mr. Berry, we will begin with your opening statement. We will then have statements from Dr. Crews, Rabbi Kahn, Mr. Weber, and Mr. Weinstein.

As a reminder, please keep your statements to 3 minutes or less. We have your written testimony for the record. Following your testimony, each Member will participate with questions in rounds of 5 minutes each until adjournment.

And, additionally, you need to be aware that votes could be called virtually anytime, and when the votes are called, if there is any opportunity to break, we will. We will recess, and then come back. But that is always quite up in the air.

Mr. Berry.

**STATEMENT OF MICHAEL BERRY, SENIOR COUNSEL,
DIRECTOR OF MILITARY AFFAIRS, LIBERTY INSTITUTE**

Mr. BERRY. Thank you. Chairman Wilson, Ranking Member Davis, and committee members, good morning. And on behalf of Liberty Institute, thank you for the opportunity to testify on this important issue.

Liberty Institute is a national religious liberties law firm whose mission is to defend and restore religious liberty in accordance with the principles of America's Founders. As Liberty Institute's senior counsel and director of military affairs, I have the privilege of working on religious liberties issues affecting our Armed Forces.

Our military's most formidable weapon is not a high-tech vehicle or a new aircraft carrier; it is the American service member and his or her selfless service and sacrifice to this Nation. Often, it is that service member's faith that enables him or her to endure the rigors of military life and, indeed, the horrors of combat. We must, therefore, ensure that those who sacrificed so much for our religious freedom do not lose theirs.

Recent events, however, demonstrate an alarming increase in incidents of religious hostility within our military, both in frequency and severity. Within the past year alone, Liberty Institute represented or advised multiple service members who experienced religious hostility by military superiors.

The following example serves as a sample of such cases. A 19-year Air Force veteran was relieved of his duties and transferred to a different unit because his religious beliefs conflicted with those

[†] The Sikh Coalition statement can be found at <http://docs.house.gov/meetings/as/as02/20141119/102755/hrg-113-as02-20141119-sd003.pdf>.

of his commander. A 24-year Army veteran and commanding officer was threatened with career-ending punishment because he expressed his religious beliefs in response to an Army policy directive that he believed treated soldiers unfairly.

Soldiers at separate bases were instructed that certain religious ministries, including evangelical Christians and Tea Party supporters, were to be considered domestic hate groups and/or terror threats. In each of these incidents, Liberty Institute took action to defend the religious freedom of our service members. Nevertheless, each of our clients and their families experienced fear, intimidation, and a sense of betrayal by their service. On a broader scale, the result was a chilling effect on religious freedom and expression that harms our entire military.

Despite this committee's laudable efforts to protect religious freedom in the military, there is still much work to be done. I am confident that our military commanders genuinely seek to do what is right and what is lawful. The problem, however, is that we now have a military culture of fear and confusion when it comes to the law.

To combat this, we respectfully recommend directing our military to dedicate resources toward training and educating our current and future leaders on our most sacred rights as Americans. That would be a significant first step toward reversing the disturbing trend we have observed and strengthening our military.

I conclude by quoting an excerpt from a report delivered to President Truman as the United States emerged from World War II and faced a new kind of enemy: "If we expect our Armed Forces to be physically prepared, we must also expect them to be ideologically prepared."

I thank the committee for this opportunity.

[The prepared statement of Mr. Berry can be found in the Appendix on page 32.]

Mr. WILSON. Thank you very much, Mr. Berry.

And we now proceed to Dr. Crews.

And I want to thank Dave Giachetti on our staff of the Military Personnel Subcommittee. He is above reproach on keeping time.

And, Mr. Berry, you were remarkable. This is unheard of.

But, no, so that everybody has an opportunity. And Mr. Giachetti will be the arbiter. Thank you.

Dr. Crews.

**STATEMENT OF RON CREWS, CHAPLAIN COLONEL, USA (RET.),
EXECUTIVE DIRECTOR, CHAPLAIN ALLIANCE FOR RELIGIOUS LIBERTY**

Dr. CREWS. Chairman Wilson, Ranking Member Davis, and committee members, the Chaplain Alliance for Religious Liberty exists to protect the religious liberty of chaplains and those they serve. We speak on behalf of almost 50 percent of chaplains currently serving in the military. Further, all of our members are military veterans, and we bring that wealth of experience to bear in this public comment.

The military is a unique institution of the state that may make uniquely comprehensive demands of individual service members that it cannot make of any other free member of society. Our Na-

tion has a history, though, of working hard to protect and accommodate military religious liberty—a tradition that has limited restrictions on service members’ ability to live their faiths.

Certainly, no American, especially those serving in the Armed Forces, should be forced to abandon their religious beliefs. Accordingly, the military chaplaincy was established before the founding of our Nation 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, over the past few years, our government has been retreating from that history of accommodation, enacting new policies without considering their dangerous effect on religious liberty and sometimes taking overtly hostile actions toward faith.

We have reported to you many concerns, including an Ohio National Guard removing an article from a Wing newsletter that mentioned the words “faith” and “Jesus Christ” while Moody Air Force officials allowed an article about atheism to remain. We believe the atheist airman has the liberty to write about the merits of atheism, and we believe the Christian airman has the liberty to write about the value of his faith in Jesus Christ. This double standard must stop.

An Air Force Academy cadet was required to remove a Bible verse from his personal whiteboard outside his living quarters. An equal-opportunity officer gave a PowerPoint training presentation that listed evangelical Christians, Catholics, Orthodox Jews as religious extremists.

Although the military may, when necessary to its mission, diminish some aspects of religious liberty, it may not and must not extinguish it. These attacks on religious liberty may be abated somewhat by the passage of section 533 of the NDAA [National Defense Authorization Act], but as long as military officials are labeling orthodox religious believers as domestic hate groups, the military will be abandoning its duty to protect religious liberty for service members.

General Patton once said, “It is the spirit of the men who follow and lead that gain the victory.” To attack the religious beliefs of our service personnel is to attack their spirits—the very spirits who are ensuring the safety of our Nation.

Thank you for your work on this issue, and we stand ready to help you.

[The prepared statement of Dr. Crews can be found in the Appendix on page 55.]

Mr. WILSON. Thank you very much, Dr. Crews.

Rabbi Kahn.

**STATEMENT OF RABBI BRUCE KAHN, D.D., CAPTAIN,
USN (RET.)**

Rabbi KAHN. Good afternoon, Chairman Wilson, Ranking Member Davis, and esteemed members of the committee. Thank you for inviting me to offer this testimony. It is an honor to participate.

I was commissioned an ensign in 1970, retired as a Navy captain in June 2002, was called back and served for a short time in the

Iraqi theater in 2003. I have served in a wide array of commands afloat and ashore with the Navy, Marines, and Coast Guard.

Navy Chief of Chaplains Rear Admiral Margaret Kibben wrote, "Chaplains are a safe place, a sanctuary where our people can come to regain a sense of wholeness and hope." I think everyone can agree with that conviction, but what does it take to be that sanctuary providing a path to wholeness and hope? We take a step when we serve everyone.

Over the decades, at least 95 percent of the troops to whom I provided ministry were not Jewish. They were from numerous faiths and included those with no interest in religion at all. That amazing diversity is just one reason why the military chaplaincy is necessarily a far different ministry from that in the civilian denominational setting.

For example, as a Jewish chaplain, I don't pray in Hebrew or Aramaic when doing so defeats the point of my presence. I don't counsel by citing the Talmud when I know the people with me have no awareness of or affection for that source. I would not avoid passages in the Quran when conducting a Bible class that Muslims would like to attend.

When someone, perhaps a constituent of yours who may be 20 years old or so, needs me to pray with him or her before heading into a firefight or needs me to say the right words when, God forbid, he or she is dying from one's wounds, I will do so as your constituent in crisis requires. And I will do so every time. I am a U.S. Navy chaplain.

We must always put first the spiritual and moral wellbeing of the troops. Their religious freedom is not to be sacrificed at the altar of our own. No one forced us to become chaplains. This is the ministry we volunteered for, and we must accept the expectations of flexibility that come with it.

That is why, depending on the religious composition of the troops present, we adjust what we say and do to embrace as many of them as possible, rather than set them apart one from the other. Let's remember that when troops go into battle they must have each other's backs. The enemy tries to divide and conquer. In service with one another, we unite and win.

When we follow Chaplain Kibben's advice, we enhance unit cohesion, readiness, and mission accomplishment in service to God and country. I believe that. I am a U.S. Navy chaplain.

Thank you for providing me this opportunity to submit my testimony to you.

[The prepared statement of Rabbi Kahn can be found in the Appendix on page 71.]

Mr. WILSON. Thank you, Rabbi Kahn.

We now proceed with Mr. Weber.

And I want to commend each of you. You have been within 2 seconds of 3 minutes. This is unheard of. Thank you.

STATEMENT OF TRAVIS WEBER, DIRECTOR, CENTER FOR RELIGIOUS LIBERTY, FAMILY RESEARCH COUNCIL

Mr. WEBER. Chairman Wilson, Ranking Member Davis, and members of the committee, thank you for convening this hearing

and the opportunity to testify regarding religious freedom in our military.

I am a graduate of the U.S. Naval Academy, a former Navy pilot, and now director of the Center for Religious Liberty at the Family Research Council, where we have grown increasingly concerned about restrictions on service members' religious expression over the past several years.

Despite congressional efforts to address these restrictions and DOD assertions that the problems are modest, religious expression continues to be stifled in our military, as we saw earlier this year when Bibles were removed from Navy lodges due to fears they were causing offense and when an Air Force Academy cadet's religious expression was singled out and targeted for removal from his own whiteboard.

Even if later corrected, such accounts, as others are documented in my written testimony, create a chilling effect and bolster the perception that religion beliefs must be hidden to maintain one's standing in the military.

Such censorship reveals a misunderstanding of a very basic truth: Religion simply cannot be sectioned off into neat little compartments in our lives. It is essential to all aspects of the human experience, including how we approach the issues of death and danger so essential to military service. How can we ask service men and women to do a job which is so incredibly difficult while at the same time divorcing them from the very spiritual resources they need to do that job?

These resources go beyond the confines of the mind and find expression in one's conversations and public affirmations. Consider the example of Jeff Struecker, an Army Ranger who was sent into a firefight on the streets of Mogadishu to rescue fallen comrades during the "Black Hawk Down" incident. In a short film titled "Return to Mogadishu," Jeff explains how he relied on God for strength in his ordeal. Are we prepared to tell him that God has no part in his story? I hope not. Why should others be treated any differently?

Let me be clear: We do not support coercing anyone into religious practice, but religious freedom, including the ability to speak of one's religion, must be protected. Jeff Struecker and many others like him must have the freedom to tell how their lives and their faith drive their careers. If we deny them that, we will be suffocating their military service at its very heart.

When considering how to approach these issues, we would do well to be informed by the Supreme Court's articulation earlier this year in another case, *Town of Greece v. Galloway*, which also dealt with the role of religion in public life, in which the Court said that, quote, "offense does not equate to coercion," unquote.

But what is to be done? We recommend that this committee ensure that DOD abides by congressional intent in the last two defense bills to protect religious expression, including religious speech; ensure that branch regulations reflect these protections; and ensure that military leaders, like commanders, chaplains, and JAG [Judge Advocate General] officers, receive the proper training on these protections.

Our service men and women do not give up their religious freedom and constitutional rights simply because they join our Nation's

military. Their rights must be protected, too, and we are confident this committee will continue to play an important role in seeing that happen.

Thank you.

[The prepared statement of Mr. Weber can be found in the Appendix on page 82.]

Mr. WILSON. Thank you very much, Mr. Weber.

We now proceed to Mr. Weinstein.

STATEMENT OF MICHAEL WEINSTEIN, PRESIDENT, MILITARY RELIGIOUS FREEDOM FOUNDATION

Mr. WEINSTEIN. Mr. Chairman, Ranking Member Davis, distinguished members of the subcommittee, thank you profoundly for the gracious invitation to speak with you today.

I am the president and founder of the Military Religious Freedom Foundation, which is a civil rights organization representing nearly 40,000 military members and veterans, 96 percent of whom are practicing Christians, who are gravely concerned about their religious freedom.

They ask this Congress to protect their right to remain free from those commanders and other superiors who wrongly believe that the First Amendment gives leaders an unrestricted right to proselytize or witness to their subordinates. Whether the subordinate agrees or finds the message unwelcome does not matter; the subordinate must listen respectfully and differentially or risk being punished under the Uniform Code of Military Justice for showing disrespect to a superior, which is a violation of Articles 89 and 91. Unlike their civilian counterparts, a military subordinate does not have the ability to walk away if they would prefer not to listen.

The patriots we represent ask this committee for a simple thing that won't cost the Nation one red cent: the right to make their own choice regarding religious belief, including the right not to believe in a deity, and to be free from the interference of their leaders when making those religious choices.

Freedom of religion is the ultimate liberty of every citizen. It is the highest expression of the freedom to think, to follow one's conscience without interference from the government and, for military members, without pressure from a commander or other superior.

Military life has no civilian equivalent, so regardless of your thoughts about private-sector employers' rights to proselytize or witness to their employees, the Supreme Court has correctly held that the unique military environment requires greater limits on certain freedoms of expression.

Writing for an overwhelming six-to-two majority 40 years ago in the 1974 decision of *Parker v. Levy*, the uber-conservative Chief Justice William Rehnquist said, quote, "This court has long recognized that the military is, by necessity, a specialized society separate from civilian society. While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections. The fundamental necessity for obedience and the consequent necessity for imposition of discipline may render permissible within the military that which would be constitutionally impermissible outside

of it. Speech, to include religious speech, that is protected in the the civil population may nonetheless undermine the effectiveness of response to command. If it does, it is constitutionally unprotected.”

Now, 40 years later, *Parker v. Levy* remains the absolute and appropriate law of the land. The Air Force captured the Supreme Court’s guidance correctly in Air Force Instruction 1–1, amended only a few days ago. It states that “Air Force leaders at all levels must ensure their words and actions cannot reasonably be construed to officially endorse or disapprove of or extend preferential treatment for any faith, belief, or absence of belief.”

Ultimately, at the end of the day, the thing that we have to keep in mind is very, very simple, and that is that we can never be in a situation where to weigh religious beliefs as a necessary, sufficient condition for honorary military service is allowable, because it is patently and wrongfully in every possible way unconstitutional. We ask the committee’s support.

Thank you for the chance to speak today.

[The prepared statement of Mr. Weinstein can be found in the Appendix on page 93.][†]

Mr. WILSON. Thank you very much, Mr. Weinstein.

This is an important hearing. These are important issues that are being discussed. An indication of that, we have been joined by two more Members of Congress. I am very grateful that Congressman Doug Lamborn of Colorado, Congressman Trent Franks of Arizona—and I would move unanimous consent that both, in the order of their appearance, be allowed to participate in the hearing.

Without any objection, we shall proceed.

And, again, we could be in recess any moment. And so I just want to thank each one of you. This is going to go down in history as a record of people within the 3-minute limit, much less the 5-minute limit. As we proceed, again, beginning 5 minutes with each of us, and Mr. Giachetti will keep us in line.

Dr. Crews, both the 2013 and 2014 National Defense Authorization Acts require religious belief and expression to be accommodated unless such expression could have an adverse impact on good order and discipline.

In your view, what impact has this had on policy on chaplains and service members with diverse religious backgrounds?

Dr. CREWS. First, let me say we are most grateful for this committee’s work and the passage of section 533 and amended by 532 last year.

We believe that, statutorily, the protections exist, not only for chaplains but those they serve, to be able to serve without fear of recrimination for actions they may take.

However, the Department of Defense has been slow in providing implementing guidance on section 533 and 532 and just recently have issued some guidance that will go to the field. Our concern now is how that guidance is going to be interpreted by those on the field, particularly on the wing level, the brigade level, and their JAGs, and how they will interpret that.

[†] Enclosures additional to Mr. Weinstein’s statement can be found at <http://docs.house.gov/meetings/as/as02/20141119/102755/hrg-113-as02-wstate-weinsteinm-20141119.pdf>.

Case in point is this wing commander and his JAG who made the decision that Colonel Marquinez could not write about his faith in Christ, while yet another wing commander said, yes, this atheist could write about his atheism. And the last time I checked, this article is still on the Air Force Web site, whereas this one was removed within an hour of it being posted in the newsletter.

So it is how the 533 and 532 is being interpreted in the field; that is the concern. And that is where we ask your help in keeping DOD's feet to the fire, that they obey the intent of Congress.

Mr. WILSON. Thank you very much.

And, Mr. Berry, in your view, how has the Department of Defense combated the perception that there could be career consequences for speaking out about one's moral or religious convictions?

Mr. BERRY. Chairman Wilson, the Department of Defense has, obviously, in January of this year, with the revision to Instruction 1300.17, has taken great steps forward in trying to ensure that service members' religious liberties are protected.

However, as Dr. Crews alluded to, those are the first steps necessary, and I honestly believe that more needs to be done to, in essence, follow up on simply a Department of Defense instruction and to put meat on the bones, if you will. Namely, what I am referring to is there needs to be some formal education done both at the command level and then for the subject-matter experts to deal with these issues.

The military has demonstrated great capability at devoting the resources it has available to it to combat issues—social issues and societal issues that it faces, even on controversial topics such as suicide awareness, PTSD, et cetera. If the military can do the great job that it has in addressing those issues, then certainly it can also do so with the perception or the actual religious hostility that service members are experiencing.

Mr. WILSON. Thank you.

And, Rabbi Kahn, you and I both began our military careers about the same year. So thank you for your Navy service. And as a Navy dad, I actually appreciate your service.

Rabbi KAHN. Sir, thank you. And I, yours.

Mr. WILSON. Well, thank you very much. I was Army, but, hey, this is good.

With the National Defense Authorization Act requirements on religious belief, back again to what I asked about to Dr. Crews, in your view, what impact has this policy had on chaplains and service members with diverse religious backgrounds?

Rabbi KAHN. Sir, I believe that varies considerably depending on the individual that is involved.

For those people who are thoroughly understanding of the idea that we need to have religious freedom but without using it to coerce others, especially when you are in a position of authority over those individuals, if you have people who are devout in their faith but who at the same time want to use that in order to protect the rights of choices, faith choices, that others make in their command, then it is no problem whatever. It is wonderful.

But where you have individuals who believe that they are on a mission to bring others to their point of view and they want to use

every opportunity that they have available in order to pursue that course, then you have cracks in unit cohesion and you have real problems with maintaining readiness and being prepared for going to war.

So I believe it depends greatly on who you are talking about and what that person's approach to those regs happens to be.

Mr. WILSON. Thank you very much.

And in strict accordance with the 5 minutes, we now proceed to Mrs. Davis.

Mrs. DAVIS. Thank you, Mr. Chairman.

And this is really following up and perhaps another way of stating the question and to all of you, have you seen that the recent changes actually clarified or enhanced religious accommodation for service members?

Mr. WEINSTEIN. Is that for—

Mrs. DAVIS. And are they aware—and are they, you know, aware of them, as well? I think chaplains certainly are aware of the changes, but I am just wondering, what do you think? Has it clarified it for them, or has it enhanced their religious accommodation for our service members?

Mr. WEINSTEIN. Madam Ranking Member, if I may, I think that there is a tsunami of confusion out there. But there is also a lot of willful confusion. And from the perspective of the Military Religious Freedom Foundation, the excuse of "I am sorry, I just don't understand" seems very specious.

The fact that we represent a little over 13.5 percent of every Muslim American in the U.S. military, 865 LGBT [lesbian, gay, bisexual, transgender] members of the military, mostly Protestants and Roman Catholics but people of every faith, it gets a little old after a while when a superior says, "I am sorry, I just didn't know."

I think they know very well. There is a very purposeful attempt to witness and proselytize irrespective of Department of Defense directives, instructions, and regulations. And that needs to be combated, with people that violate the law being visibly and aggressively disciplined.

Thank you.

Dr. CREWS. Mrs. Davis, let the record show that Chaplain Crews agrees with Mikey Weinstein that there is a tsunami of confusion in the field.

And one of the problems that we are hearing about is that the 533 instruction has not yet made it down into the JAG corps schools or even in some levels of chaplain schools, and that is a concern, that the intent of Congress be now implemented and taught to those who are providing subject-matter experts to commanders as they have to make really important decisions about religious liberty for the service men and women.

Mrs. DAVIS. Uh-huh.

Rabbi, did you—

Rabbi KAHN. Yes, ma'am. I don't know that you can legislate this matter so finely that you can eliminate, through the legislation, the confusion that exists in the minds of our members of our Armed Forces.

I think what is more important is that if we can find some principles of what we are going to—how we are going to approach reli-

gion in the Armed Forces that are then trained to members of the Armed Forces from the top down, we would be doing ourselves a big favor.

Absolutely, the importance of religious expression in the Armed Forces, it can't be—in my view, it can't be overstated. At the same time, there is a danger that if it is not used appropriately, taking into account the special conditions in the Armed Forces, it can be damaging.

So I must say that most of the time I have seen religious freedom exercised in such a way as to enhance mission accomplishment. But that happens when commanding officers and their senior leadership teams, both officer and enlisted, seek to address the religious needs and sensibilities of all their troops.

If we could agree on that, that we are all going to address the religious needs and sensibilities of all our troops, I think we would take a giant step forward. And I could certainly see that coming to pass in the right environment of conversation and training in the military itself. I am not sure how you could actually find the language to legislate that effectively.

Mrs. DAVIS. Uh-huh. Thank you.

Mr. Berry.

Mr. BERRY. Yes, thank you, Madam Ranking Member.

Just from my own experience, having been a student at Naval Justice School and having taught law at the U.S. Naval Academy, I would just like to offer my own anecdotal experience, that there is a fundamental misunderstanding of the interplay between the First Amendment and the military at all levels, both in the educational institutions and within the force itself.

By way of example, at Naval Justice School, which is a 10-week-long course, roughly 1 to 2 hours was devoted to covering the entire First Amendment, not just the Free Exercise and Establishment Clauses but the entire First Amendment. And that is nowhere near enough to even begin to scrape the surface of the body of law that is out there that needs to be covered.

Thank you.

Mrs. DAVIS. Thank you.

I think, Mr. Weber, did you want to—

Mr. WEBER. Ranking Member Davis, thank you for your question.

I will just quickly note that the language is pretty clear: sincerely held conscience, moral principles, and religious beliefs. However, as has been noted already, that needs to be made clear throughout the services at all levels and supported by a culture of understanding of the intent of what that is trying to get at.

So I think the language is clear, but it needs to be made clear throughout the services.

Mrs. DAVIS. Okay. Thank you.

Thank you, Mr. Chairman.

Mr. WILSON. Thank you, Ms. Davis.

And we are voting on the floor now. We have three votes. The estimate is we will be back by 3:10. We will recess and begin immediately with Congressman Walter Jones of North Carolina.

We are in recess.

[Recess.]

Mr. WILSON. Ladies and gentlemen, I would like to call the subcommittee back to order, the Military Personnel of the House Armed Services Committee.

We had the recess for votes. And, at this time, the minority members are in a separate caucus, but we have been advised that we can proceed. And we will with Congressman Walter Jones of North Carolina.

Mr. JONES. Mr. Chairman, thank you very much.

And I, in 2005, was notified by an Army chaplain in Iraq who was asked by the company commander to conduct a service for a young Army soldier who had been killed in action. In that particular unit, the Army chaplain needed to email his prayer to the divisional chaplain. And let me make it clear that this was taking place outside the chapel in Iraq.

And Jonathan Stertzbach emailed his divisional chaplain, who emailed back and struck through the words, which was the close of this chaplain, "in the name of our Lord and Savior, Jesus Christ, amen." He was removed from his chapel.

If that is the American military, then I am sure George Washington would be very disappointed, because only until the mid-nineties did our chaplains have any restriction, whether they be Jewish, Muslim, Christian—no restriction at all. I do not know how we in America can think that we should have control over the conscience of a man of faith, whether they be Jewish, Muslim, or Christian. That is not America, military or nonmilitary.

We in the House Armed Services Committee this past year got into the NDAA bill—I am going to read this, and I wanted to ask each one of you to give me a short sentence—"the religious freedom of military chaplains to close a prayer outside of a religious service according to the dictates of the chaplain's conscience"—"conscience." I don't think any government should dictate the conscience of any human being, be it a minister or a chaplain. That is not what God intended.

And for us to say that because I am Jewish that I have to close a prayer in a certain way or because I am a Christian or an Imam, it doesn't matter, it is America.

And these kids are giving their life in Muslim countries so that the Muslim imams can have freedom to pray as they see fit, but yet in America, where they came from to give their life, our chaplains are being challenged on how to close a prayer? It is a sad day for America when that is happening. It is a sad day for the military.

I talked to one of the chaplains for General Schwarzkopf. Desert Storm, he said, I had no restriction. The general would say we need to have prayer before battle, we need to have prayer after battle. He never said to me, You be conscious of how you close your prayer.

If we are starting to dictate the conscience of our ministers and our chaplains, then, America, God forgive us because we are not protecting freedom in America. That is a sad day.

How can anyone—and I want you to quick answer because of the time. I have 1 minute and 32 seconds. I want each one of you to say "this is fair" or "this is not fair." Just give me that, "fair" or "not fair."

The religious freedom of military chaplains to close a prayer outside of a religious service—outside of a religious service according to the dictates of the chaplain’s conscience, is that fair or unfair?

And I will start with you, Mr. Berry. Just give me “yes” or “no.”

Mr. BERRY. Yes, sir.

Dr. CREWS. I think that is a fair statement, yes, sir.

Rabbi KAHN. No, sir, it is not fair at all.

Mr. JONES. Okay. Then you believe that, as anyone, you have a right to believe that the government should dictate how your conscience functions? Then it is a sad day. And I would fight for a Jewish rabbi chaplain’s right to close the prayer they see fit. And if we are going to start challenging people of different faiths and religions, we are headed toward the end of the world.

Yes, sir. Please. Next.

Mr. WEBER. It is fair, Congressman.

Mr. WEINSTEIN. Congressman Jones, it is a beautiful day for America when we have a situation—

Mr. JONES. Just—

Mr. WEINSTEIN. Excuse me. No, I want to answer your question.

Mr. JONES. No, sir.

Mr. WEINSTEIN. No, no, no. I want to answer your question. It is an unfair question you are asking.

Mr. JONES. Fair or unfair? Fair or unfair is all I am asking.

Mr. WEINSTEIN. I don’t even understand your question. What I am saying is, in the military, Congressman, you can—

Mr. JONES. Answer the question.

Mr. WEINSTEIN. No. You can have either religious formations or mandatory formations. You can’t have mandatory religious formations. You cannot have mandatory religious formations.

Mr. JONES. That is my time.

Mr. WILSON. And, at this time, thank you very much, Mr. Jones.

We will be proceeding to Congressman Dr. Joe Heck of Nevada.

Dr. HECK. Thank you, Mr. Chairman.

Thank you all for being here today for the hearing.

You know, obviously, a very emotionally charged topic, and rightfully so, I believe. I have served for over 24 years through various levels of command and have had a chaplain as a personal staff officer assigned to me through all levels of command.

As many of you probably know, in Army FM [Field Manual] 6–0, the chaplain is personal staff assigned to the commander to provide for the free expression of religion and the religious, moral, and ethical leadership. He has a dual role—or she—has a dual role as a religious leader and as a staff advisor.

My concern is that we seem to be getting so wrapped around the axle that we are actually going to infringe upon the ability of a chaplain to do the job that they are charged to do, which is not just be a religious leader and minister to the needs of the service members, but to be that staff advisor on religious issues, moral and ethical issues to the commander.

I relied heavily on my chaplains during difficult times. I was in Al Asad for a year, taking care of dying soldiers every day in a CSH [Combat Support Hospital]. And to go up to the chaplain and ask to pray for me or to pray with me, regardless of the denomination of that chaplain, was one of the things that helped me get

through that deployment as we cared for our service men and women.

And I say, Mr. Weinstein, I take exception with the comment you made that you believe commanders are willfully proselytizing because of this specious argument of “I just didn’t know.” I think the problem is that we have to define what coercion is. We use that word, but if I speak to my formation in an informal setting and I want to end that with saying “may God bless you,” am I violating—in your opinions, am I violating their civil liberties? Am I coercing them to follow a specific religious dictum because that is how I choose to end a talk with my troops?

Those are the issues that trouble me, is that we are truly going to make it so difficult for chaplains—I mean, Rabbi, you said in your statement, when you were referring to ministering to those dying of wounds, you used the phrase, quote, “God forbid,” end quote. If I use that phrase, “God forbid,” in a statement or in a talk before my formation, am I proselytizing because I have invoked a deity higher than mine that perhaps some other religious background does not believe in?

So not only do I believe we are making this more difficult for our chaplains, we are making it more difficult for our commanders. And that is why there is so much confusion.

We are getting so afraid of what we can and can’t say, to be politically correct, as opposed to speaking from the heart to the men and women that we are leading into battle. How can I expect men and women to follow me and put their lives on the line if I have to spend more time worrying about how I am going to phrase something than getting the job done?

So, again, I only got a minute, 45 left. So, I mean, in your opinions—and I will go down the line—is saying things—I mean, because I am looking for input. I mean, I know what my chaplain, my staff chaplain, tells me now, but I would like to get some outside expertise.

Closing a talk with the formation, again, not in formation, if we are gathered around, even if it is a mandatory meeting, and at the end of it I say, you know, “God bless you,” am I proselytizing? Am I violating their rights?

Mr. Berry.

Mr. BERRY. Dr. Heck, not only is that position consistent with, it is actually supported by, our Federal courts. There is case law on that that actually says—and I will just give one brief quote—military chaplains do not invoke the official imprimatur of the military when they give a sermon or are acting in a religious capacity. And, therefore, it is wholly appropriate for them to advance their religious beliefs in that context.

Dr. HECK. But not as a chaplain. I am saying as a commander. Not as a man of the cloth, but as a commander using that phrase.

Mr. BERRY. Yes, sir.

Dr. HECK. That is part of the thing that Mr. Weinstein brought up, that commanders are willfully proselytizing.

Dr. CREWS. Sir, Dr. Heck, thank you for your service.

Just because you are a commander does not mean that you give up your religious liberties. I believe your religious liberties remain,

just as every other service member's, that you are able to exercise your religious liberties.

Dr. HECK. Rabbi.

Rabbi KAHN. God bless you. I really would like to explain my answer to both of you.

Dr. HECK. If you can in 15 seconds.

Rabbi KAHN. But I can't do it in 15 seconds—

Dr. HECK. All right. So let's get together after—

Rabbi KAHN [continuing]. But I very much want to respond.

Dr. HECK. Let's get together afterwards, or perhaps you can respond for the record, if we could, or have a discussion offline.

[The information referred to can be found in Appendix on page 164.]

Dr. HECK. Mr. Weber.

Mr. WEBER. Congressman, Dr. Heck, I definitely agree with the sentiment expressed, that the oversensitivity to making a comment, a religious reference, and the reaction to that is a severe problem. I think that is what we are here to address today. And it is not coercion every time a deity is mentioned or a religious reference is made.

Dr. HECK. My time is up, but, Mr. Chairman, may I have your indulgence just to get Mr. Weinstein?

Mr. WILSON. Yes.

Dr. HECK. Okay.

Mr. WEINSTEIN. Congressman Jones, actually, it is pronounced "Weinstein."

Dr. HECK. Sorry.

Mr. WEINSTEIN. God bless you.

Yeah, I just wanted to say that, look, the bottom line here is that we are talking about a unity—there is a large number, some people say as many as a quarter, of our military that shares no faith whatsoever. Obviously, if someone sneezes and you say "God bless you" or you say "God bless you" and it is not a Tourette's Syndrome thing—but to say it from a purposeful perspective right before you go into a combat mission, the question I have for you, sir—and I thank you for your service—why would you want to say something that could possibly be divisive and not unifying for your men and women as you go into combat?

Dr. HECK. Well, I mean, perhaps we can have that conversation offline, as well. I don't want to impose on the chairman anymore than I already have.

Thank you, Mr. Chair.

Mr. WILSON. Thank you, Dr. Heck.

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

Dr. FLEMING. Thank you, Mr. Chairman.

And thank you, panel, for being here.

We had a hearing just like this several months ago, where we had chaplains from the military, the highest-ranking chaplains. And that hearing and previous hearings, whenever we posed a question, particularly from this Clear and Present Danger, it really catalogs the many instances. Basically, their response was, there has never been a problem, those things didn't happen, or they were misinterpreted, or so forth.

So I challenged them. I said, you take this back and give us a report on it. And we have it in the notes, and I would like to submit it for the record.

[The information referred to was not available at the time of printing.]

Dr. FLEMING. But, for many cases, they conceded that there was a problem, it just hadn't been properly addressed. In other cases, they just didn't address it at all.

But, you know, what was interesting is, right after the meeting, I am walking down the hallway, and a military officer who was in that meeting came up to me and said, "Sir, you need to realize this is a huge problem in the military. What these gentlemen are telling you is not really reflective of the reality that is going on in the military." And so that certainly spoke to my heart on this.

Now, I hear the word "proselytizing" bandying back. We have discussed this many times. I have yet to hear one Member of Congress say that we should have a law that allows or promotes in any way proselytizing. No one has an interest in that, and that becomes simply a strawman argument, something to argue against that really doesn't exist in fact.

So I think that we need to be sure that we are talking about the right thing here. The important thing that happened in 533 that we changed in fiscal year 2014 from the NDAA was—the prior language said that military members were allowed to believe what they wanted to believe. Well, that is not what the First Amendment says. The First Amendment talks about speech, it talks about expression. The government can't keep you from believing anything anyway; you can always believe what you want to believe. The crux of the matter, where the rubber meets the road, if you will, is always in expression, religious expression.

And, you know, it is interesting, the courts have given a wide swath on the First Amendment. For instance, we see things on TV and in movies now that were unthinkable a few years ago. Why? Because the courts say it is your First Amendment right. It doesn't matter if it offends someone. And yet we hear in the military where someone has a Bible on their desk or they write something on a whiteboard and all of a sudden it offends people and it has to be taken down. So there is clearly a double standard being applied.

But for Dr. Crews, I would like to ask you this. Does the Chaplain Alliance continue to receive complaints from chaplains restricting their religious expressions?

Dr. CREWS. We have received complaints, Dr. Fleming, of a chaplain that Congressman Jones made reference to, but, more recently, a chaplain who was told to preach two sermons, one on Sunday morning and one on Sunday night, the same message in two different services, and he preached that message on a Sunday morning, and then immediately following that service he was visited by his supervisory chaplain and told he could not preach that same message in a chapel service that night.

Dr. FLEMING. Well, could I interrupt you just for a second?

Dr. CREWS. Yes.

Dr. FLEMING. It states very clearly under 533, it says, no member of the armed services may, number one, require a chaplain to per-

form any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain.

Dr. CREWS. Yes, sir.

Dr. FLEMING. Wouldn't that be—to require a chaplain to do that, wouldn't that be a violation of—

Dr. CREWS. It would be a violation, yes, sir. And this chaplain was instructed not to preach that message because of the content of that particular text that he was reading from and how he was interpreting that text.

But my understanding is the role of the chaplain, that we represent the faith groups who sent us there. And this chaplain was being totally in accord with the faith group that had sent him to be a chaplain. And we believe that that supervisory chaplain was totally out of line in trying to monitor or change that chaplain's sermon material. To me, that was a gross violation of what Congress intended in section 533.

And there are other examples, as well.

Dr. FLEMING. Sure.

Mr. Berry, if we impinge the rights of those who express themselves of conscience and religious beliefs, does that not also endanger those who may have atheistic, agnostic, or humanistic perspectives?

Mr. BERRY. That is absolutely correct, Dr. Fleming. In fact, religious freedom should be of concern to all Americans, regardless of what faith they hold or no faith at all.

And, in fact, even one instance of religious hostility will have and does have a chilling effect across the entire military, from the senior most general to the lowliest private. Just one incident is all it takes. And that message is sent very clearly, that if you do something that is considered to be out of line or politically incorrect, you will be punished.

And, in fact, there are actual Air Force JAG memorandums expressing that opinion, as we alluded to earlier, that, although beliefs are protected in the Air Force, actions and speech stemming from those beliefs are still punishable. Well, that sends a very clear message: If you have a religious belief or no belief at all, you have to keep it within your own—within yourself. You cannot express it or speak on it.

Dr. FLEMING. Right.

I yield back.

Mr. WILSON. Thank you, Dr. Fleming.

We now proceed to Chairman Randy Forbes of Virginia.

Mr. FORBES. Thank you, Mr. Chairman.

And thank you, gentlemen, for being here. I am sorry I only have 5 minutes. I have to make my questions short and ask your answers to be even shorter.

Mr. Weinstein, in a Washington Post article on July 16th, 2006, they attributed a quote to you that said, "We have created this foundation to be a weapon. We are going to lay down a withering field of fire and leave sucking chest wounds." Was that an accurate quote?

Mr. WEINSTEIN. By the way, it is pronounced "Weinstein."

Mr. FORBES. "Weinstein." I apologize.

Mr. WEINSTEIN. I said it earlier.

Mr. FORBES. I just need to know whether you made—

Mr. WEINSTEIN. What I was saying was, I said it earlier, it is “Weinstein,” and maybe you weren’t listening.

Mr. FORBES. No, what I want to know about is your quote.

Mr. WEINSTEIN. Yeah, I wanted to make it very clear that we realize that what we are facing is a tsunami of fundamentalist Christian—

Mr. FORBES. Did you make that quote or not? And I know you want to—

Mr. WEINSTEIN. I am going to get to your—can I answer your question?

Mr. FORBES. No, sir, because I don’t have but 4 minutes here.

Mr. WEINSTEIN. Yeah, I will answer it in 5 seconds.

Mr. FORBES. “Yes” or “no”?

Mr. WEINSTEIN. I am trying to explain what I said. We are facing a tsunami of fundamentalist Christian exceptionalism—

Mr. FORBES. Did you say those words?

Mr. WEINSTEIN [continuing]. And supremacy. And—

Mr. FORBES. Let me ask you another one, then, if you are not going to answer that one.

Mr. WEINSTEIN. No, I will be happy to tell you. Yes, of course I said those words, and proudly.

Mr. FORBES. Okay.

The second one, on June 16, 2013, you said, “Today we face incredibly well-funded gangs of fundamentalist Christian monsters who terrorize their fellow Americans by forcing their weaponized and twisted version of Christianity upon their helpless subordinates in our Nation’s Armed Forces.”

Did you make that quote?

Mr. WEINSTEIN. I did.

Mr. FORBES. Okay. Then here is what I want to just say to you guys. That, to me, is the definition of coercion.

And, Rabbi, when you gave your statement earlier—and I don’t think you meant this. But if I came to you with a marriage problem or financial problem or thoughts of suicide, I am looking for authenticity, you know? And I almost got from you the fact that you felt that if you weren’t telling me what I wanted to hear that somehow or the other that you were coercing me. And I just don’t think that is the definition that we want to put on our men and women in uniform.

And so, Mr. Weber, I want to ask you, based on—

Rabbi KAHN. That was not what I meant, sir.

Mr. FORBES [continuing]. Based on *Town of Greece v. Galloway*, can you explain what the difference is between coercion, by that court decision, and being offended?

Mr. WEBER. I can, Congressman. You know, in that case, the Court said that, quote, “offense does not equate to coercion.” That was Justice Kennedy in a concurring opinion.

Now, in that case, the Court was dealing with prayer in a public setting, a local government gathering. But what it had to confront was whether the offense towards people who disagreed with the prayer of a certain speaker who was coming and praying according to the dictates of a certain religion was sufficient to justify an establishment clause claim.

And, actually, if you look at the dissent, the majority and concurring opinions, the Supreme Court unanimously agreed that religion had a role in public life. So none of the justices said religion can't be here, has no place here. They just disagreed on—they differed over what lengths the government had to go to to accommodate minority beliefs. But they roundly repudiated the notion that offense equated with coercion.

And this is a recent decision, the Supreme Court's ruling on an establishment clause case. You know, and this isn't the only case. I use that as an example because I think it is pretty clear what they mean by "coercion" and "offense."

Mr. FORBES. Mr. Berry, how about you? I mean, I just can't comprehend—our guys in the military are pretty tough. They get a lot of stuff thrown at them. I can't comprehend how a cadet writing a scripture verse on a whiteboard is defined as coercion versus, you know, just even offending somebody.

How do you look at *Town of Greece v. Galloway* and the difference between "offense" and between "coercion"?

Mr. BERRY. I agree with Mr. Weber's assessment.

And to go back to the Air Force Academy whiteboard incident, I actually had the opportunity to meet with the senior attorney at the Air Force Academy to ask why they held the position that the verse would have to be removed. And the position that they took was that, because that cadet held a position of leadership and under Air Force Instruction 1-1, as a leader within his cadet squadron, it may cause other cadets who were subordinate to that cadet to feel that they had to share his belief in order to curry favor or gain favorable treatment or it somehow was a barrier to access to that cadet.

Mr. FORBES. And, see, I only have 30 seconds, but that is exactly what Dr. Fleming is saying. I haven't heard any people of faith calling atheists monsters or saying they want to put sucking wounds in them.

I mean, you are basically looking at a situation here where these individuals are stating what they believe and, based on that, we are calling that coercion, and then we are starting to restrict that kind of freedom of expression and belief.

Nobody is defending individuals trying to proselytize or coerce. We are simply trying to say, we need a protection. Just because you wear a uniform doesn't mean that you no longer have your right to express your freedom of your faith.

And, Mr. Chairman, my time is out, so I yield back.

Mr. WILSON. Thank you, Chairman Forbes.

We now proceed to Congresswoman Vicky Hartzler of Missouri.

Mrs. HARTZLER. Thank you, Mr. Chairman.

Thank you, gentlemen, for being here on this very, very important topic.

Chaplain Crews, I would like to visit with you first. Do you feel like that the chaplains represented by the Chaplain Alliance are fully confident in their ability to teach, express, and counsel based on the tenets of their faith without repercussions from the chain of command?

Dr. CREWS. That is our sincere hope, that that has been the long-standing policy for chaplains, that chaplains, as I mentioned ear-

lier, represent the faith that sent them to be chaplains. We fully expect a rabbi to be a rabbi and a Baptist to be a Baptist, a Catholic to be a priest.

Where we have experienced difficulty is in a few areas now of some supervisory chaplains wanting to step in to monitor sermons, monitor prayers, monitor teachings, which has caused us to come to you to ask for the section 533, for which we are grateful.

Thank you, Congresswoman.

Mrs. HARTZLER. Since we have passed section 533, have you seen a change in how that has been supervised, how chaplains have been supervised?

Dr. CREWS. Unfortunately, I have to say "not yet."

Now, we know that Department of Defense just earlier this year finally issued some implementing guidance, for which we are grateful. But we are still waiting to see how that implementing guidance is going to be carried out and how it is going to be taught, both at JAG schools and chaplain schools today.

Mrs. HARTZLER. So, as you know, DOD policy rightly calls on chaplains to serve individuals of all faiths—

Dr. CREWS. Correct.

Mrs. HARTZLER [continuing]. And no faith, and yet they are also held accountable to their faith traditions from their various denominations that support them.

So, as a chaplain, how do you balance these two aspects of your job? Must you be nonsectarian in all the duties that you perform?

Dr. CREWS. I tell the chaplains that I endorse, you serve everyone who walks through your door or you meet in the motor pool with grace and dignity. You are there to support them. And you are there to either perform the duties that you can perform according to your faith conscience, or if you cannot, then you are to provide for them, you are to find someone who can do that.

And, by and large, chaplains have been doing that successfully since 1775, providing and performing those religious ministries.

And so, yes, our chaplains today are great men and women of the cloth who are serving all who come to them, without any discrimination as to who they are, with the understanding that I tell our chaplains, you have to be clear, that if someone is coming to you for counsel, you have to be clear upfront, I am going to counsel you from a biblical perspective. If that is a problem, then let me find another chaplain that you may be more comfortable with. That has been working well, and we trust that it is going to continue to work well.

Mrs. HARTZLER. I certainly hope so. I certainly hope so, as well.

Mr. Weber, I just wanted to follow up on something you said earlier. In light of the recent Supreme Court precedent, if I am offended at something someone else has said about their faith, does that mean it was a violation of the establishment clause?

Mr. WEBER. Congresswoman, it does not mean there was a violation of the establishment clause.

Now, as I mentioned, that case dealt with a specific context. But the Court was very clear; in dealing with the context in that case, it noted that American citizens can deal with offense. As part of a free democracy, we engage in robust debate and come into conflict

with opinions with which we disagree all the time. Therefore, you are going to have to live with being offended.

Now, it was a local government context, but, you know, I think we can trust service men and women who are facing battle conditions and the dangers of war and all sorts of other offending circumstances, that a viewpoint with which they disagree is not going to be a problem.

Mrs. HARTZLER. Good. We certainly hope not. We want to protect our religious freedoms.

Thank you. I yield back.

Mr. WILSON. Thank you, Ms. Hartzler.

We now proceed to Congressman Doug Lamborn of Colorado.

Mr. LAMBORN. Thank you, Mr. Chairman, and thanks for having this hearing.

And I first want to say God bless each one of you for your service.

I have the honor of representing the Air Force Academy. And, after the whiteboard incident, I went over there to see what the whiteboards looked like, and they are actually real small. They are about the size of this piece of paper, right outside the dormitory doors that each person has.

Mr. Berry, was anything wrong with a cadet, whatever his role or position, writing an inspirational Bible verse on his whiteboard?

Mr. BERRY. No. And, in fact, Mr. Lamborn, that was really the issue that I raised with the attorney there, was that they had stopped reading Air Force Instruction 1-1, at least the version that existed at the time—it has been since revised—but they stopped reading it at paragraph 2-11, which says that the requirement of government neutrality toward religion.

And I said, what about the very next paragraph, which says that airmen are able to freely practice their own beliefs? And what about the protections that exist in DOD Instruction 1300.17?

And the response, unfortunately, I received was, well, this is not, you know, my policy, this is Air Force policy coming from the Pentagon. So it was a very unsatisfactory answer.

But you are absolutely right, Mr. Lamborn, that that cadet had every right under our Constitution to express his religious belief or no belief at all.

Mr. LAMBORN. And we have talked a little bit about leadership. And my concern is that, if taken to an extreme, someone who is a leader and has a religious component to his or her life of any of a multitude of religions, and to not be able to ever discuss that would be dishonest with other people. Do you agree with that?

Mr. BERRY. Yes, sir. And, in fact, that reminds me of the very last thing that my commanding officer said to our unit in Afghanistan before we departed friendly confines, and that was that we had been physically prepared to fight the enemy but that it was up to each of us to make sure that we were mentally and spiritually prepared to fight, that we were to fight with a clean heart and a clean conscience.

Mr. LAMBORN. Dr. Crews, I offered an amendment to the NDAA this last summer, which was accepted by the whole House, and it required the Air Force to rewrite its religious liberty regulations.

What is your opinion on the new Air Force regulation language?

Dr. CREWS. We are very grateful for the new language. We believe that it brings that Air Force policy more closely in line with the intent of your committee with 533.

I am not an attorney and don't play one on TV, but my reading of it, I understand it to be more in line with Federal law, RFRA [Religious Freedom Restoration Act]. It uses some of the RFRA language that I think helps—will help commanders and JAGs to be better able to make decisions like the whiteboard incident, like this dear colonel's article, that there is no reason why people of faith, regardless of their rank, cannot be able to express that faith while they are wearing the uniform.

Mr. LAMBORN. Okay. Thank you.

And, Mr. Weber, you gave us a quote in your testimony to the effect that being offended doesn't mean being coerced.

If someone like Mr. Weinstein is offended by an evangelical Christian, whether it is a chaplain or an airman or an officer, talking about his faith, does that translate into being coerced?

Mr. WEBER. Congressman, it does not. You know, as I mentioned—and this comes from the Supreme Court this year—offense itself does not mean there is coercion. And, you know, I think that is a policy and a principle that can be easily applied to uphold the right of all to live out their lives in accordance with conscience and beliefs.

Mr. LAMBORN. Well, I am going to yield back, but, once again, I thank all five of you for your service.

Mr. Chairman, I yield back.

Mr. WILSON. Thank you, Mr. Lamborn.

And we now will be concluding with Congressman Tim Huelskamp of Kansas.

Mr. HUELSKAMP. Well, thank you, Mr. Chairman, for allowing me to participate in this hearing. And I would like to thank the members of the committee that have done a superb job on protecting religious liberty.

And this issue means a lot to me personally, Mr. Chairman. In our family, we just buried my uncle, who had served 30 years as a U.S. Army chaplain, at age 97, and served many tours of duty. And so this means a lot to me.

And I would like to first ask Dr. Crews a question.

And, as you know, DOD policy calls on chaplains to serve individuals of all faith and no faith, and yet they are also held accountable to the faith traditions that support their endorsements. As a chaplain, how do you balance these two aspects of the job?

Dr. CREWS. That is a good question. And, as I said, chaplains wear two hats. We are chaplains, we are ministers or rabbis or people of the cloth, as we say, that represent the faith group from which we come. We are also staff officers at whatever level that we are serving. And we are to be that advisor to the commander on morale and the welfare of the military persons that we are serving.

Historically, chaplains have done a great job, I think, of balancing that fine line of being true to their convictions, being true to their conscience, and yet serving a broad multitude of faiths or no faiths.

I know in my last assignment at Fort Campbell, we had a group of pagans, and they wanted to have a space to do what they do.

And it was part of my job as the chaplain to provide that space and also to provide any funds that they may need to carry out so that they could practice their faith, or non-faith.

And I think chaplains, by and large, have done an excellent job of that. And we want to make sure that chaplains are continued to be encouraged, that they can be representatives of their faith group without fear of recrimination, particularly in this politicized society and culture we live in right now.

Mr. HUELSKAMP. Yeah, Dr. Crews. And I do hear from chaplains, not only in my district but elsewhere in the country, that are worried. They fear for their rights of conscience, their ability to serve men and women who are putting their lives on the line.

And do you think the DOD is adequately protecting their conscience as well as the members are that they try to serve?

Dr. CREWS. These are challenging days. It is a different day. Rabbi Kahn and I were talking before the hearing about how it is a different day now than when we were serving on Active Duty. And it is particularly because of the cultural climate change that has taken place in our country and in our military. And it is making it difficult for some who particularly come from an orthodox—and that is with a little “o”—faith background understanding of biblical values and morals, that they may not be in the politically accepted camp right now.

And so, for them to be able to continue to serve and be seen as a team player, to be able to do the marriage retreats that they want to do but yet they cannot because they are told that they would have to violate their conscience in order to do those marriage retreats, that is a growing concern. And how that is solved is—I don’t think we have found the answers yet in any of the branches.

But we are hopeful that the chiefs of chaplains understand and believe that they do and want to support—we believe that they want to support the chaplains that they are supervising to be able to be faithful to their faith group and yet to be able to serve all of the service members of their units and commands.

Mr. HUELSKAMP. Yeah. And I appreciate, particularly work on the committee and in certain traditions, particularly Roman Catholic traditions, the ability to find enough priests to serve our Catholic men and women is extremely limited. And there are things we can do as Congress to make that easier. And, certainly, protecting their conscience is definitely one of those that rates very highly.

Mr. Weber, if we might finalize, if you could talk a little bit about, just quickly, a dynamic that makes it important for the Armed Forces to protect the religious expression of our chaplains.

Mr. WEBER. Absolutely, Congressman. You know, I think as Dr. Crews has already pointed out, what we are interested in seeing is chaplains’ ability to act and live out their conscience and faith according to their deeply held beliefs in their role as a chaplain, just as the rest of us may seek to live out certain beliefs in our lives or at work or as we go about our daily business.

You know, so, to that extent, you know, we are pleased that the language protecting chaplains is in place, you know, the way that has worked out in practice. And how it looks going forward, in terms of how it is practiced at all levels of the military, is going to be continually important. But like the protection of religious ex-

pression for service men and women, we obviously care about it being in place for chaplains, too, you know. And I concur with everything that Dr. Crews has said here.

Mr. HUELSKAMP. Okay.

Well, Mr. Chairman, thank you. I yield back.

Mr. WILSON. Thank you, Congressman Huelskamp.

And I recognize Congressman Dr. John Fleming for a unanimous-consent request.

Dr. FLEMING. Mr. Chairman, I ask unanimous consent—the question was brought up about a survey showing that 25 percent of the military, when it came to religious diversity, were—I am not sure if I recall correctly the word used—atheist or nonbelievers or something like that.

And I refer back to, and I would like to submit for the record, from the Military Leadership Diversity Commission a religious diversity in the U.S. military study that was done, pretty large study. What it actually showed was 4 percent humanist, which is the closest it came to atheist; 12.1 percent were no religious affiliation reported. That is to say, they didn't necessarily affiliate with one denomination or another, which is a trend in the evangelical world. I am a Baptist, and many people now say that they are evangelical or they are not attached to any specific denomination.

So that is really a misrepresentation of what the real percentages are in that. And I wanted to be sure and submit this study. It is a pretty good study from 2009.

Mr. WILSON. Is there any objection?

Without objection, so ordered.

[The information referred to can be found in the Appendix on page 169.]

Mr. WILSON. I would like to thank Ms. Davis again for her role as the ranking member of the committee.

We appreciate each of the witnesses being here today.

I particularly want to thank the Military Personnel Subcommittee professional staff, led by Jeanette James, David Giachetti, Colin Bosse, additionally Craig Greene. And we have been very fortunate to pick up recently assigned Darreisha Bates.

If there is nothing further, we shall be adjourned.

[Whereupon, at 4:07 p.m., the subcommittee was adjourned.]

A P P E N D I X

NOVEMBER 19, 2014

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

NOVEMBER 19, 2014

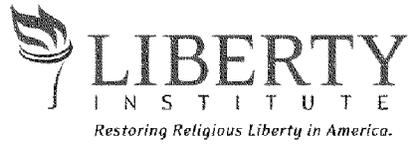
Chairman Joe Wilson Opening Statement
Hearing: Religious Accommodations in the Armed Services
November 19, 2014

Welcome to a meeting of the Subcommittee on Military Personnel of the House Armed Services Committee. Ladies and Gentlemen, the hearing will come to order. Today, the subcommittee will hear from several non-governmental witnesses' on their view of the Department of Defense's and the Services' enactment and enforcement of religious accommodation statutory and regulatory guidance and its impact on the rights of religious expression of our service members.

Historically, the Armed Forces have supported religious freedom and accommodated service member's religious beliefs and practice when possible. I believe we can maintain a proper balance between religious accommodations and military readiness, unit cohesion, and good order and discipline. One of the strengths of our military is its diversity of belief and mutual respect. As such, it has been important for Congress to ensure that the appropriate statutory and regulatory guidance is in place and that DOD and the military services are implementing such guidance in order for the services to meet important spiritual and religious needs of the 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 the perception from outside of the Department of Defense on its implementation of the religious accommodations policy and the effect on service members.



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**

November 19, 2014

To Chairman Wilson, Ranking Member Davis, and Committee Members:

On behalf of Liberty Institute, thank you for the privilege of presenting testimony regarding religious accommodation in the armed forces. This important issue is a pillar of Liberty Institute's mission.

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 clients include The American Legion, the Veterans of Foreign Wars, the Military Order of the Purple Heart, not to mention individual service member and veterans.

For as long as America has had a military, religion and faith have played integral roles in it. Since before the founding of our nation, American civil and military leadership have taken deliberate steps to meet the religious needs of service members, and to prevent it from becoming a purely secular entity. Thus, religious accommodation in the armed forces has both a historic and legal precedent. This foundation is explained further in the attached article: "*The Role of Religion in the United States Armed Forces.*"

Despite this firm foundation, the American military—coincident with American culture in general—has become increasingly secular during the past several decades. The result is that many service members perceive hostility against overt religious expression within the military. Unfortunately, this perception has now become a sad reality. This is evidenced by an alarming increase in instances of religious hostility over the past few years alone.

Liberty Institute currently represents service members who have experienced hostility, and in some cases discipline, because of their religious beliefs. 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. These service members experienced uncertainty, fear, hostility or outright denial of the right to freely exercise their religious beliefs. Of the many freedoms that our service members voluntarily relinquish upon entering the military, religious freedom is not one. The following examples, nevertheless, illustrate a growing trend of hostility towards religious freedom in the armed forces.

Liberty Institute represents an active duty Airman with over nineteen years of dedicated service, who was relieved of his duties and involuntarily removed from his unit because he did not agree with his commander's opinion that any religious or moral opposition to same-sex marriage violated Air Force and Department of Defense (DOD) policy. To be clear, the commander initiated the conversation and asked our client if he agreed with her, to which he respectfully declined to answer. Nevertheless, she relieved him of his duties and removed him, placing his military retirement and honorable service in jeopardy. To make matters worse, when our client submitted a formal complaint, the Air Force responded by reading our client his Article 31(b) rights—the military's version of

Miranda rights— and accused him of a crime. At the conclusion of its 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. Liberty Institute obtained a copy of the Air Force policy memorandum¹ that establishes this strained interpretation of the law. Such a policy violates federal law (the Religious Freedom Restoration Act of 1993) and the Constitution. Moreover, this policy is apparently now ubiquitous within the Air Force.

In March 2014, the United States Air Force Academy made national headlines when a Bible verse was removed from a white board outside a Cadet's living quarters. Liberty Institute attorneys met with Academy officials immediately following the incident in an attempt to ascertain the facts and the Air Force Academy's policy on religious expression. Academy officials claimed the Cadet removed the Bible verse after his fellow Cadets "counseled" him. An Academy official explained, however, that had the Cadet not removed the Bible verse, Academy officials likely would have ordered him to remove it. We objected that, in accordance with DOD Instruction 1300.17, and federal law, simply writing a Bible verse on a dorm room white board is a protected form of religious exercise. Much to our surprise, the Academy official responded that he "[did] not believe the DOD meant to provide policy on 'religious exercise' in [DOD] Instruction 1300.17 on anything other than apparel, grooming, and body art."

The Academy official based this interpretation on Air Force Instruction 1-1, Paragraph 2.11, which purportedly requires government "neutrality" towards religion. Although government neutrality may be an appropriate objective, it is the manner in which Paragraph 2.11 is implemented which causes many constitutional issues. Namely, the Air Force interprets Paragraph 2.11 such that any Airman—including Cadets—who holds a leadership position, may not overtly express their religious beliefs because doing so would amount to "coercion" in violation of Paragraph 2.11. This strained interpretation of the law resulted in the opinion that a Cadet writing a Bible verse on a white board would impermissibly coerce other Cadets, or make them feel that the Air Force preferred a particular religion over theirs. Such an opinion is contrary to the Constitution, federal law, military regulations, and common sense. The Academy's position, nevertheless, is consistent with the Air Force policy memorandum discussed above. The result is that the Air Force's incorrect interpretation of the law restricts religious freedom in an unnecessary and unlawful manner.

Although it may represent a disproportionate share of news coverage, incidents of religious hostility are not limited to the United States Air Force. Liberty Institute also represents active duty United States Army Soldiers who experienced religious hostility.

¹ OpJAGAF 2013-3 of March 20, 2013.

In one case, we represent an active duty officer who, in an 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 are ineligible. Our client—a decorated combat veteran—asked whether he, as a commanding officer, would be required to publicly endorse same-sex marriages within his unit, thereby violating his religious beliefs. Instead of answering his questions and working with him to resolve his moral dilemma, the Army suspended his security clearance and initiated an investigation into his conduct. Liberty Institute mounted a vigorous defense of this Soldier, and he was eventually exonerated. But the damage to his professional reputation, not to mention his confidence in the Army's commitment to its Soldiers, was done.

In another case, we represent an active duty Soldier who attended a mandatory training event during which an Army equal opportunity instructor equated Christians with hate groups. Liberty Institute investigated and discovered that all equal opportunity instructors 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.

At a time of turmoil and instability, during which our nation faces many external threats, DEOMI's message is inappropriate and offensive to those who swear an oath to protect and defend our Constitution because they believe in "individual liberties" and "making the world a better place."

In each of these incidents, the military interpreted and used existing laws, regulations, or policies to justify its hostility towards religious freedom. As we reflect on our recent Veterans Day observance, we honor the selfless service and sacrifice of our nation's armed forces. Our military continues to willingly sacrifice many freedoms in service to our nation; but not religious freedom. Today, sadly, America's 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.² We have successfully used this survey 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 2014, Liberty Institute did not have a separate category for instances of religious hostility that directly affect our service members and veterans. But in the past few years alone we observed an alarming spike in such instances. Clearly, instances of religious hostility against 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 Section IV of the Survey in order to provide an accurate representation of the facts necessary to safeguard the Constitutional rights of our service members.

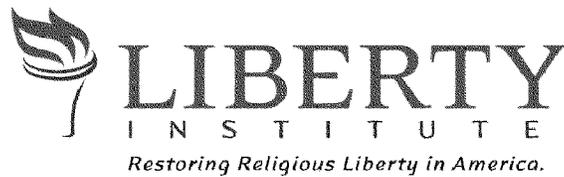
In light of these incidents, we commend the Committee for its tireless work on this vital issue. As a result of provisions within recent editions of the National Defense Authorization Act, the DOD responded by substantially amending DOD Instruction 1300.17. On its face, the Instruction appears to address some of the past deficiencies with respect to service members' religious liberties. It is critical, however, that the DOD 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 clients frequently complain that, despite the existence of laws, regulations, and policies that purport to protect religious expression, there remains a culture of fear among service members. That culture can only be changed from the top. Service members respond to strong leadership. Military leaders at all levels—from Generals in the Pentagon to drill instructors at basic training—must make protecting religious freedom and rights of conscience a priority. Our service members deserve better than lip service paid to the sacrifices they continue to make on behalf of all Americans. Therefore, we respectfully recommend that the Committee consider and evaluate implementing a requirement that service members in key leadership positions, such as commanders, judge advocates, and senior enlisted advisors, undergo mandatory, periodic training designed to ensure that such leaders understand, appreciate, and respect the role of religious liberty within the armed forces.

In conclusion, Liberty Institute encourages the Subcommittee to hold the DOD accountable to the Constitutional requirement of religious freedom in the military. We must ensure that this bedrock principal of American freedom is not only protected, but cherished.

Thank you for your valuable time and consideration.

² An unabridged copy of our Survey and an Executive Summary are available at: <http://www.libertyinstitute.org/pages/survey-of-religious-hostilities>



The Role of Religion in the United States Armed Forces
by Michael Berry¹

Abstract

Attempts to secularize America's military have existed for as long as America has had a military. Amid increasing diversity, some question the role that religion should, or may permissibly play, in the military. This paper attempts to address the role of religion in the United States Armed Forces from the historic and legal bases.

By the Numbers - Religious Diversity in America's Military²

In 2009, the Department of Defense conducted a Religious Identification and Practices Survey (RIPS) as Part B of the Defense Equal Opportunity Climate Survey (DEOCS). The RIPS was submitted to 14,769 service members, of whom 6,384 elected to participate. The RIPS revealed no statistically significant variations in race, ethnicity, age, gender, or military rank. And of those who completed the RIPS, only 0.25 percent did not provide valid responses regarding religious affiliation.

The RIPS reveals what appears to be a gradual trend in the United States towards greater percentages of the population reporting no religious affiliation. This is particularly true among younger adults, of whom the military contains in disproportionately greater numbers than society in general. This is consistent with the data reported by two other, well-respected surveys: the American Religious Identification Survey (ARIS)³, and the U.S. Religious Landscape Survey⁴.

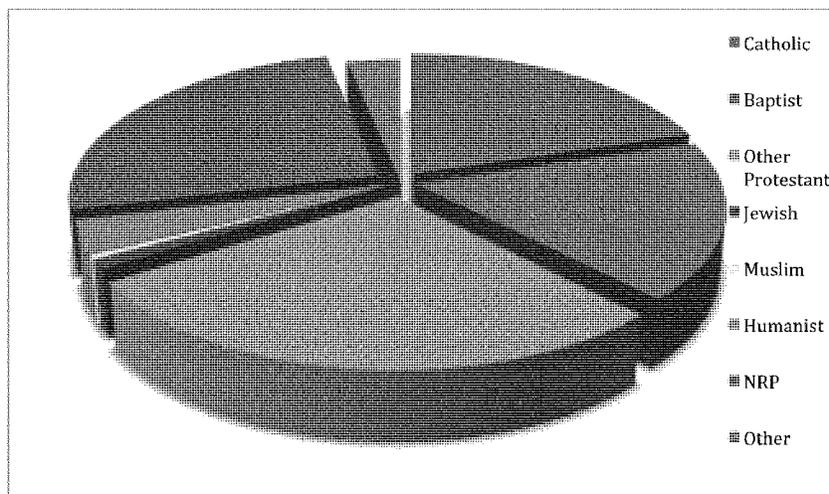
Overall, the No Religious Preference (NRP) population comprises approximately one quarter (25.50 percent) of RIPS participants. Nevertheless, service members who claim some form of Christian identity continue to comprise the largest population (65.84 percent). Within Christian denominational groups, Catholics (20.11 percent) and Baptists (17.56 percent) comprise the largest populations within the military. In fact, no other category claims even a double-digit percentage. The chart below provides a graphical representation of this data:

¹ Senior Counsel and Director of Military Affairs, Liberty Institute.

² Issue Paper #22 (June 2010), *Religious Diversity in the U.S. Military*, Military Leadership Diversity Commission.

³ Kosmin & Keysar, 2008.

⁴ Pew Forum on Religion in Public Life, 2008.



The RIPS also captured other important data on religion within the military. On the question of the importance of religion in one's life, a substantial majority claimed that religion is either "important" or "very important." Moreover, the RIPS reveals that age and rank may factor into the role religion plays. Older service members, who are typically also higher in rank, are more likely to claim a religious affiliation or preference, as well as placing more importance on religion in their lives. A corollary to this is that those in positions of leadership must prepare themselves to lead more religiously diverse populations—to include NRPs—into the twenty-first century.

Despite this increased diversity, without a doubt America's military continues to remain a force that places a high value on the role of religion in life. This is not a new phenomenon. Indeed, there exists a robust historical framework for religion and religious expression within the United States military.

The Historical Foundations of Religion in the Military

Since the United States' founding, American civil and military leadership have taken deliberate steps to meet the religious needs of the military and to prevent it from becoming a purely secular entity. The founders were no strangers to government provision of religious support. For example, in 1789 the first federal Congress passed a law providing for the payment of legislative chaplains.⁵ Nearly two centuries later, the

⁵ *Journal of the First Session of the Senate of the United States of America* (Washington: Gales and Seaton, 1820), p. 67, August 28, 1789. See also *The Public Statutes at Large* (Boston: Little & Brown, 1845), Vol. I, pp. 70-71, September 22, 1789, "An Act for allowing compensation to the Members of the Senate and House of Representatives of the United States, and to the Officers of both Houses (c)."

Supreme Court upheld the constitutionality of those legislative chaplains, concluding that it “is not . . . an establishment of religion,” but rather “a tolerable acknowledgement of beliefs widely held among the people of this country.”⁶ Today, in continuance of the first Congress’ policy, the government directly funds the salaries, activities, and operations of more than 4,500 military chaplains.⁷ Despite periodic legal challenges, the Supreme Court “has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause.”⁸ This includes military chaplains.

It is important to note that, while paid chaplains may constitute an official acceptance of, or authorization for, the presence of organized religion in military life, chaplains are the personification—not the limits—of such religious expression. In other words, if the government pays chaplains to perform religious exercises, it may also approve other forms of religious expression that are distinct from a formal chaplaincy, including service members’ religious expression.

Perhaps no individual had a greater influence in shaping our nation’s armed forces than George Washington, its first Commander-in-Chief. He made known his convictions on the importance of religion within the military early in his career while serving as a young Colonel during the French & Indian War (1753-1763). Throughout that time, he repeatedly requested religious support for his troops,⁹ explaining:

⁶ *Marsh v. Chambers*, 463 U.S. 783 (1983).

⁷ As of June 2006, there were 1,432 Army chaplains; 825 Navy chaplains, and 602 Air Force chaplains, for a total of 2,859 regular duty chaplains. Additionally, there are 433 chaplains in the Army Reserve National Guard, 500 chaplains in the U. S. Army Reserves, 237 chaplains in the U. S. Navy Reserves, 254 in the Air National Guard, and 316 in the U. S. Air Force Reserves, for a total of 1740 reserve chaplains. This makes a combined 4,599 federally-funded chaplains in the regular and reserve military. From information provided from the office of then-U. S. Congressman Bobby Jindal (LA) on September 28, 2006.

⁸ *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327 (1987).

⁹ Washington made at least six separate pleas for chaplains, including five times to Virginia Governor Robert Dinwiddie and once to Virginia Governor John Blair. These occasions included to Governor Dinwiddie: George Washington, *The Writings of George Washington*, John C. Fitzpatrick, editor (Washington, D. C.: Government Printing Office, 1931), Vol. I, p. 470, September 23, 1756; Vol. I, p. 498, November 9, 1756; Vol. I, p. 510, November 24, 1756; Vol. II, p. 33, April 29, 1757; Vol. II, p. 56, June 12, 1757; and to Governor Blair: Vol. II, p. 178, April 17, 1758. He also wrote a letter to John Robinson, speaker of the House of Burgesses from 1738-1766, on this issue: Vol. I, p. 505, to John Robinson on November 9, 1756.

*Common decency, Sir, in a camp calls for the services of a divine, and which ought not to be dispensed with, altho' the world should be so uncharitable as to think us void of religion.*¹⁰

Washington's British superiors refused each of his requests. But Washington believed so firmly that religious exercises and activities were essential to the well-being of his troops that he periodically undertook to perform those duties himself, including reading Scriptures, offering prayers, and conducting funeral services.¹¹

Future presidents and legislatures followed Washington's lead, laying a solid foundation for religious expression in the military. After the Battles of Lexington, Concord, and Bunker Hill, it became evident that reconciliation with Great Britain was unlikely. In response, Congress officially established the Continental Army, and explicitly recommended that "all officers and soldiers diligently to attend Divine Service."¹² Similarly, Congress instructed America's fledgling navy that "commanders of the ships of the Thirteen United Colonies are to take care that Divine Service be performed twice a day on board, and a sermon be preached on Sundays."¹³

America's second Commander-in-Chief, John Adams, was no less insistent that religious expression be promoted in the military. Known as "The Father of the American Navy," Adams' presidency saw the U.S. Navy grow from its humble origins, as an organization comprised largely of privateers¹⁴, into a formidable fighting force capable of defending the nation. During the Navy's ascendancy under his watch, Adams instructed his Secretary of the Navy, Benjamin Stoddert, on the importance of a Navy chaplaincy:

*I know not whether the commanders of our ships have given much attention to this subject [chaplains], but in my humble opinion, we shall be very unskillful politicians as well as bad Christians and unwise men if we neglect this important office in our infant navy.*¹⁵

¹⁰ George Washington, *The Writings of George Washington*, John C. Fitzpatrick, editor (Washington, D.C.: Government Printing Office, 1931), Vol. II, p. 178, to John Blair on April 17, 1758.

¹¹ See, e.g., Jared Sparks, *The Writings of George Washington* (Boston: Russell, Odiorne, & Metcalf, 1834), Vol. 2, p. 54; E. C. M'Guire, *The Religious Opinions and Character of Washington* (New York: Harper & Brothers, 1836), p. 136; Washington Irving, *Life of George Washington* (New York: G. P. Putnam & Co., 1855), Vol. I, pp. 128-129, 201; C. M. Kirkland, *Memoirs of Washington* (New York: D. Appleton & Company, 1857), p. 155; Hon. J. T. Headley, *The Illustrated Life of Washington* (New York: G. & F. Bill, 1859), p. 60; etc.

¹² *Journals of the Continental Congress* (Washington, D.C.: Government Printing Office, 1905), Vol. II, p. 112, June 30, 1775.

¹³ *Journals of the Continental Congress* (Washington, D.C.: Government Printing Office, 1905), Vol. III, pp. 378, November 28, 1775.

¹⁴ A private citizen authorized by the government to serve aboard military naval vessels.

¹⁵ John Adams, *The Works of John Adams*, Charles Francis Adams, editor (Boston: Little, Brown and Company, 1853), Vol. VIII, pp. 661-662, to B. Stoddert on July 3, 1799.

Congress responded favorably to President Adams' desire by establishing and providing for naval chaplains, and re-issuing the naval regulations it established during the Revolutionary War, requiring that Divine Service be performed twice each day aboard all naval vessels, and that a sermon be preached each Sunday.¹⁶

With this foundation firmly established, the tradition of religious expression within the military carried well into the twentieth century. For example, shortly after taking office, and during the military build-up preceding World War II, President Franklin Roosevelt declared:

*I want every father and every mother who has a son in the service to know – again, from what I have seen with my own eyes – that the men in the Army, Navy, and Marine Corps are receiving today the best possible training, equipment, and medical care. And we will never fail to provide for the spiritual needs of our officers and men.*¹⁷

During World War II, President Roosevelt apparently became even more committed to preserving the spiritual fitness of the military. So committed was Roosevelt, in fact, that he directed, at government expense, the printing and distribution of the Bible to troops along with his exhortation that “I take pleasure in commending the reading of the Bible to all who serve in the Armed Forces of the United States.”¹⁸

Following World War II, with the emergence of communism as the preeminent threat to American and western European democracies, the battle for ideological superiority commenced. President Harry Truman, wanting assurances that American service members were prepared to combat communism, convened a commission to examine the role of chaplains and spiritual faith in the military. The commission reported:

One of the fundamental differences dividing this world today lies in the field of ideas. **One side of the world, to which we belong, holds to the idea of a moral law which is based on religious convictions and teachings. The fundamental principles which give our democratic ideas their intellectual and emotional vigor are rooted in the religions which most of us have been taught. Our religious convictions continue to give our democratic faith a very large measure of its strength.** The

¹⁶ *The Public Statutes at Large* (Boston: Charles C. Little and James Brown, 1845), Vol. II, p. 45, “An Act for the better government of the navy of the United States,” April 23, 1800, Art. II.

¹⁷ Franklin D. Roosevelt, “Fireside Chat,” *The American Presidency Project*, October 12, 1942.

¹⁸ *The New Testament of Our Lord and Savior Jesus Christ, Prepared for Use of Protestant Personnel of the Army of the United States* (Washington, DC: US Government Printing Office, 1942), letter by Franklin Roosevelt inside front cover.

other side of the conflict has organized its idea upon a rejection of moral law and individual dignity that is utterly repugnant to any of our religions. Indeed, it has been necessary for the totalitarians to attack and stifle religion because such faith represents the antithesis of everything they teach. **It follows, therefore, that if we expect our Armed Forces to be physically prepared, we must also expect them to be ideologically prepared. A program of adequate religious opportunities for service personnel provides an essential way for strengthening their fundamental beliefs in democracy and, therefore, strengthening their effectiveness as an instrument of our democratic form of government.**¹⁹

The commission's report was not unfounded. During and after World War II, the U.S. Army surveyed thousands of soldiers about their attitudes toward military service. In 1949, the U.S. Army's Research Branch, Information and Education Division, produced a three-volume record of the survey's results.²⁰ In Volume II, *The American Soldier, Combat and Its Aftermath*, the U.S. Army surveyed its officers and enlisted service members about the importance of prayer. Among a list of options that included "thinking that you couldn't let the other men down," and "thinking that you had to finish the job in order to get home again," World War II veterans most frequently identified prayer as their source of motivation during combat. It is therefore reasonable to conclude that a permissive religious climate was essential to America's combat efficacy during World War II.

The preceding anecdotes are but a sample of the hundreds of historical examples establishing a clear and unambiguous message: the practice of permitting, encouraging, and at times requiring, religious expression within the armed forces was instituted by those who first won America's independence. And, despite multiple challenges, it has continued uninterrupted since then.

Legal Challenges to Religious Expression in the Military

Legal challenges to the constitutionality of religious expression within the military may take various forms. But the substance of the argument is generally similar: because service members are representatives and agents of the federal government, service member religious expression necessarily implies governmental endorsement of religion, thereby violating the Establishment Clause of the First Amendment. And although courts have repeatedly rejected this argument, as discussed below, the unique

¹⁹ *The Military Chaplaincy: A Report to the President by the President's Committee on Religion and Welfare in the Armed Forces*. October 1, 1950 (Washington, D. C.: 1951)[emphasis added].

²⁰ Stouffer, Samuel A., et al. *Studies in Social Psychology in World War II*. Princeton University Press (1949).

nature of the military and its mission²¹ means that courts often apply the First Amendment to service members differently than in other contexts. This is because, in contrast to civilian society, there is less individual autonomy in the military. Obedience to orders, good order, and discipline are vital to a military force that is capable of fighting and winning wars. The United States Supreme Court repeated this on multiple occasions:

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; to accomplish its mission the military must foster instinctive obedience, unity, commitment, and esprit de corps. The essence of military service is the subordination of the desires and interests of the individual to the needs of the service. . . . [W]ithin the military community there is simply not the same [individual] autonomy as there is in the larger civilian community.²²

And:

While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and the military mission requires a different application of those protections. The fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it.²³

Nevertheless, even the military's mission to fight and win wars, which necessitates obedience to authority, good order, and discipline, does not absolve it from ensuring the constitutional right to religious expression. In fact, one court stated that the military not only *may* accommodate religious expression, but it *must*.

In 1985, the United States Court of Appeals for the Second Circuit decided the case of *Katcoff v. Marsh*.²⁴ In *Katcoff*, two Harvard Law School students challenged the constitutionality of the U.S. Army's chaplaincy, arguing that government provision and funding of chaplains in order to provide for religious practice violated the Establishment Clause. The court rejected that argument, reasoning that, because of the rigors of military life, a service member's ability to freely practice their religion would be stifled unless the military provided chaplains.²⁵ Importantly, the court held that the Constitution "*obligates* Congress, upon creating an Army, to make religion available to soldiers who have been moved by the Army to areas of the world where religion of their own denominations is

²¹ See *Parker v. Levy*, 417 U.S. 733, 743 (1974) ("[I]t is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise.").

²² *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986).

²³ *Parker*, 417 U.S. at 758.

²⁴ *Katcoff v. Marsh*, 755 F.2d 223 (2d Cir. 1985).

²⁵ *Id.* at 234.

not available to them.”²⁶ The principle *Katcoff* exemplifies is now embodied in official DoD policy. Joint Publication 1-05, Religious Affairs in Joint Operations, states:

U.S. military chaplains are a unique manifestation of the nation’s commitment to the values of freedom of conscience and free exercise of religion proclaimed in her founding documents Uniformed chaplaincies are essential in fulfilling the government’s, and especially the Department of Defense’s, responsibilities to all members of the Armed Forces of the United States.²⁷

In other words, without a military chaplaincy, Congress would be unable to ensure service members’ rights under the Free Exercise clause.

American service members assigned to austere environs or forward-deployed experience this reality every day. They are unable to freely exercise their religion by virtue of their military service. Generally speaking, a service member assigned to an air base in Europe or Japan, or to a remote outpost in the Middle East, cannot attend services at his or her church, synagogue, mosque, etc. Thus, military chaplains provide an invaluable service that our forefathers understood to be a bulwark of liberty—military chaplains facilitate the free exercise of religion as guaranteed by the First Amendment. But the challenges to the chaplaincy and chaplains’ religious expression did not stop with *Katcoff*.

In the 1990’s, Congress considered a legislative override to President Clinton’s veto of the Partial-Birth Abortion Ban Act. Seeking to present a unified voice in support of the congressional override, the Catholic Church in the United States engaged in a “Project Life Postcard Campaign,” which began in 1996. The campaign consisted of Catholic priests throughout the country—including the Archdiocese for Military Services—preaching to their parishioners against the “partial-birth abortion” procedure. Priests encouraged parishioners to sign postcards urging their elected representatives to vote to override President Clinton’s veto.

In response, the Judge Advocate General of the Air Force—the highest-ranking attorney in the Air Force—issued an opinion letter prohibiting participation in the Postcard Campaign. The Army and the Navy²⁸ subsequently issued similar guidance to their chaplains.

Father Rigdon and Rabbi Kaye, a Roman Catholic priest and Jewish rabbi, respectively, were U.S. Air Force chaplains. Believing that partial-birth abortion was a significant issue to their denominations and congregations, both chaplains wanted to take part in the Postcard Campaign. But the Air Force prohibited them from doing so. In 1996,

²⁶ *Katcoff*, 755 F.2d at 234 [emphasis added].

²⁷ JP 1-05, at 1-1.

²⁸ The U.S. Marine Corps does not have an independent chaplains corps. The U.S. Navy provides chaplains for the U.S. Marine Corps.

Father Rigdon and Rabbi Kaye sued the Secretary of Defense, alleging that the military's prohibition on military chaplains encouraging their congregants to contact Congress in favor of the Partial-Birth Abortion Ban Act violated the Religious Freedom Restoration Act.²⁹ In 1997, the United States District Court for the District of Columbia ruled in favor of the chaplains.

The court's rationale was straightforward:

When chaplains are conducting worship . . . they are acting in their religious capacity, not as representatives of the military or . . . under the color of military authority . . . [M]ilitary chaplains do not invoke the official imprimatur of the military when they give a sermon; they are acting in a religious capacity, and therefore, it is wholly appropriate for them to advance their religious beliefs in that context.³⁰

Thus, not only does the First Amendment's Free Exercise Clause require the provision and funding of military chaplains, it also prohibits censorship of their speech when performed in their religious capacity. When chaplains perform their religious duties—whether it be delivering the Sacraments, preaching from the pulpit, or counseling the penitent—they enjoy enhanced First Amendment protection compared to their military colleagues.

Military Restrictions on Religious Expression

As *Katcoff* and *Rigdon* demonstrate, religious expression in the military does not run afoul of the First Amendment to the Constitution simply because it amounts to government acceptance or approval of such religious expression. *Rigdon*, however, did not define the limits on military proscription of a chaplain's non-religious speech. Nor did the court disturb the Supreme Court's holding in *Parker*, which arguably grants the military greater authority to curb non-religious speech.³¹

Because the fundamental concept of the “needs of the service” being greater than the “desires and interests of the individual” is central to how courts view service members' religious liberties, the right to religious expression in the military is not without limitation. The Department of Defense and each of the five military service branches have policies that govern how the military must accommodate the religious needs of service members. The notion that military commanders retain the authority and discretion to maintain good order and discipline, military readiness, and mission capability, are embedded in those policies.

²⁹ *Rigdon v. Perry*, 962 F.Supp. 150 (D.D.C. 1997).

³⁰ *Id.* at 160-61 (internal quotations and citations omitted).

³¹ *Parker* involved an Army medical specialist who, in protest against the Vietnam War, encouraged Soldiers to refuse to deploy to Vietnam for political reasons.

For example, the U.S. Army policy states “the Army will approve requests for accommodation of religious practices unless accommodation will have an adverse impact on unit readiness, individual readiness, unit cohesion, morale, discipline, safety, and/or health.”³²

The U.S. Navy and Marine Corps policy states the “Department of the Navy policy is to accommodate the doctrinal or traditional observances of the religious faith practiced by individual members when these doctrines or observances will not have an adverse impact on military readiness, individual or unit readiness, unit cohesion, health, safety, discipline, or mission accomplishment.”³³

The U.S. Air Force policy is perhaps the most restrictive of the service branches on this subject. It states “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 government establishment of religion.”³⁴ Paradoxically, the same regulation also states that “all Airmen are able to choose to practice their particular religion” and that Airmen “should confidently practice [their] own beliefs.”³⁵ But even then, an Airman’s “right to practice [their] beliefs does not excuse [them] from complying with directives, instructions, and lawful orders . . .”³⁶

Clearly, the right to engage in religious expression in the military is not unfettered. Military commanders retain substantial discretion in leading, training, and regulating the conduct of their subordinates. This even extends to expressive conduct.³⁷

Limitations on Military Authority to Censor Expressive Conduct

Although *Greer v. Spock* upheld the authority of military officials to restrict speech in furtherance of military objectives, it did not grant *carte blanche* to the military.³⁸ Indeed, a military commander who engages in censorship in an arbitrary and capricious manner, even under the guise of military necessity, may find him or herself on the losing end of a lawsuit. Such was the case in *Nieto v. Flatau*.³⁹

Jesse Nieto’s son, Marc Nieto, was an American Sailor killed in the Islamic terrorist attack on the U.S.S. Cole in 2000. Mr. Nieto, a retired U.S. Marine, worked as a civilian contractor at Marine Corps Base Camp Lejeune, North Carolina. In response to

³² AR 600-20 of March 18, 2008, ¶ 5-6a.

³³ SECNAVINST 1730.8B of October 2, 2008.

³⁴ AFI 1-1 of August 7, 2012 at ¶ 2.11.

³⁵ *Id.* at ¶ 2.12.1.

³⁶ *Id.* at ¶ 2.12.2.

³⁷ See *Greer v. Spock*, 424 U.S. 828 (1976) (holding that military ban on partisan political activity is consistent with military objectives and does not violate First Amendment).

³⁸ *Greer*, 424 U.S. at 839 (concluding that policy was “objectively and evenhandedly applied”).

³⁹ *Nieto v. Flatau*, 715 F.Supp. 2d 650 (E.D. N.C. 2010).

his son's death, Mr. Nieto began displaying various decals on his vehicle to honor his son's memory, and to express his views criticizing Islam and terrorism.

In 2008, Camp Lejeune officials began receiving complaints that Mr. Nieto's decals were offensive. Colonel Richard Flatau, Jr., the base commander, responded by ordering Mr. Nieto to remove his decals, citing Camp Lejeune regulations prohibiting "extremist, indecent, sexist, or racist messages on . . . motor vehicles in any format."⁴⁰ When Mr. Nieto refused to remove the decals from his vehicle, Camp Lejeune officials ordered him to remove his vehicle from Camp Lejeune, and banned him from the base and all other federal installations until he complied. Mr. Nieto sued, arguing that Colonel Flatau applied the base regulation against him in an arbitrary and capricious manner, and that he engaged in viewpoint discrimination.⁴¹

The court agreed with Mr. Nieto, holding that because Camp Lejeune officials permitted some decals to be displayed, they could not arbitrarily pick and choose those decals that were not permitted simply because some may find their message offensive.⁴² Specifically, pro-Islam messages were permitted, while anti-Islam messages were not. Importantly, the court stated "[w]hile the military may have greater leeway in restricting offensive material in furtherance of securing order and discipline among its troops, it may not do so in a manner that allows one message while prohibiting the messages of those who can reasonably be expected to respond."⁴³ This form of censorship is referred to as viewpoint discrimination, and it is unconstitutional.⁴⁴

Thus, even when a military regulation authorizes a commander to prohibit certain forms of speech in order to maintain good order and discipline, commanders may not engage in viewpoint discrimination against religious expression.

Challenging Alleged Constitutional Violations by the Military

Inevitably, the question arises: What recourse or remedy is available to a service member whose constitutional rights are violated by the military? It is a question courts have yet to address in a comprehensive and satisfactory manner. The unfortunate result is the lingering misconception that *no* recourse is available. This subsection attempts to dispel that myth.

In 1986, the Supreme Court decided the case of *Goldman v. Weinberger*.⁴⁵ In *Goldman*, the Court held that the U.S. Air Force did not violate the First Amendment rights of an Orthodox Jew and ordained rabbi who served in the Air Force by prohibiting

⁴⁰ *Nieto*, 715 F.Supp. 2d. at 652.

⁴¹ *Id.* at 656.

⁴² *Id.*

⁴³ *Id.* at 656.

⁴⁴ See, e.g., *Rosenberger v. Rector and Visitors of the Univ. of Virginia*, 515 U.S. 819 (1995).

⁴⁵ *Goldman*, *supra*.

him from wearing his yarmulke while indoors and on duty. The Court held that the regulation at issue reasonably and even-handedly regulated attire in a manner that accomplished the military's need for uniformity and discipline.⁴⁶ Although Mr. Goldman did not prevail on the substance of his constitutional claim, his case is notable because it stands for the proposition that service members *can* sue the federal government for violating an individual's constitutional rights.

Just three years earlier, and in contrast to *Goldman*, the Supreme Court decided *Chappell v. Wallace*,⁴⁷ in which it held that enlisted service members could not sue to recover damages from superior officers for constitutional violations in the course of military service. The Court's rationale was that, because of the unique and special nature of the military, Congress created a separate system of justice for service members under the Uniform Code of Military Justice (UCMJ).⁴⁸ Were the Court to craft a judicial remedy exposing officers to personal liability to those whom they command, it could severely undermine the special nature of military life. Moreover, because Congress—to whom the Constitution delegates control over the armed forces—had not provided a cause of action and remedy for constitutional violations by individual officers, any judicially created remedy would be inconsistent with Congress' authority in military matters.⁴⁹ In other words, the *Chappell* Court held there is no military analog to a *Bivens*⁵⁰ action, meaning enlisted service members may not sue their superiors for constitutional violations. Subsequent Congressional action, however, renders continued reliance on *Chappell* misplaced.

Ten years after the Supreme Court decided *Chappell*, Congress passed the Religious Freedom Restoration Act of 1993 (RFRA).⁵¹ Although a subsequent decision limited RFRA's reach to only the federal government,⁵² RFRA nevertheless prohibits "a government" from substantially burdening a person's free exercise of religion unless it can demonstrate a compelling interest that is implemented in the least restrictive way. RFRA creates a cause of action against "a government" that is unable to satisfy this standard. By its own terms, RFRA defines "a government" as including "a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States . . ."⁵³ Thus, post-*Chappell*, Congress *did* create a cause of action for constitutional violations by individuals. Accordingly, *Chappell's* validity is questionable, at best. And although it may be difficult to prevail against an individual

⁴⁶ *Goldman*, 475 U.S. at 510.

⁴⁷ *Chappell v. Wallace*, 462 U.S. 296 (1983).

⁴⁸ *Id.* at 302-04.

⁴⁹ *Id.* at 304.

⁵⁰ See *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) (providing money damages remedy for injuries resulting when federal officials violate an individual's constitutional rights).

⁵¹ 42 U.S.C. §§ 2000bb – bb-4.

⁵² *City of Boerne v. Flores*, 521 U.S. 507 (1997).

⁵³ 42 U.S.C. § 2000bb-2(1).

military officer on a constitutional violation claim—for example, the officer may claim qualified immunity—it is clear that RFRA creates a cause of action for such claims.

Therefore, service members who are victims of constitutional violations *can*, in fact, sue the United States, the responsible individual, or both.

Conclusion

American service members voluntarily surrender many freedoms and liberties upon entering the military. Religious freedom, however, is not one of them. Religion and faith have played integral roles in America's military since before our founding. Today, service members continue to enjoy broad, robust First Amendment rights. Service members are free to engage in religious expression in a manner consistent with their faith. The authority and discretion of military officials to curb such expression is not unfettered. And those who find themselves the victims of First Amendment violations may allege constitutional claims against those responsible.

CURRICULUM VITAE**MICHAEL D. BERRY**

ADDRESS

Home: 6010 Autumn Way, McKinney, TX 75070
 Office: 2001 W. Plano Parkway, Suite 1600, Plano, TX 75075
 Phone: (972) 941-4445
 E-mail: mberry@libertyinstitute.org

PROFESSIONAL HISTORY**Liberty Institute**, Senior Counsel, Director of Military Affairs (2013 – present)

- Responsible attorney for matters affecting religious liberty within the military, including service members, veterans, and military support organizations.
- Frequent commentator, television, and radio guest, having appeared dozens of times in media outlets such as Time Magazine, Fox News, Breitbart, Houston Chronicle, and Dallas Morning-News.
- Public speaker with dozens of speaking engagements at high-profile national events.
- Responsible for overseeing Liberty Institute internship program.
- Responsible for case intake and management process.

United States Marine Corps, Active Duty (2006 – 2013), Reserve (2013 – present)**Appellate Defense Attorney**, (2009 – 2013)

- Counsel of record for over 100 clients appealing their federal felony convictions, including murder, rape, espionage, and war crimes.
- Orally argued thirteen cases before military appellate courts.
- Counsel of record in numerous, high-profile military cases, including *United States v. Medina*, and *United States v. Castellano*.
- Only attorney in department to litigate national security cases requiring TS/SCI clearances.
- Supervisory attorney for a team of 30 defense attorneys in more than 200 appellate cases.
- Adjunct Professor of Law at the United States Naval Academy.
- Responsible attorney for training junior attorneys at military installations nationwide.

Civil and Administrative Law Attorney (2008-2009)

- Primary legal advisor to the Commanding Officer of the fourth largest installation in the Marine Corps for all civil, ethical, fiscal, and administrative law matters.
- Supervised more than 20 pre-litigation claims and investigations in cases involving potential litigation against the United States.
- Initial review officer for all high-profile investigations including aviation mishaps.

Battalion Landing Team Judge Advocate (2007-2008)

- Hand-selected to serve as the principal legal advisor to the Commanding Officer of a reinforced Marine Corps infantry battalion consisting of more than 1200 personnel.
- Subject-matter expert on complex legal matters of multi-national significance including the Rules of Engagement, law of war, international law, fiscal law, criminal law, and administrative law.
- Appointed as the Federal Claims Commissioner for southern district of Helmand Province, Afghanistan, to oversee compensation payments for collateral damage due to coalition operations.
- Responsible attorney for investigation into the death of a U.S. Marine officer.

Federal Prosecutor (2007)

- Represented the United States in approximately 15 federal criminal cases including rape, sexual assault, and child pornography.

Estate Planning and Family Law Attorney (2006 – 2007)

- Supervised the estate planning and family law office for the fourth largest installation in the Marine Corps.
- Provided services for over 1600 estate-planning clients.
- Represented over 160 clients in domestic relations, adoption, immigration and consumer protection cases.
- Managed and led the implementation of a new case-management database for the fourth largest installation in the Marine Corps.
- Under my leadership, our office received the ABA Award for Legal Assistance to Military Personnel.

Blackstone Fellow – Alliance Defending Freedom, Intern (2003)

- Provided legal research and legislative support to the public policy division of the Massachusetts Family Institute.

PROFESSIONAL AWARDS AND DECORATIONS

Navy-Marine Corps Commendation Medal, with Gold Star in lieu of second award
Navy Unit Commendation Medal
Afghanistan Campaign Medal
Global War on Terror Service Medal
National Defense Service Medal
North Atlantic Treaty Organization-International Security Assistance Force Medal
Navy-Marine Corps Sea Service Deployment Ribbon
Rifle Expert Badge, second award
Pistol Expert Badge, second award

LICENSES, ADMISSIONS, AND CLEARANCES

Active license, in good standing, to practice law in the following jurisdictions:

- United States Court of Appeals for the Armed Forces
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Northern District of Texas
- United States District Court for the Southern District of Texas
- United States Navy-Marine Corps Court of Criminal Appeals
- State of Texas
- State of Michigan

Security clearance:

- Top Secret with access to Sensitive Compartmented Information (TS/SCI)

EDUCATION

J.D. - The Ohio State University Moritz College of Law, Columbus, OH (2005)

- CALI Award for Excellence (Highest Grade in Class) – History of American Law and Society
- Academic Promise Scholarship Recipient
- President, Christian Legal Society, Ohio State Student Chapter
- Blackstone Fellowship

B.B.A. - Information and Operations Management - Texas A&M University, College Station, TX (1999)

- College of Business Distinguished Student
- Dean's List
- Air Force ROTC Scholarship Recipient

**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: Michael Berry

Capacity in which appearing: (check one)

Individual

Representative

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

FISCAL YEAR 2013

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
N/A			

FISCAL YEAR 2012

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
N/A			

FISCAL YEAR 2011

Federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
N/A			

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): N/A ;
 Fiscal year 2012: N/A ;
 Fiscal year 2011: N/A ;

Federal agencies with which federal contracts are held:

Current fiscal year (2013): N/A ;
 Fiscal year 2012: N/A ;
 Fiscal year 2011: N/A ;

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): N/A ;
 Fiscal year 2012: N/A ;
 Fiscal year 2011: N/A ;

Aggregate dollar value of federal contracts held:

Current fiscal year (2013): N/A ;
 Fiscal year 2012: N/A ;
 Fiscal year 2011: N/A ;

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): N/A ;
Fiscal year 2012: N/A ;
Fiscal year 2011: N/A .

Federal agencies with which federal grants are held:

Current fiscal year (2013): N/A ;
Fiscal year 2012: N/A ;
Fiscal year 2011: N/A .

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

Current fiscal year (2013): N/A ;
Fiscal year 2012: N/A ;
Fiscal year 2011: N/A .

Aggregate dollar value of federal grants held:

Current fiscal year (2013): N/A ;
Fiscal year 2012: N/A ;
Fiscal year 2011: N/A .



Ron Crews, CH (COL) USAR Retired
Executive Director
Email: rcrews@chaplainalliance.org

Written Statement of Ronald A. Crews
Chaplain (COL) USA
Executive Director
Chaplain Alliance for Religious Liberty

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

November 19, 2014

Hearing on Religious Accommodation in the Armed Forces

September 19, 2014

Chairman Wilson, Ranking Member Davis, and committee members,

Thank you for this opportunity to discuss the current challenges military members are facing concerning their religious liberties.

By way of introduction, the Chaplain Alliance for Religious Liberty (“CALL”) is a private, non-profit association that exists to advocate for and protect the religious liberty of chaplains and those they serve. Most of CALL’s members and leadership are official representatives of their various faith groups who certify chaplains for service in the U.S. Armed Forces. Through this certification relationship, CALL speaks on behalf of almost fifty percent of chaplains currently serving in the military. Further, almost all of CALL’s members and leadership are military veterans, most of whom served as chaplains. CALL brings that wealth of experience to bear in this public comment.

The military is a unique institution of the State that may, by law and by necessity, make uniquely comprehensive demands of individual service members that it cannot make of any other free member of society. Despite the unique constraints of the military, however, our Nation has a history of working hard to protect and accommodate military religious liberty. For this reason, the military chaplaincy was established even 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.

Indeed, since the founding of our nation, our military has stood for respectful religious pluralism. At a time when preaching non-Anglican beliefs was punished by law in Virginia, then Colonel George Washington made sure the non-Anglicans under his command had a chaplain who shared their specific religious faith and could meet their spiritual needs. This legacy has endured because the military recognized that protecting authentic religious diversity is a necessity. Doing so both secures the constitutional liberty of the men and women protecting liberty for the rest of us, and respects what it means to be religious – living in accordance with one’s core convictions about the ultimate meaning of the universe. The military should continue to stand for robust inclusion of religious voices.

Over the past few years, however, our government has been retreating from that history of accommodation, enacting new policies without considering their dangerous effect on religious liberty and occasionally even taking overtly hostile actions toward people of faith. Chaplain Alliance for Religious Liberty has reported to you many incidents of concerns including:

- The Ohio Air National Guard removed an article that dared to mention the words, faith and Jesus Christ from a Wing newsletter while Moody Air Force officials allowed an article about atheism remain (See attachment);
- An Air Force Academy cadet required to removed a Bible verse from his personal whiteboard outside his living quarters;
- A devotional message by an Air Force chaplain removed from the base website, later reinstated after public outcry and intervention by some on this committee;
- 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;¹
- 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;²
- 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;³
- A chaplain being relieved of his command over a military chapel because, consistent with his Biblical view of the definition of marriage, he could not allow same-sex weddings to take place in the chapel;⁴

¹ 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).

² 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).

³ 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).

⁴ 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).

- A chaplain who asked a senior military officer whether religious liberty would be protected in the wake of the repeal of the law against open homosexual behavior in the military being told to “get in line” or resign;⁵
- A chaplain was pulled from receiving a previously scheduled career advancement because, during the legislative debate on the repeal of DADT, he forwarded an email respectfully explaining the possible negative ramifications of repeal on the chaplain corps.⁶

A more complete list of concerns is provided in a document, “Clear and Present Danger: The Threat to Religious Liberty in the Military” published by the Restore Military Religious Freedom coalition of which I am a member.

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 imposed a type of sexual orientation non-discrimination requirement for the military. These 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 that 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, serve these needs while authentically representing their faith as ministers who teach, preach, counsel, and advise in accordance with their faith’s beliefs. While there is no question chaplains will continue to serve all service members with respect and care, there is increasing reason to fear that the government will not allow them their Constitutional freedom to do that job as their faith requires and their own conscience demands. And that diminution in liberty will in turn harm the rights of those such chaplains exist to serve: the men and women of our military.

Although the military may, when absolutely necessary as a part of its mission, diminish some aspects of religious liberty, it may not, and must not, extinguish it.

Our Nation’s effort to accommodate service members’ religious needs has been remarkably successful and “follows the best of our traditions.”⁷ That tradition of accommodation has given wide latitude for religious freedom in the military—a latitude 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

⁵ *Id.*

⁶ See *Military Under Fire*, *supra* at n.27, at 4:21 to 4:44.

⁷ *Zorach v. Clauson*, 343 U.S. 306, 314 (1952) (praising the State’s efforts to accommodate, and thus respect, the “spiritual needs” of citizens).

associations, actively sharing religious beliefs with non-believers, and avoiding (or condemning) conduct understood as immoral.⁸

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.*

Thus, service members who share those beliefs and chaplains who represent them, 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 corrupt their role as religious representatives of their faith. But adhering to this basic and long-respected duty to God has become increasingly difficult in our military.

These attacks on religious liberty may be mitigated somewhat by the passage of statutory protections for service members' and chaplains' rights of conscience, such as section 533 of the 2013 National Defense Authorization Act. Thank you for your work in passing this protection as well as the language in section 532 of the 2014 NDAA. Unfortunately, the President indicated his opposition to the conscience protections by calling this provision, "ill-advised and unnecessary,"⁹ and the Secretary of Defense has moved very slowly in following through on section 533's command that he "issue regulations implementing the protections afforded by this section."

At a minimum, the government must fulfill its statutory duty required by section 533. But even the most robust regulatory enforcement of section 533 and of similar laws guaranteeing military religious liberty, such as the Religious Freedom Restoration Act, will not be enough. As long as military leaders are labeling orthodox religious believers as "domestic hate groups" and comparing them 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 armed services. Its continuation not only offends religious liberty, it threatens the unity and *esprit de corps* that is necessary to a functioning military.

⁸ *See Emp't. Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990).

⁹ *See Statement on Signing the National Defense Authorization Act for Fiscal Year 2013*, 2013 Daily Comp. Pres. Docs. 00004, p. 1 (Jan. 2, 2013).

If these practices continue, the harm to military religious liberty will be felt in at least two broad ways. The first is the weeding out of service members who hold traditional 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.¹⁰ That inquiry would, for the first time, prove toxic for many devoutly religious service members if senior military leaders are advised 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 would 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.¹¹ Thus, traditional religious service members and chaplains would slowly find their promotion ceilings decreasing, their range of service possibilities shrinking, and their careers ending.

The second form of negative pressure on religious liberty would 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.¹² Thus, for instance, the Army chaplaincy provides, with the full support of commanding officers, a marriage enrichment program known as Strong Bonds.¹³ 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. If marriage programs like Strong Bonds are bluntly restructured to treat same-sex unions as the equivalent of marriages, many chaplains and commanding officers who personally administer the programs would face a direct conflict with their faith.

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

¹⁰See 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.

¹¹ See 10 U.S.C. § 632 (providing that, in most instances, an officer who twice fails to be selected for promotion must be discharged).

¹² See 10 U.S.C. § 1789.

¹³See Army Strong Bonds Home Page, available at <http://www.strongbonds.org/skins/strongbonds/home.aspx> (last visited Jan. 24, 2013).

marriage without violating both their conscience and the endorsement of their specific faith group.¹⁴

Because their military and religious duties call them to express their religious beliefs regularly and in a number of different ways, chaplains would 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.¹⁵ Chaplains may be punished for declining to privately counsel same-sex couples on certain matters relating to a couple's relationship¹⁶ or for counseling them according to their faith group's traditional religious beliefs on marriage.¹⁷ Chaplains with traditional religious beliefs who, as is common now, are 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.

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

¹⁴See, 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).

¹⁵See *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).

¹⁶See *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).

¹⁷See 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).

chaplains representing faith groups with traditional religious beliefs on marriage and family are removed from or kept from roles that would be prone to experiencing conflict—such as administering the Strong Bonds program—they, and the service members whom they serve will view such a move as direct government hostility to their faiths. The Federal Government would have effectively established preferred religions or religious beliefs within the military.¹⁸

Let me close by giving an example. Just a few months ago chaplains in Afghanistan were given mandatory “Post-DOMA repeal” training for serving in this new environment. This training is scenario-based. Endorsers and chaplains were told that this would be a time to say whatever you wanted to say without fear of retribution. One of the scenarios involved a same-sex couple asking to send their child to a chapel youth group. The chaplain said that of course the child would be accepted, but the couple would be told that a Biblical view of marriage would be taught at the youth group.

A disgruntled Chaplain Assistant in the training, violating the conditions of the training, reported this comment to the EO officer who reported it the commander. A 15-6 investigation (the Army’s formal investigation into alleged wrong doing) was initiated on the chaplain. The chaplain was told a “letter of Caution” would be placed in his file, but when the JAG was reminded of the NDAA language nothing was done. However, this chaplain now has a negative history that will go with him throughout his career.

General Patton once said, “Wars may be fought with weapons, but they are won by men. It is the spirit of the men who follow and of the man who leads that gained the victory.” If we force our service men and women to surrender their religious beliefs and abandon their freedom to operate according to their conscience, we are, in essence, attacking and ultimately crushing, their spirits. Spirits that are crucial to the perpetuation of our great American military, and spirits who are ensuring the safety of our people and many others every day.

Our nation has a long and admirable history of protecting the religious liberty of those who give their lives to protect ours. We must not abandon that heritage now. The military must stop this attack on the religious freedom and spirits of its members. No American, especially those serving in the armed forces, should be forced to surrender their religious beliefs. I thank this committee for all you have done to ensure that chaplains and those they serve will be able to serve both God and country without fear of retribution.

¹⁸ *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.”).

63

Respectfully,

A handwritten signature in black ink that reads "Ronald A. Crews". The signature is written in a cursive style with a large, prominent initial 'R'.

Chaplain (COL) Ronald A. Crews, USA (Ret.)
Executive Director



Atheist ponders spiritual fitness

Commentary by Senior Airman Jarrod Grammel
23d Wing Public Affairs

5/20/2013 - **MOODY AIR FORCE BASE, Ga.**, -- On May 17, Moody Air Force Base, Ga., held the next in a series of Comprehensive Airman Fitness (CAF) Days, each focusing on a different pillar of CAF.

This time, the pillar and focus for the day was spiritual fitness. Air Combat Command states that spiritual fitness is about having a sense of purpose and meaning in life. For the majority of people this will involve God and their religious beliefs. However, I believe religion isn't the only, and perhaps shouldn't, be the only way to achieve spiritual fitness.

As an atheist, people sometimes ask and wonder where I get my sense of purpose. I don't believe that God created me and has a special purpose for me in life, but rather that I'm the result of 4 billion years of evolutionary success on a minor planet of an average star in a universe with at least 100 billion galaxies.

And that's perfectly fine with me. My purpose and meaning comes from a desire to improve the world, help people, achieve my goals and enjoy the simple things in life.

I've always thought that one of the most important things to do in life is leave the world a better place than when you were born. This relatively broad statement could mean many things: a teacher who molds future generations into productive citizens, a scientist who makes an important discovery, a doctor who saves lives or an author who changes the way people think about a subject.

If you're like me, the mention of the word spiritual brings to mind ideas of spirits, ghosts, the supernatural or some kind of God. Sam Harris, author, philosopher and neuroscientist, points out that despite the term's unfortunate ties to medieval superstitions, these associations have nothing to do with its etymology.

The word spirit actually comes from the Latin term spiritus, meaning breath, and it wasn't until the 13th century that the term became associated with these ideas.

Harris argues that the word spirit should not be reserved for only the religious. In a blog post on spirituality, he acknowledges that human consciousness can allow for remarkable experiences.

"The fact that one can lose one's sense of self in an ocean of tranquility does not mean that one's consciousness is immaterial or that it presided over the birth of the universe," Harris wrote in a blog. "... a maturing science of the mind should help us to understand and access the heights of human well-being. To do this, however, we must first acknowledge that these heights exist."

Another aspect of spirituality for many religious people is praying. For the nonreligious, Harris believes certain practices of meditation are nontheistic and can be brought up in any secular or scientific context without embarrassment. The practice of "mindfulness" has been shown to have psychological benefits such as mitigating anxiety, emotional regulation, self awareness and improving cognitive function.

Another aspect of spiritual fitness is a feeling of connectedness. I think it's important to interact with other people who have similar interests or worldviews. For the religious, church offers the opportunity to connect with like-minded people.

However, there are many other ways to connect with people. Sports, book clubs, running groups and even family gatherings can help connect you with people who share similar interests and worldviews.

11/13/2014

Commentary - Atheist ponders spiritual fitness

I also believe a deep appreciation of art, music and even nature can be spiritual in a loose sense. I've often found myself leaning against a tree, reading a book on a clear day, and felt an overwhelming sense of calmness and clear mindedness. Or perhaps it can be felt after a long day of work when you listen to a favorite song.

However you chose to think about spiritual fitness, it doesn't have to be reserved only for the religious. Whether you believe your purpose in life comes in the form of God's divine plan or not, everybody should feel their life has meaning. And maybe we don't have a divine purpose, but rather that we must find our own.

COMMANDER'S COMMENTS: A SPIRITUAL JOURNEY AS A COMMANDER

First, I want to honor and thank you, present and past veterans, for your dedication and service to our wonderful, great nation. Every military branch has their own creed, serving as a guidepost for our actions. Each creed has similar themes and values reminding us of our responsibilities and duties when we put the uniform on. Of course, the most important to us, and my personal favorite is the Airman's Creed.

I am an American Airman.
I am a warrior.
I have answered my nation's call.

I am an American Airman.
My mission is to fly, fight and win.
I am faithful to a proud heritage,
A tradition of honor,
And a legacy of valor.

I am an American Airman,
Guardian of freedom and justice,
My nation's sword and shield,
Its sentry and avenger.
I defend my country with my life.

I am an American Airman:
Wingman, leader, warrior.
I will never leave an Airman behind,
I will never falter
And I will not fail.

As your medical group commander, our mission is to keep our Stingers medically ready at all times. We all must be fit to serve the Governor of Ohio in times of a natural or man-made disaster, civil disturbances or for the President of the United States during war or peacetime contingencies.

For the past 35 years I have been in the military. I started out as a young enlisted member reaching the rank of sergeant and worked my way up to colonel. Over the years, I have moved between three branches of service including the Marine Corps, Army National Guard and now as a member of the 180th family in the Air National Guard. There have been many challenges and adversities along the way that really impacted my life. I was challenged with the loss of my father at age 24, discrimination, career advancement, college, exposed to all walks of life, drugs, alcohol, immoral lifestyles and the many challenges of patient care. It is my strong spiritual foundation that has kept the light shining on my path. I would not be the man I am



Colonel Francisco Marinichino
Medical Group Commander

today if it wasn't for my mother leading our whole family to Jesus Christ. Her creed to us five children growing up is God first in your life, then comes family and third work.

The Air Force core values of service before self, integrity first and excellence in all we do also serve as a foundation in my life. I believe God expects us to live our lives by these values. As a commander, I deal with a diverse group of medical specialties, medical logistics, administrators, nursing service, medics, dental, optometry, public health, bioenvironmental and physicians. I try to emphasize that everyone is unique and have their own special talents that can create a successful organization when combined. I encourage empowering people with their talents and strengths no matter how young or old and regardless of if they have rank on their sleeves or collar. Humbleness and the ability to listen and respect the ideas of one another are vital because they work towards sustaining successful organization.

My career both in the military and civilian world have brought many challenges and struggles but one verse from the bible that helped me get through them is from Matthew 19:26. With God all things are possible.

So no matter how stressful your life can be with juggling family issues, relationships, career advancement, work, school, or any burden that life throws your way, cast it upon the Lord and He will sustain you. In 2006, the phrase "In God we Trust" was the 50th anniversary of its adoption, the Senate reaffirmed it as the official national motto of the United States of America. This phrase can also be found in the bible in Psalm 118:8, Psalm 40:3, Psalm 73:28 and Proverbs 29:25.

Our DPH, Alina Fuller, emphasized the four pillars of wellness: spiritual, social, emotional and physical. The goal is to achieve a healthy balance in all four. When we slip in one of these areas the others become unbalanced causing a lower ability to achieve resiliency in life.

The military has many resources through the Director of Psychological Health, Chaplain's office, medical services and various training opportunities to help you achieve success in your professional, personal and spiritual development.



Ron Crews, CH (COL) AUS Retired
Executive Director
Email: rcrews@chaplainalliance.org

Dr. Ron Crews
CH (COL) USAR Retired

Dr. Ron Crews serves as the Executive Director for Chaplain Alliance for Religious Liberty, an organization of chaplain endorsers who speak on behalf of more than 2,700 military chaplains, and as Endorsing Agent for Grace Churches International (GCI). He came to GCI after completing a tour of duty as a mobilized reserve chaplain serving as the Deputy Installation Chaplain for Programs at Fort Campbell, Kentucky. This tour culminated a 28-year career as an Army chaplain on active duty and in the reserve component. Assignments included service with the 82nd Airborne Division and with the 101st Airborne Division (Air Assault).

Dr. Crews holds a Doctorate of Ministry degree from Trinity Evangelical Divinity School, a Master of Divinity degree from Columbia Seminary and a Bachelor of Arts degree from Stetson University.

He holds many military awards including the Legion of Merit, Meritorious Service Medal (with two oak leaf clusters), and the Army Commendation Medal (with three oak leaf clusters).

He and his wife Jonda live in Alexandria, VA, and have four children and five grandchildren.

**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: Ronald A. Crews

Capacity in which appearing: (check one)

Individual

Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: Chaplain Alliance for Religious Liberty

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): N/A _____;
 Fiscal year 2012: N/A _____;
 Fiscal year 2011: N/A _____;

Aggregate dollar value of federal contracts held:

Current fiscal year (2013): N/A _____;
 Fiscal year 2012: N/A _____;
 Fiscal year 2011: N/A _____;

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): N/A ;
Fiscal year 2012: N/A ;
Fiscal year 2011: N/A ;

Federal agencies with which federal grants are held:

Current fiscal year (2013): N/A ;
Fiscal year 2012: N/A ;
Fiscal year 2011: N/A ;

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

Current fiscal year (2013): N/A ;
Fiscal year 2012: N/A ;
Fiscal year 2011: N/A ;

Aggregate dollar value of federal grants held:

Current fiscal year (2013): None ;
Fiscal year 2012: None ;
Fiscal year 2011: None ;

RABBI BRUCE EDWARD KAHN, D. D.
CAPT, CHC, USN (Ret)
14316 CANTRELL ROAD
SILVER SPRING, MARYLAND 20905
301.384.3309 kahnb7@gmail.com

Good Morning Chairman Wilson, Ranking Member Davis and esteemed members of the Committee. Thank you for inviting me to offer this testimony. It is an honor to participate in this hearing.

I received my commission in the United States Navy in June 1970, went on active duty in July 1974, and retired as a Navy Captain in June 2002. During my career, as the biography submitted with this statement makes clear, I served active and reserve Navy, Marine and Coast Guard commands, afloat and ashore, hospitals and academies, many Chiefs of Navy Chaplains, and numerous other flag officers, O-7 through O-10.

In 1986, I was the Jewish chaplain Mrs. Rickover requested to come to her home immediately upon the passing of Admiral Hyman Rickover, and I ministered to her throughout that time. On October 11, 2001, I was the only Jewish chaplain in the United States Armed Forces who co-officiated in the Pentagon's memorial service for the victims who died there one month earlier. Though retired from the Navy, in September 2003, at the request of Rear Admiral Louis Iasiello, Navy Chief of Chaplains, I accepted non-pay orders to go to the Iraqi Theater during a series of Jewish holy days. There was insufficient rabbinic coverage in the operating area.

Throughout my career, I had the honor of serving sailors of numerous faiths and denominations as well as those with no interest in organized religion.

I would like to begin by stating eight basic principles that I and nearly every US Navy chaplain with whom I served over a twenty-eight year span understood as critical to our service.

1. The military chaplaincy is necessarily a far different ministry from that in a civilian denominational setting. That must be kept in mind at all times.
2. Our purpose is to advise the command on matters of morals and morale and to assist each person in that command to reach a more complete state of being based on the beliefs, values, and practices that individual affirms. Our success enhances unit cohesion, readiness, and mission accomplishment in service to God and country. We also work with command to ensure that the right of all service members to exercise their beliefs, without harming the same right of one's shipmates, is zealously protected and affirmed.

3. In the military we serve everyone regardless of faith group as well as those who profess no faith at all. We chaplains must exercise flexibility and find ways of saying and doing things that work for the people we serve even though we would say and do things differently in a denominational setting. The needs of the troops come first.
4. The challenge is for the chaplain to adjust to the legitimate requirements of the troops, not for the troops to adjust to the denominational practices of the chaplain. The chaplain adapts his or her exercise of religious freedom in order to affirm the religious freedom of the members of the command in which we are providing ministry. Regardless of denomination, the chaplains with whom I served, save just a few, were faithful to this sine qua non approach to the US Navy chaplaincy.
5. Even when we conduct worship for our own faith group, we are sensitive to denominational differences and address them as fully and flexibly as possible. For example, a Protestant Chaplain has to take into account the wide range of beliefs and practices among that population, such as very different approaches to baptism, to the origin of Biblical text, to symbol versus sacrament, liturgical versus non-liturgical worship and more. Jewish chaplains have to take into account a wide range of beliefs and practices among co-religionists based on denominational differences, attitudes about the source and authority of the Torah, the service members' understanding of Hebrew, whether the service members keep kosher, wear a tallit, a kippah, and more.
6. Needless to say, when we participate in events, ceremonies and daily evolutions such as the evening prayer aboard ship, involving the command population at large, we must be determined to be as inclusive as possible, refraining from using language that would without doubt exclude personnel of varying faiths.
7. It is not only logical, reasonable, and caring to provide a thoroughly inclusive ministry but necessary to serve the command's goals for unit cohesion, readiness and mission accomplishment. In what manner would unit cohesion be served by praying, teaching, counseling, and advising in a way that favored and included some unit members while excluding others? How would the motivation to attain the maximum level of readiness be stimulated when diminishing the value of some troops compared to others? How would mission accomplishment be enhanced when acting to create thoughts in unit members that their importance to the command is less than that of other personnel of the "right" faith?
8. When troops go into battle, their lives are on the line and they must have each other's backs. At this time, it is vital for them to feel robustly affirmed by the command, including the chaplains in that command. Chaplains must meet the troops where they are in their faith and beliefs, especially in and around mission-critical moments. Chaplains should say and do that which will leave those troops

in a better position intellectually, spiritually, and emotionally to succeed while going in harm's way and especially when the end of life is tragically at hand. So it was that when I attended chaplains' school, every rabbi was trained to baptize anyone near death who wanted that rite done and every Christian chaplain learned to recite the She'ma in Hebrew, to say those words for Jewish personnel.

Throughout my decades of service, these principles were not things that had to be commanded of us chaplains. We understood and affirmed them regardless of which denomination endorsed us.

I put these principles into practice continuously. During my career, active and reserve, I estimate over 95% of the troops with whom I served were neither of my denomination nor even of my faith group. I served the needs of Catholics and Protestants of every denomination, different groups of Latter-Day Saints, and numerous Christians of other affiliations. I served the needs of different groups of Buddhists and Muslims and more, as well as those with no affiliation, including agnostics and atheists.

It was mission-critical for me to learn as much as I could about these diverse faiths and practices. I tried hard to use that understanding meticulously, sensitively, and in a timely way in order to best meet the needs of service members, who were often at grave risk of injury and loss of life for days, weeks, months, and years at a time.

Nearly all the chaplains I knew felt they served God, country, the command, and the troops in that command best by providing for the needs of all. That overarching belief made it simple to adjust one's denominational preferences so that we might best help that community we voluntarily sought to serve.

Let me give you a few examples of how I applied these principles during my service.

- Late one December, I was attached to a squadron of minesweepers, including one that had just returned from a nine-month deployment that was supposed to have lasted only three months. It was Christmas and the troops from that minesweep and their families were coming apart at the seams. With an understanding of this time of year very much in mind, and understanding the separation syndrome full well, I provided counseling night and day, organized the Christmas blood drive, a holiday dinner, led Christmas services, and delivered the sermon. These were not things a civilian rabbi does. They were all things a rabbi who is a US Navy Chaplain does.
- When working with scores of non-Jews returning from Nam who were shattered and trying to find their way through continued military service, I had to respond to their needs for prayer with words that were familiar to them, not the prayers I say in Hebrew. That is what a US Navy Chaplain does.

- When 130 Muslims from Kuwait were undergoing training at my base and I was assigned to be their chaplain, I knew I could accept in a heartbeat that challenge and hoped they could as readily accept my doing so. That is what a US Navy Chaplain does.
- When counseling a Christian whose service member husband had just died and who believed the devil had killed him, and now wanted to take her own life, I did not respond to her as a rabbi talking from Jewish sources. Instead I approached her based on her beliefs about the devil and suggested that killing herself would be giving Satan an added victory. To fight back against him she might consider affirming life more than ever even as she traversed her grief. I asked her to rely on the grace her faith promises. That is what a US Navy Chaplain does.
- A chaplain does not conduct life cycle events that one's denomination forbids. This is different than saying one only conducts life cycle events the way one was trained to do in seminary. I was once the chaplain for Marine Aviation Training Support Group 90. A Marine Corps lieutenant colonel, a Southern Baptist from Texas who had never before met a rabbi, told me he was dying from cancer. He wanted me to conduct his funeral. I replied, "Sir, there are Southern Baptist chaplains serving Navy commands nearby." He asked, "Are you the Marine chaplain here son?" I answered, "Yes sir, I am." And then he more commanded than stated, "Then I want you!" My denomination did not forbid my officiating the military funeral of a Southern Baptist. I would have to do the funeral the Colonel's way. That is what a US Navy chaplain does.
- During Gulf War I, the staff of the Naval Reserve Center in Baltimore was under unbelievably intense, unrelenting pressure to get reserves mobilized and on their way. I saw what was happening and looked after the Center staff through that crisis. When it ended, two members of the staff, a Pentecostal and a member of the Assemblies of God Church were going to wed. Given what we had just gone through they wanted me, a rabbi, to marry them. They said, "You are our chaplain!" I went to chaplains from the bride and groom's denominations and got smart about such a wedding and conducted it. That is what a US Navy Chaplain does.

Military chaplains should never have to be told to pray inclusively or to teach, counsel and advise based on meeting the service members where they are. It should be a given. Chaplains should be zealous to do so. That is where military chaplaincy differs from serving a civilian congregation. The religious freedom of the troops is not to be sacrificed to meet the demands of the chaplain. The chaplain adjusts to meet the faith requirements of the troops. Doing so creates the right atmosphere for enhanced unit cohesion, enhanced readiness, and enhanced mission accomplishment. What would be gained by creating a military chaplaincy that does not serve directly the needs of the troops of varied faiths? Who gains? Does the country gain, or the command, or the troops themselves? As a chaplain, I thought everyone gained, including me, by

flexibility and inclusivity, by maintaining situational awareness and adjusting accordingly.

I conclude with a quote of Navy Chief of Chaplains Rear Admiral Margaret Grun Kibben. This statement appears on the CREDO web site (Chaplain Religious Enrichment Development Operation):

"I am deeply humbled and honored to serve in this capacity as community leader of over 1,000 chaplains, representing over 100 different faith groups, as well as 1,000 Religious Program Specialists.

"Navy chaplains and Religious Program Specialists help inspire hope, strengthen spiritual well-being, increase personal resilience, and enhance mission readiness in the Navy, Marine Corps, and Coast Guard. In doing so, they support my three tenets: Enrich the lives of our people, Engage with leadership, and Enhance our professional capabilities.

"We should never lose sight of the reason why the Chaplain Corps exists: To enrich the spiritual lives of our Sailors, Marines, Coast Guardsmen, and their families. We in the Chaplain Corps are graced with the privilege and imbued with the sacred responsibility of enriching the lives of those whom we serve so that they remain resilient and mission-ready.

"I believe we all have a fundamental human need to thrive spiritually and connect with the tangible and intangible sources for hope. We live in a day and age where iPhones, iPads, and the fleeting satisfaction of Instagram threaten to isolate our people from the importance of human connections and a sense of community. Chaplains help connect our people to their sources for hope and help them develop spiritually in their personal faith.

"Chaplains are a safe place, a sanctuary where our people can come to regain a sense of wholeness and hope. We have an obligation to uphold the sacred trust they place in us and to maintain absolute confidentiality with our people."

I understand and affirm what she says. I am a career-long US Navy chaplain. My role is to "create a place where our people can come to regain a sense of wholeness." It is an honor to do so. A Navy chaplain serves all by meeting them where they are and working to address their religious needs in a variety of ways depending on the religious backgrounds of the people to whom one is providing ministry amid all circumstances and conditions. It is not the chaplain's religious program. It is the command's religious program. The chaplain serves the command and the troops within that command along with their family members. One performs such service adjusting reasonably and appropriately one's verbiage and practices as needed by those to whom we volunteered to provide ministry. As Admiral Kibben wrote, "We have an obligation to uphold the sacred trust they place in us."

I don't pray in Hebrew or Aramaic when doing so defeats the point of my presence. I pray inclusively. I don't counsel based on the teachings in the Mishnah's "Ethics of the Fathers" when I know the people with me have no awareness of or affection for that source. I don't avoid passages in the Qur'an when conducting a Bible class on a ship that Muslims would like to attend along with non-Muslims. And when someone, perhaps a constituent of yours who is perhaps 20 years old or so, needs me to pray with him or her as one heads into a firefight or needs me to say the right words when, God forbid, he or she is dying from one's wounds, I will endeavor to do so every time. I am a US Navy chaplain.

Thank you for providing me this opportunity to submit my testimony to you.

Biography of Rabbi Bruce E. Kahn, D. D. CAPT, CHC, USN (Ret)

Born November 7, 1945. Married Toby Andrea Levin August 18, 1968. We have two married daughters and three grandchildren.

Earned Degrees: Bachelor of Arts. Bachelor of Hebrew Letters. Master of Arts in Hebrew Letters. Rabbi. Honorary Degree: Doctor of Divinity.

Commissioned an ensign in June, 1970. Upon ordination in 1974 immediately entered active duty. Two years active duty at Naval Air Station Memphis. Assigned as collateral duty Staff Chaplain Marine Aviation Training Support Group 90 (3,000 Marines.) Served twenty-six years as a reservist. Three times a unit commanding officer, once a regional senior chaplain. Almost all reserve work performed in active duty commands: Fleet Religious Support Activity NOB, Office of the Navy Chief of Chaplains, National Naval Medical Center Bethesda, Operational Ministries Atlantic Fleet, Fleet Chaplain (Reserve) Atlantic Fleet. Served brief periods on ENGAGE, JOHN F. KENNEDY, DWIGHT D. EISENHOWER, MT. WHITNEY, SHREVEPORT, SHENANDOAH, WASP, PELELIU.

Ran numerous special projects for Navy Chiefs of Chaplains Admirals Trower, Muchow, Holderby, Black and Iasiello. Conducted service first time Jewish worship pennant flown underway on a US Navy ship (MT. WHITNEY.) Requested by Mrs. Eleanor Rickover to be available when Admiral Rickover passed away. Escorted to the Rickover home within ten minutes of his death. Advised her and Admiral Bruce DeMars on arrangements. Officiated at Admiral Rickover's burial. Provided limited editing assistance on his official biography written by Dr. Francis Duncan. Activated on 9/11 and assigned to minister to Pentagon commands who lost personnel in the attack and to the families of the fallen. Only Jewish chaplain, active duty or reserve, from any branch selected to co-officiate in Pentagon's 9/11 Memorial Service held on October 11, 2001. Retired from the Navy in 2002. In fall of 2003 sent for brief period to Iraqi Theater serving NAVCENTCOM in Bahrain and then to Expeditionary Strike Group One embarked on PELELIU off Basra protecting southern pipe lines and pumping station. Only retired Navy chaplain sent to a war zone.

Served brief periods at USNA and Coast Guard Academy. Filled gap as Coast Guard District 7 Staff Chaplain and CINCLANTFLT CHAPLAIN. Additional staff experience: DESRONTWO, DESRONFOUR, SUBRONTWELVE, MATSG90 (Marines), MAG34 (Marines), COMLOGRUTWO, COMREDCOMREGSIX (joint), COMCARGRUEIGHT (twice) and COMSURFLANT,

Navy Schools: Chaplain School Basic Course. Chaplain School Reserve Advanced Course. Twice attended Naval War College Current Strategy Forum, once at the specific invitation of the then President of the War College, Admiral James Service.

Awards: Meritorious Service Medal (2x), Navy Commendation Medal (2x), National Defense Medal (3x) and others. Numerous letters of commendation.

Congregations served: 1976-1980 Congregation Or Ami in Richmond, VA. 1980-2001 Rabbi and Senior Rabbi Temple Shalom, Chevy Chase, MD. 2001-Present Rabbi Emeritus of Temple Shalom. 1983-Present, A founder and board member of the Equal Rights Center, Washington, DC. 2004-08 Served as the ERC Executive Director.

Major Community Activities: Founding Member of Interfaith Social and Legislative Action Group of Virginia, Soviet Jewry Committee of the Washington Board of Rabbis, Chaplaincy Committee of the Central Conference of American Rabbis, Hebrew Home of Greater Washington Ethics Committee, First Rabbinic Advisor to Jewish Hospice of Montgomery County, Committee on Hate/Violence of Montgomery County, Founding President Jewish People For Righteous Giving.

Received from the Washington Lawyers' Committee for Civil Rights and Urban Affairs its 2011 Alfred McKenzie Award. (Additional McKenzie Award recipients, among others: NAACP, Urban League, Leadership Conference on Civil Rights, Congresswoman Eleanor Holmes Norton.)

Several published articles.

**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: Rabbi Bruce E. Kahn, CAPT, CHC, USN (Ret)

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
FHAP/FHIP	HUD	\$54,000.	Testing and Outreach
Mental Disability	HUD	\$207,375	Disability Rights Testing
FHIP PBI/PBG	HUD	\$325,000	Enforcement/Ed Outreach

FISCAL YEAR 2012

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
FHAP/FHIP	HUD	\$20,000	Testing & Ed Outreach
FHAP/FHIP	HUD	\$112,000	Testing & Ed Outreach
Mental Disability	HUD	\$207,375	Disability Rights Testing
FHAP/FHIP	HUD	\$16,425	Testing & Ed Outreach
Mobility Disability	HUD	\$68,000	Housing Survey
FHIP/PBG	HUD	\$325,000	Testing & Ed Outreach
FHIP	HUD	\$125,000	Education and Outreach

FISCAL YEAR 2011

Federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
HDS	HUD	\$89,000	LGBT Rights Testing
HDS	HUD	\$189,000	Civil Rights Testing
FHIP PEI/PBG	HUD	\$325,000	Testing/Enforcement
FHIP	HUD	\$99,000	Education and Outreach
FHIP	HUD	\$125,000	Education and Outreach
LEPI	HUD	\$100,000	Multi-language materials

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): Two ;
 Fiscal year 2012: Five ;
 Fiscal year 2011: Two .

Federal agencies with which federal contracts are held:

Current fiscal year (2013): HUD ;
 Fiscal year 2012: HUD ;
 Fiscal year 2011: HUD .

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): Civil Rights Testing & ED Outreach ;
 Fiscal year 2012: Civil Rights Testing & ED Outreach ;
 Fiscal year 2011: Civil Rights Testing & ED Outreach .

Aggregate dollar value of federal contracts held:

Current fiscal year (2013): \$261,375 ;
 Fiscal year 2012: \$423,800 ;
 Fiscal year 2011: \$278,000 .

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): One ;
Fiscal year 2012: Two ;
Fiscal year 2011: Four .

Federal agencies with which federal grants are held:

Current fiscal year (2013): HUD ;
Fiscal year 2012: HUD ;
Fiscal year 2011: HUD .

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

Current fiscal year (2013): Civil rights testing & ED outreach ;
Fiscal year 2012: Civil rights testing & ED outreach ;
Fiscal year 2011: Civil rights testing & ED outreach .

Aggregate dollar value of federal grants held:

Current fiscal year (2013): \$325,000. ;
Fiscal year 2012: \$450,000. ;
Fiscal year 2011: \$649,000. .



ADVANCING FAITH, FAMILY AND FREEDOM

Written Statement of Travis S. Weber, Esq.
Director
Center for Religious Liberty
Family Research Council

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

September 19, 2014

Hearing on Religious Accommodations in the Armed Forces

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

Introduction

Chairman Wilson, Ranking Member Davis, and Members of the Committee: Thank you for convening this hearing and for the opportunity to testify regarding the importance of protecting religious freedom in the Armed Forces. I am Travis Weber, Director of Family Research Council's Center for Religious Liberty, a graduate of the U.S. Naval Academy, and a former Navy pilot.

In recent years, Family Research Council (FRC) has grown concerned that restrictions on service members' religious expression demonstrate a fundamental misunderstanding of and hostility towards religious belief and its expression in the military. As our society as a whole faces policy questions related to the role of religion, the military also has been confronted with questions regarding the permissibility of displays of personal faith.

Our Founders recognized the importance of religious faith and the necessity of restraining the government from compelling individuals to believe or act contrary to conscience. Accordingly, the First Amendment to our Constitution provides for the free exercise of religion and freedom of speech while prohibiting Congress from making any "law respecting an establishment of religion," thus ensuring that the national government will not establish a national church. FRC believes that no individual in the U.S. military should be coerced into religious participation to which he or she objects. Such coercion does not occur, however, just because a service member encounters faith or opinions with which that person may disagree or take offense. Simple objection to another's religious speech is not a basis for silencing that speech. Unfortunately, that seems to be the current view adopted by many commanders and some military policy.

Indeed, despite the American tradition of respecting conscience, constitutional obligations to protect religious exercise and freedom of expression, and repeated statutory guidance from Congress, DOD continues to err on the side of constraining religious speech, running afoul of constitutional and statutory standards. These constraints, even when occasionally corrected by military leaders, have damaged troop morale, injured public trust in our Armed Forces, and created a perception that religious convictions are not welcome in the U.S. military. This reality is deeply troubling, particularly when one considers our heritage of religious pluralism.

Concerns over Military Culture of Hostility towards Religion

As a result of a seeming pattern of reflexive hostility towards religious expression in the military, some service members have encountered confusion, unlawful restrictions on speech, and even career consequences for religious views. FRC has catalogued public reports of some of these incidents and military responses to them in our online summary, "A Clear and Present Danger: The Threat to Religious Liberty in the Military." Incidents have included an Air Force Academy cadet's religious expression being erased from the white board which served as the forum for cadet postings, a DEOMI officer prohibiting the use of the word "Christmas" to describe an upcoming football tournament, and initial statements from the Pentagon stating that the sharing of personal religious beliefs is permitted "as long as it does not make others uncomfortable."¹

¹ *A Clear and Present Danger—The Threat to Religious Liberty in the Military*, Family Research Council, Mar. 21, 2014, pages 6, 11-13, available at <http://frc.org/clearpresentdanger>.

While restrictions on free exercise prompt constitutional concern generally, such restrictions are even more serious in the military environment given its highly regulated structure and the disincentives to challenging authority inherent in military service. The reality of command pressure means that service members encountering wrongful penalties for expressing a religious or moral belief may face the choice of privatizing beliefs or challenging command restrictions and jeopardizing their careers as a result. This dilemma demonstrates a basic misunderstanding of the nature of religious belief, as religious belief shapes and defines the lives of followers and thus cannot be bifurcated from day-to-day living.

It is axiomatic that one's spiritual conscience and core principles do not evaporate the moment one leaves a house of worship, any more than a businessperson could claim his ethical conscience remained at home while he enjoyed a week of care-free insider trading. The U.S. Supreme Court recently highlighted this reality of religious belief when it affirmed in *Burwell v. Hobby Lobby* that "free exercise is essential in preserving [our] own dignity and in striving for a self-definition shaped by [our] religious precepts."² This "implicates more than just freedom of belief," and includes "the right . . . to establish one's religious (or nonreligious) self-definition in the political, civic, and economic life of our larger community."³ *Hobby Lobby* affirmed that religious beliefs may inform the practices of a family-owned business; the same principle of broad applicability of belief is valid for the men and women who voluntarily assume the defense of our nation. They too must be afforded the ability to live in accordance with their personal beliefs.

Conversely, impeding the expression of religious belief can harm morale and wellbeing by alienating troops from the core convictions which give meaning and purpose to their lives. Given the unique stresses and dangers of military life, a conscious focus on spiritual matters often accompanies military service. As British scholar and author C.S. Lewis noted during the outbreak of World War II, "[i]f active service does not persuade a man to prepare for death, what conceivable concatenation of circumstance would?" It is unavoidable that "[w]ar threatens us with death and pain," matters about which "[n]o man . . . need try to attain a stoic indifference."⁴ Lewis, who fought for his own country in World War I and then went on to serve as a professor at both Oxford and Cambridge, knew that faith can afford the comfort, certainty, and security so necessary to troops faced with serious injury and death on a regular basis.

Moreover, the close companionship which arises naturally out of military camaraderie makes more immediate the need to discuss weighty matters of life and death with fellow service members before heading off to face war. A respect for religious freedom in the military thus means that men and women should be able to worship with other believers. More importantly, they must also be free to apply, exercise, and vocalize their beliefs—diverse as they may be—without fear of reprisal.

Noting the problem of a military increasingly hostile toward religious expression, an April 2014 U.S. Army War College Strategic Studies Institute report by Don M. Snider and Alexander P. Shine points out that "If the Services really want leaders 'of character' as their doctrines so

² *Burwell v. Hobby Lobby Stores*, 134 S. Ct. 2751, 2785 (2014) (Kennedy, J., concurring).

³ *Id.*

⁴ C.S. Lewis, "Learning in War-Time," Sermon Delivered at Oxford University (Oct. 22, 1939).

plainly state, then they must maintain professional cultures that allow, indeed foster, authentic moral character whether faith-based or not, and its development as soldiers volunteer and serve.”⁵ For “[t]he Services can ill afford to lose the irrefutable power of soldiers’ personal moralities as they serve in both peace and in war, providing an additional motivation and resilience to prevail in the arduous tasks and inevitable recoveries inherent in their sacrificial service.”⁶ Yet given ongoing actions by commanders and DOD policies that fail to clarify protections for religious expression, fostering such a professional culture will require a much more pro-active approach by DOD in order to assure service members that people of religious conviction are welcome in the Armed Forces. To date, DOD’s actions have continued to be confusing, at best, and hostile to religious expression at worst.

Congressional Response to Military Restrictions on Religious Expression

Prompted by this concern over actual and perceived hostility towards religious expression, Congress has twice enacted statutory requirements that DOD provide explicit affirmation of the ability of service members to profess and practice religious beliefs.

In the Fiscal Year (FY) 2013 National Defense Authorization Act (NDAA) (P.L. 112-239), Congress required DOD to better protect a service member’s conscience, moral principles, or religious beliefs. Because of DOD’s failure to abide by the FY 2013 NDAA and the issuance of a harmful interpretation of the statutory language by the Air Force Judge Advocate General (TJAG) in 2013, Congress reiterated in the FY 2014 NDAA (P.L. 113-66) its previous intent to protect not just the ability to hold a religious belief but also the ability to express that belief. DOD took an initial step in January 2014 towards complying with the FY 2013 law by issuing a revision of some DOD regulations. Continuing a troubling disregard for complying with actual statutory text, however, DOD failed to consult with the official military faith-group representatives as demanded by law. Furthermore, military branches such as the Air Force have failed to bring their policies into line with statutory requirements.

Thus, in yet another effort to force DOD to provide clarity to commanders, troops, and the public about religious freedoms in the military, the U.S. House of Representatives adopted a requirement as part of its FY 2015 NDAA (H.R. 4435) in May 2014 that DOD reissue implementing regulations. In the meantime, persistent ambiguity regarding the ability of service members to discuss their religious convictions has resulted in lingering confusion amongst military leadership and troops alike.

DOD’s Inaction Means the Military Climate Is Still Cause for Concern

Despite ongoing Congressional efforts to clarify protections for religious expression and despite repeated DOD declarations that hostility towards faith is more perception than reality, the various branches continue to inappropriately stifle religious expression in concrete ways. Two recent actions by the Air Force and the Navy serve as relevant examples of such hostility which has continued notwithstanding statutory changes initiated by this Committee.

⁵ *A Soldier’s Morality, Religion, and Our Professional Ethic: Does the Army’s Culture Facilitate Integration, Character Development, and Trust in the Profession?*, Don M. Snider and Alexander P. Shine, U.S. Army War College Strategic Studies Institute, Professional Military Ethics Monograph Series, Volume 6, Apr. 2014, page xii, available at <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1203>.

⁶ *Id.*

In the spring of 2014, the U.S. Air Force Academy required a cadet to remove a religious saying from a dry erase board. Though the board was used normally for some personal communication, the quotation was deemed impermissible because of the religious content of the quotation and because of concerns it could offend bystanders. Public backlash to this action continued in part because of the Air Force Academy's contradictory explanations for targeting the expression.

Undergirding the Air Force response to this incident lies a faulty assumption that potential offense to a bystander from a cadet's religious expression justifies restricting the cadet's speech. Additionally, the Air Force continues to view religious expression by an officer as immediately suspect because of concerns that such communication may run afoul of the First Amendment's Establishment Clause. Yet no reasonable reading of Establishment Clause jurisprudence realistically provides grounds for such concerns. In reality, the Air Force's interpretation puts it in the role of determining what are and are not acceptable religious beliefs for any officer or airmen to voice publically – a view which places the government in the position of religious arbiter – which is certainly prohibited by the First Amendment.

While military necessity and the need for good order and discipline may require a nuanced approach towards certain constitutional rights within the military context, by no means do service men and women give up their First Amendment rights simply by entering the military. Indeed, it would be nonsensical to ask them to give up the very rights they have sworn to protect. How can we ask service men and women to do a job which is so incredibly difficult, while at the same time divorcing them from the very spiritual resources they need to accomplish this job?

Again, the question before the Air Force and DOD is not one involving religious coercion (which FRC opposes); the question rather is whether the individual right to freely express one's faith will be protected within the confines of military service. For our Constitution does not prevent people from being confronted with ideas with which they may disagree—it instead ensures the exchange of diverse ideas, providing freedom for voicing popular and unpopular opinions.⁷

The Navy has also demonstrated knee-jerk reactions to the presence of religious content this year. In August 2014, news broke that the Navy Exchange Service Command (NEXCOM) had issued a directive requiring the reassessment of the presence of donated Gideon Bibles in Navy Lodges nationwide. Defaulting to the position that the mere existence of Bibles in Lodge rooms may cause offense to some visitors, NEXCOM acted at the urging of religious freedom critics to begin the removal of the Bibles. The public response prompted the Navy to put on hold the directive and order a policy review still to be completed.

Here, the Navy would do well to be informed by the principle articulated in the Supreme Court's recent ruling in *Town of Greece v. Galloway* that “[o]ffense . . . does not equate to coercion.”⁸ Because our sailors are “mature adults”—who “presumably” are “not readily susceptible to

⁷ See *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1823, 1826 (2014); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 44 (2004) (O'Connor, J., concurring) (“[T]he Constitution does not guarantee citizens a right entirely to avoid ideas with which they disagree. It would betray its own principles if it did; no robust democracy insulates its citizens from views that they might find novel or even inflammatory.”).

⁸ *Town of Greece*, 134 S. Ct. at 1826.

religious indoctrination or peer pressure”—their “quiet acquiescence” is not reasonably interpreted as agreement with “words or ideas expressed.”⁹ Even the four dissenting justices in *Town of Greece* did not believe that the public space should “become a religion-free zone;” they merely differed with the majority over what steps the government had to take to satisfy religious diversity.¹⁰ If our Supreme Court unanimously believes that religion has a place in the public space occupied by local government officials, how much more do our brave service men and women have the right to speak publically about religion when they enter the military?

In the same way that the mere presence of a religious television channel on a military lodge television does not unconstitutionally establish religion, the existence of a donated Bible in a hotel room simply gives individuals the option of reading material. No person is forced to read a book by its proximity to them in a room. Moreover, those of other faiths are free to place their own material in the rooms. That they may choose not to do so does not mean that others may be prevented from providing their own material.

The Navy incident illustrates a key point. The wrongful restriction of religious content and speech in the military, even if later corrected, negatively affects military culture by bolstering the perception that religious beliefs must be hidden in order to maintain one’s standing in the U.S. military. Though such a conclusion we certainly hope is erroneous, its existence reflects a command instinct that defaults to restriction of religious expression rather than to protection.

Policy Recommendations

FRC remains deeply concerned that DOD continues to minimize the tangible and intangible harms to our military that arise from restrictions on religious expression. As the Committee continues its invaluable oversight role, we recommend the Committee take the following actions:

- Require DOD to honor congressional intent in Section 533 of the FY 2013 NDAA and Section 532 of the FY 2014 NDAA to protect religious expression and not just the ability of a service member to hold a belief, which is consistent with recent Supreme Court guidance on religious expression.
- Require DOD to fully update and revise branch regulations to reflect the text of the law, the historic understanding of the nature of religious belief and practice, and recent Supreme Court guidance on religious expression.
- Require DOD to provide prompt and transparent reports to this Committee and to the public regarding future actions that restrict religious expression.

Conclusion

Service men and women do not give up their constitutional rights simply because they join the world’s greatest military. Religious freedom has a long and rich constitutional tradition in the United States, and it must be upheld inside and outside the Armed Forces. Actions to restrict religious expression and hostility towards religious speech in the military must be proactively prevented by clear policy and guidance from DOD. We look forward to such positive developments as this Committee continues to play an essential role in ensuring that the rights of all service members are protected, in accordance with constitutional and statutory requirements.

⁹ *Id.* at 1827 (quoting *Marsh v. Chambers*, 463 U.S. 783, 792 (1983)).

¹⁰ *Id.* at 1842 (Kagan, J., dissenting).

Travis Weber

801 G Street NW, Washington, DC 20001 | 202-637-4617 | tsw@fre.org

EXPERIENCE

Family Research Council, Washington, DC – Director, Center for Religious Liberty January 2014 – Present

- Responsible for entire portfolio of religious freedom issues for national public interest organization.
- Analyze legal and policy developments pertaining to religious freedom, both in the military and civilian contexts.
- Monitor trends affecting religious freedom in all branches of government at federal, state, and local levels, enabling proper litigation strategy and/or legislative initiatives.
- Advocate for religious freedom in law and policy by writing, speaking, conducting interviews, and testifying on relevant issues.

Boyle Litigation, Camp Hill, PA – Associate Attorney May 2011 – January 2014

- Substantial caseload responsibility and experience in all aspects of civil litigation practice, primarily focused on federal civil rights litigation against the government. In several different matters, drafted responsive pleadings and briefs that defeated motions for summary judgment, motions to dismiss, motions to join additional defendants, and motions in limine, in some cases resulting in a favorable settlement for the client. Defended and took depositions. Managed investigation of potential wrongful death case to determine exposure of multiple parties.
- Significant experience and caseload responsibility in military-related law practice representing service-members and civilian contractors in litigation, government investigations, and administrative terminations. Represented an Army veteran in a federal civil action against his employer for wrongful termination and discrimination against service-members. Represented an Army colonel in an Article 15-6 investigation, which resulted in no immediate adverse action being taken against the client.
- Significant experience in all aspects of firm's criminal defense practice. Drafted filings and represented clients at hearings at all stages of cases. Drafted multiple sentencing memoranda resulting in favorable outcomes for clients. Represented client at proffer session with the government, which resulted in the government recommending a reduced sentence for the client. Analyzed international kidnapping case, and researched and drafted memoranda on the issues of jurisdiction and venue.
- Assisted with development of international criminal law practice area, focused on helping businesses manage human rights concerns and potential criminal liability arising from cross-border actions and supply chain issues.

Federal Maritime Commission, Washington, DC – Legal Intern Spring 2011
Drafted legal memoranda and briefs for filing in federal court. Investigated impact of foreign shipping practices on U.S. economy.

U.S. House of Representatives, Office of Congressman Trent Franks, Chairman of the Subcommittee on the Constitution, Judiciary Committee, Washington, DC – Legal Intern Spring 2011
Assisted staff with development of legislation and legal work-product. Participated in discussions, legal analysis, and modification of proposed legislation. Attended committee hearings and mark-ups. Reported on progress of hearings to staff.

American Center for Law and Justice, Virginia Beach, VA – Law Clerk Summer 2008 – Summer 2010
Researched and drafted memoranda on various international law issues, including: the United Nations Resolution Combating Defamation of Religions, relevance of the Law of Armed Conflict in Israeli operations in Gaza, and cases before the International Criminal Court.

U.S. District Court for the Eastern District of Virginia, Norfolk, VA – Extern for the Honorable Mark S. Davis Summer 2009
Researched various civil and criminal matters and wrote opinions and orders denying a motion for default judgment, granting a motion to decline jurisdiction over a declaratory judgment action, denying a prisoner's habeas petition for ineffective assistance of counsel, and denying a prisoner's motion to reconsider a denied sentence reduction. Compiled relevant information to prepare Judge Davis for guilty pleas and sentencing hearings.

Alliance Defense Fund, Scottsdale, AZ – Blackstone Legal Fellowship Intern Summer 2008
Participated in program to equip law students to think critically about the legal culture, focusing on natural law principles in religious freedom and First Amendment issues. Attended legal seminars on philosophy, political theory, history, jurisprudence, and public policy analysis.

U.S. House of Representatives, Office of Congressman Joseph Pitts, Washington, DC – Intern 2006 – 2007
Assisted staff in researching legislation, handling constituent mail, attending briefings, and other special projects. Attended U.S. Commission on International Religious Freedom roundtable discussion. Submitted brief to staff on a Department of Health and Human Services study of teen pregnancy.

HITT Contracting, Fairfax, VA – Project Engineer 2006
Assisted on-site management of a \$15 million office renovation for a large general contractor. Oversaw day-to-day operations of subcontractors and managed project schedule.

United States Navy – VQ-3, Tinker AFB, Oklahoma City, OK – Junior Officer / Pilot 2002 – 2005
Piloted Navy E-6 (Boeing 707) aircraft with crew of 18 personnel. Led and trained enlisted personnel in practicing wartime maneuvers and preparing for yearly inspections. Revised flight squadron regulations. Finished 1st in first phase of flight school. Graduate of Navy Survival, Evasion, Resistance, and Escape (“SERE”) School.

EDUCATION

Georgetown University Law Center, Washington, DC May 2011
LL.M., International Law, with Certificate in International Human Rights Law – GPA: 3.55/4.0 (Graduated with Distinction)

Regent University School of Law, Virginia Beach, VA May 2010
J.D. – GPA: 3.425/4.0 (Rank: 34/124)
Notes & Comments Editor, Regent University Law Review
Norfolk Juvenile Detention Center tutor, Academic Merit Scholarship.

U.S. Naval Academy, Annapolis, MD May 2002
B.S., Economics
Naval Academy Athletic Hall of Fame, College Sailing All-American in 2001 and 2002, Captain of the Varsity Sailing Team, Dean’s List and Midshipman of the Semester in 2001.

BAR ADMISSIONS

- U.S. Supreme Court
- U.S. District Court for the Middle District of Pennsylvania
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Federal Claims
- U.S. District Court for the Western District of Pennsylvania
- U.S. Court of Appeals for the Armed Forces
- Pennsylvania (retired)

PUBLICATIONS AND PAPERS

- Travis Weber, Note, *The Free Speech Protection Act of 2008: Protection Against Suppression*, 22 REGENT U. L. REV. 481 (2010).
- “Examination of the Obligation to Prevent in the Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity in Light of the Obligation to Prevent in the Genocide Convention” (2011).
- “Judicial Independence in Iraq” (2010).
- “Detention of Unlawful Combatants Under International Humanitarian Law: A Comparison of Recent Developments in Israel and the United States” (2011).
- “The Temporal Scope of Civilian Loss of Protection in the ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities” (2010).
- “Hate Speech and Free Speech in the United States, Canada, and South Africa” (2011).
- “The Impact of *Osorio v. Dole Food Co.* on International Due Process” (2010).
- “Never Say Never: Searching for Common Ground Between Muslim and Western Nations on the Issues of Human Dignity and Human Rights” (2010).
- “When a Functioning State Becomes a Failed State” (2010).

QUALIFICATIONS AND OTHER INTERESTS

- Commercial Pilot’s License
- DOD Top Secret-SCI Security Clearance (inactive)
- Other Interests: Racing sailboats, surfing, snowboarding, traveling.
- Travel: Jamaica, Antigua, Canada, Chile, Netherlands, El Salvador, Costa Rica, and Mexico.

**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: Travis Weber

Capacity in which appearing: (check one)

- Individual
 Representative

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

FISCAL YEAR 2013

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
N/A			

FISCAL YEAR 2012

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
N/A			

FISCAL YEAR 2011

Federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
N/A			

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): N/A
 Fiscal year 2012: N/A
 Fiscal year 2011: N/A

Federal agencies with which federal contracts are held:

Current fiscal year (2013): _____
 Fiscal year 2012: _____
 Fiscal year 2011: _____

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): _____
 Fiscal year 2012: _____
 Fiscal year 2011: _____

Aggregate dollar value of federal contracts held:

Current fiscal year (2013): _____
 Fiscal year 2012: _____
 Fiscal year 2011: _____

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): N/A ;
Fiscal year 2012: N/A ;
Fiscal year 2011: N/A ;

Federal agencies with which federal grants are held:

Current fiscal year (2013): _____ ;
Fiscal year 2012: _____ ;
Fiscal year 2011: _____ ;

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

Current fiscal year (2013): _____ ;
Fiscal year 2012: _____ ;
Fiscal year 2011: _____ ;

Aggregate dollar value of federal grants held:

Current fiscal year (2013): _____ ;
Fiscal year 2012: _____ ;
Fiscal year 2011: _____ ;



MILITARY RELIGIOUS FREEDOM
f o u n d a t i o n

**Written Statement for the
United States Congressional Record**

**Religion in the United States Military:
Balancing Personal Freedom with Professional Neutrality**

**By
Michael L. “Mikey” Weinstein
Founder and President
Military Religious Freedom Foundation**

**For
U.S. House of Representatives
Committee on Armed Services
Military Personnel Subcommittee**

**Re:
Religious Accommodations in the Armed Services**

**Submitted
Friday, September 19, 2014**

*"...to support and defend the **Constitution** of the United States against all enemies foreign and domestic."*

All members of the US military swear (or affirm) a commitment to this all-important, sacred mission. It is why our singular Department of Defense exists and the fundamental reason why our tremendous Soldiers, Sailors, Airmen, Marines, and civilians in the DoD choose to serve this great nation. However, while our military is quite diverse – representing the citizenry it protects – we do not speak of “one black Army and one white Army, a male Navy and a female Navy, one gay Marine Corps and one straight, the Democratic Air Force and the Republican version.” Our military is one as an institution, with a mission that transcends discriminators not germane to that mission. We do not have an Army of Christ, a Jewish Navy, a Catholic Marine Corps, nor a Muslim or Atheist Air Force; Hence the sacred mission of the Military Religious Freedom Foundation (MRFF; www.militaryreligiousfreedom.org), which is to support and defend the religious rights of *all* those who support and defend our Constitution and us, and to ensure that the American citizen can depend upon *their* military to protect our great nation without bias or partisanship. Today, the MRFF represents well over 38,000 active duty United States Sailors, Soldiers, Marines, Airmen, Cadets, Midshipmen, National Guard and Reserve personnel, Coast Guard men and women and Veterans. Approximately 96% of our MRFF clients are practicing Christians. About 3/4 of that 96% are Protestants from a plethora of denominations, while the remaining 1/4 are Roman Catholic. MRFF also represents a little over 13.5% of all Muslim Americans in the U.S. Armed Forces, as well as 863 LGBTQ clients. Of the approximate 4% of the 38,000-plus MRFF clients who are not Christians, the foundation represents many American military members who are Jewish, Hindu, Sikh, Buddhist, Native American spiritualist, Agnostic, Atheist, Humanist, Secularist, and numerous other minority faith traditions.

Morale, unit cohesion, and good order and discipline are critical in every military unit, from a rifle squad through companies, squadrons, fleets, and entire services. The proper function of these units depends upon each individual valuing, respecting, and depending upon the excellence of their comrade standing beside them (literally and figuratively). Muslim must serve with Christian, Atheist with Jew, and Hindu with Sikh, if we are to be successful. Such distinctions *must* be irrelevant, lest we descend into a miasma of preferential treatment, unit segregation, animosity, and (fatal) doubt among comrades and between cooperating units. If a leader overtly declares to their unit, during the assumption of command, that they will lead their unit based upon Christian principles, does that not alienate those who don't self-identify as Christian? Might they question their place in the unit and their fair and equitable treatment? If, prior to a mission, the commander were to ask all troops to lay down their prayer rug and request Allah's blessing—in accordance with the commander's particular beliefs—would this bind and motivate the unit's soldiers towards success or sow seeds of division? How welcome can the Atheist or Hindu sailor feel at the commander's Christmas or Hanukkah party, or while dining in a unit facility decorated with specific monotheistic holiday decorations?

We at the MRFF fight these battles every day for the same reasons that Congress has so wisely restricted the political activities of military members (and other government

employees) – to maintain and support the religious neutrality of our military and civil service. The MRFF knows that this committee would be aghast upon learning of (for example) a “Democratic Marines for Hillary in 2016” rally held in uniform, during the duty day, attended by senior officers and NCOs, or an “Air Force Republicans Against Obamacare Breakfast Rally” under the same circumstances—these actions would clearly be beyond the pale of reasonable conduct. We strongly support the restrictions on the Constitutional rights of free speech and assembly for military and civil service members that make hypotheticals like this seem preposterous to all of us here today. We also strongly support equitable application of the same standard of neutrality to the religious sphere—an area that for too long, and in too many units, has been rife with blatant sectarian proselytizing. Commanders blithely kick-off staff meetings with prayers, asking all to stand and bow their heads for a monotheistic invocation to a patriarchal deity (generally “God” or “Jesus”) at mandatory military events. Senior NCOs send base-wide emails announcing the annual prayer breakfast — with tickets sold NOT by chaplains but by unit first sergeants and with the attendance of observant commanders guaranteed. Superiors inform their subordinates suffering from PTSD or domestic issues that all would be solved if only they “find God” or “accept Jesus.” Supervisors review the personnel records of his or her subordinates to find each member’s stated religious preference clearly indicated within. The U.S. armed forces may have mandatory events or religious events but, clearly, NOT mandatory religious events.

The MRFF realizes that religious belief is an important part of many lives — in fact, it's an important part of the lives of an overwhelming number of our clients — and, to that extent, we are a decidedly and actively **pro-Christian** organization that wishes to promote respect for **all** religious perspectives and does not ask for any restrictions at all in the free practice of religion for all service members—*in their private, off-duty lives, and outside of the possibility of poisoning the cohesion, morale, and good order and discipline of their units. It's ALL about the time, place and manner of desired religious expression.*

Fortunately, there is an actual U.S. Supreme Court case right on point here. The Supreme Court in Parker v. Levy, 417 U.S. 733 (1974), concluded that Capt. Levy's First Amendment right of free speech did not allow him to encourage soldiers to refuse to deploy to Vietnam because he and they believed the War in Vietnam was immoral. In a 6-2 decision written by noted ultra-conservative Chief Justice Rehnquist, the Supreme Court said,

"This Court has long recognized that the military is, by necessity, a specialized society separate from civilian society. We have also recognized that the military has, again by necessity, developed laws and traditions of its own during its long history. The differences between the military and civilian communities result from the fact that it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise... An army is not a deliberative body. It is the executive arm. Its law is that of obedience. No

*question can be left open as to the right to command in the officer or the duty of obedience in the soldier... While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections. **The fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it...** In the armed forces, some restrictions exist for reasons that have no counterpart in the civilian community. Disrespectful and contemptuous speech, even advocacy of violent change, is tolerable in the civilian community, for it does not directly affect the capacity of the Government to discharge its responsibilities unless it both is directed to inciting imminent lawless action and is likely to produce such action... **In military life, however, other considerations must be weighed. The armed forces depend on a command structure that, at times, must commit men to combat, not only hazarding their lives but also ultimately involving the security of the Nation itself. Speech that is protected in the civil population may nonetheless undermine the effectiveness of response to command. If it does, it is constitutionally unprotected.**"*

Let me give you an example of our work that may surprise you: We recently received a complaint from a devout Christian service member who claimed that one of the senior officers in his unit had a bumper sticker on the car that they drove to work every day that not only declared their Atheist stance, but was decidedly derogatory and disrespectful of Christian views. The Christian service member, who was of a much lower rank, did not feel comfortable (given the command climate on base) going to his supervisor to register a complaint or even to discuss the situation. Instead, he reached out to us, and we immediately contacted the higher military command leadership. Within a few days time, our MRFF client's senior leadership did the right thing — the offending driver was told that his vehicle was banned from the base so long as the sticker remained on the bumper.

We've had myriads of cases similar to this among Christians who felt their respective commanders had expressed views of one Christian perspective equally disrespectful toward other Christian denominations, particularly the subordinates' own, or were pressuring said subordinates to become "more Christian" or "real Christians" like those commanders. Indeed, this is why 96% of MRFF's clients are Christians. The pressures placed upon non-Christians are on an even higher plane.

I've asked a MRFF supporter and volunteer — who came to support MRFF from a somewhat unique direction — to share his story. His name is Mike Challman — a 1985 graduate of the U.S. Air Force Academy (USAFA), a decorated Air Force officer and a lifelong, ardent Christian. Today, he is a senior business executive and community leader. He first learned of MRFF through news reports about its challenge to the phrase "so help me God" in the USAFA honor oath. By his own admission, his initial response was critical of MRFF's actions and highly suspicious of its intentions, because the media reports he read

consistently depicted MRFF as having an anti-religion (specifically anti-Christian), probably atheistic, agenda.

In his own words:

“Everything I’d read in news reports and conservative commentaries suggested that MRFF was dangerous to the religious freedom of my fellow Christians in the military, and was an organization to which I should stand opposed.”

Mike reached out to MRFF directly to express his concerns, and was surprised by the gracious responses he received and the willingness of the organization to discuss his questions. He relates that he was also surprised to learn that most of MRFFs volunteers, supporters, and clients are people of faith. This led him to do his own research into the issue of Constitutional protections, particularly how the courts have interpreted the Establishment clause and the ‘no religious test’ requirement, and how those protections are being manifested in today’s military.

By the conclusion of his research effort, he says:

“It was a slam dunk. The media reports and conservative commentators were not telling the whole story, and in many cases were not telling a true story. The position of MRFF is not anti-religion; it is pro-Constitution. My research also revealed that the abuse of the Constitutional rights of military members is a legitimate problem today, and one that demands a response. Even more importantly, I was shocked to discover that there is a very real, very serious threat from a small but active segment of conservative, Evangelical Christians who believe that the US government should be an explicitly Christian institution, and that the U.S. military should be an explicitly Christian force. More so, they believe it is their God-given right to promote their particular dogma anytime, anywhere, to anyone. As a Christian myself, I can appreciate the passion of their beliefs, but I strongly disagree with the notion that any single sectarian belief, even Christianity, should be given preference or prominence in our government and our military. ”

It is this particular threat from Dominionist Christians that has led Mike to become an active MRFF supporter, assisting with responses to emails from Christians and working to help educate his fellow Christians about the threat posed by these extremists. Again, in his own words:

“Some of the correspondence that MRFF receives from individuals who claim to be my fellow Christians is stunning in its hostility, nastiness, and often threatening content. It grieves me to know that there are people who harbor such hatred toward their fellow citizens, yet who believe they are acting at God’s behest. But it also strengthens my resolve to resist these extremists who would sacrifice the Constitutional rights of others on the altar of their own

sectarian beliefs.”

Mike also asked me to relate how he balanced his personal faith with his professional obligations when he was an Air Force Officer. Recounting his experiences, he explains:

“During my time in the Air Force, I still remained an active and devout Christian and I retained all of my Constitutional rights to my religious beliefs. But as a leader with authority over other service members, I also had a responsibility not to use my position to promote my personal beliefs to my subordinates, because they too had a constitutional right to their own beliefs (including non-belief). More importantly, they had a right to live and work in an environment where my sectarian religious beliefs were not conflated with the mission of our unit.”

Finally, Mike asked that I let you know how proud he is to stand with MRFF and support the rights of all military members, both believers and non-believers, who deserve nothing less than the full protection of the Constitution that they have sworn to protect and defend with their very lives. He hopes that you will be as fervent in your own defense of their rights.

I’ve asked another MRFF supporter and unpaid advisory board member, who also came to support MRFF from a somewhat unique direction, to share his story as well. His name is Lawrence Wilkerson – a United States Army soldier for 31 years (retired colonel) during which he was special assistant to the chairman of the Joint Chiefs of Staff, General Colin Powell, and later, after retirement from the US Army, Secretary of State Colin Powell’s chief of staff at the State Department. Now, he is a professor of government and public policy at the College of William and Mary. He first learned of MRFF through former U.S. Ambassador Joe Wilson, who is a full board member of the MRFF.

We had just lost former U.S. Navy SEAL, Glen Doherty, who was killed in the attack on our consulate in Benghazi, Libya as an MRFF advisory board member and Joe Wilson was helping us find a replacement. Wilkerson was very skeptical at first, telling Ambassador Wilson that he knew first-hand how important spiritual counsel was to soldiers, particularly on the battlefield. Joe pressed on nonetheless. Yes, yes, Wilkerson countered, he knew how the Constitution read about religion—indeed he taught such aspects in his seminars—but he also knows how important religion is, and in addition to being a Baptist himself, his wife and children are Catholic.

In his own words:

“When the bullets are whining in your ears and the mortar rounds exploding in your face, God can be a great comfort. Endangering that comfort would be utter stupidity.”

Ambassador Wilson persisted, explaining MRFF's mission was not to destroy that comfort but to secure and enhance it for all soldiers, of all religions, or of no religious faith whatsoever. Joe also spoke of the vital importance of government's showing absolutely no predilection for, support of, or association with a particular religion.

Wilkerson said he would consider MRFF's request and study what it was doing and get back to Ambassador Wilson. Meanwhile, Joe provided Wilkerson with information on MRFF, including sharing with him some of the more obscene, profane and disturbing e-mails that poured into MRFF from so-called "Christians" across the United States (with most of the senders using anonymity of some sort to mask their actual origins). Some of these Christians, however, readily identified as Dominionists. Several were actually serving U.S. military members—a fact that truly disturbed Colonel Wilkerson.

Wilkerson re-read James Madison's work on religious freedom in Virginia and reacquainted himself with the firm concept that we've come to know as separation of church and state. He noted that Madison was even opposed to chaplains serving in the armed forces. He also took time to acquaint himself thoroughly with MRFF's work, its vast clientele of active members of the armed forces, and its various fights over the past few years. As a result, Wilkerson became a believer in our cause and joined the advisory board. He told MRFF:

"I never realized how much my Army had changed since I retired in 1997. I recall a few problems with one or two die-hard evangelical chaplains, but I was always able to counsel them and restrain their activities to what a chaplain's role should be—counseling all troops with no reference to a particular faith, other than the soldier's own, if that were applicable. Never should a chaplain advocate a particular religion in front of several troops or a formation or body of troops. A Baptist preacher, a rabbi, a priest, an imam all should be able to give spiritual counsel in times of stress or difficulty—but not proselytize, never proselytize."

When Wilkerson became fully apprised of what was happening in his Army, he was appalled. He discovered, for example, that a Lieutenant General (retired) had made statements implying that when Christ descended for the Rapture, it would not be with a flaming sword but with an AR-15 automatic assault rifle. He found active duty USAF officers running blog sites advocating Christianity and chaplains who proselytized the ranks regularly. He discovered prayer events that were command-directed, including in the Pentagon. He found men and women, numbering in the thousands, who complained about discrimination against them by superior ranking officers and NCOs because they were insufficiently ardent as "Christians". And, perhaps most dangerous of all, he found members of Congress who did not understand why the Constitution is correct in its separation of church and state. He found leaders who simply did not comprehend the enormous danger of a government's sponsorship of a specific religion. And, in his words, he found:

“These radical, so-called Christians have turned the Constitution on its head—and they have done so in order to protect their version of Christianity and not religious freedom, as the Founders intended. They have done it to protect themselves—not the nation, not religious freedom, but exclusively themselves. They are the American equivalent of the Islamic Taliban.”

Moreover, Wilkerson said:

“These people are dangerous, very dangerous. They want a nation founded on religious freedom to be a nation of only Christians—and only their narrow and perverse version of Christians. Nothing could be further from our Founders’ wishes, the most eloquent of whom, like Madison, knew that state sponsorship of any religion is the first step to the tyranny of that religion. It is not about God at all; it is about men lusty for power over other men and women. And that is contrary to every fiber of a free nation, a free America.”

We are also appalled when a letter from an attendee (retired colonel) at a promotion ceremony arrives on a senior commander’s desk, demanding the immediate dismissal of the promotee. The offense? In the ceremonial retaking of the oath of office that is traditional at these events, the new office-holder omitted the final four words of the oath “so help me God”—his right as a non-believer. This particular officer chose to omit the words, though, not as a statement of non-belief, but to demonstrate neutrality. But, in our strange, current world of accepted proselytization and overt religious declaration, simply NOT mentioning “God” as a condition or prerequisite for honorable service is seen as an event worthy of such significance that it could choke off all future promotions and divide a unit’s loyalties. We wish we could say that, in this case, the senior commander simply “round-filed” this letter into the trash, but instead it was sent down through the promotee’s chain of command for all to review with a request of the target officer to craft a response for the commander and send it back up the chain.

Marines, Sailors, Soldiers, Airmen, cadets and Midshipmen in basic military training and other structured training environments are derided for not attending “optional” church services during their duty time and cadets and midshipmen at our academies are afforded special privileges for “chaplain’s programs” not available to non-believing cadets—again eroding the common experience and equitable standards so important to their training experience.

What choice does a new Marine *really* have when, at their basic training graduation ceremony, in front of drill sergeants and thousands of guests, they are *ordered* to bow their heads, clasp hands, and receive the chaplain’s benediction—equivalent to the non-believer of mandatory consumption of bacon at breakfast for a Muslim Marine because “it’s good for him or her” and not participating would make you stand out as not a true member of the unit.

There are positives and progress out there, but they’ve come at a steep price—in many cases the sacrificed careers of those that have raised the issues ignored by their

commanders. These “trouble makers” are usually not immediately cashiered, but all with military experience know that there are myriad subtle, realistically untraceable methods of stalling a once-promising career through faint praise and feeble recommendation—and this is especially true in a time of personnel and budget cuts when only the “water walkers” are allowed on the escalator of promotion to senior ranks.

Air Force Instruction 1-1, paragraphs 2.11 and 2.12 provide appropriate guidance for commanders and equally comforting assurance to subordinates that, if enforced, the conditions for good order, morale, discipline and cohesion within a unit will be in place. AFI 1-1 recognizes the rights of free practice. Furthermore, it parallels the balance, in paragraphs 2.11 and 2.12, of undue influence and free practice in religion with the balance, in paragraph 2.13, of political rights and restrictions.

Specifically, paragraphs 2.11 and 2.12 state that:

“[Leaders] 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.”

In terms of free practice, paragraph 2.12 states: “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.” And, “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.”

And yet, pressure has been brought to bear by sectarian factions within and without the DoD to change this instruction, to allow commanders to proselytize and openly express their religious views (and biases) up to and until the subordinate can **prove** damage has been done to unit cohesion, morale, *and* good order and discipline within the unit. Not only does this place the burden of proof upon the injured party or parties, but the astonishing use of the inclusive conjunction (“and”) would demand a still higher (if not impossible) bar of proof.

In this time of grave and justified concern for the victims of sexual assault and harassment in our military, would we demand the same ridiculously shameful burden of proof (or injury) of these victims? Hierarchical pressures and the internal politics of the “Good Ol’ Boy” system are already tremendous, if not insuperable, barriers to reporting in this arena. Will

the open practice of proselytization and “witnessing” in the military workplace have the same repressive impact on those that would report malfeasance? More often than not, I am so sad to have to report to you that these members are instead choosing to vote with their feet, depriving our military of great (and often unique) combat and related skills and diversity in areas beyond race and religion — eliminating sources of imagination and self-evaluation that make our military the flexible, inclusive, and deadly effective force that it is.

With over 38,000 MRFF clients and more examples that I could take hours to cover, let me conclude by reiterating that the MRFF is a pro-Christian organization in both word and deed. We are pro-Muslim, pro-Jewish, pro-Hindu, pro-Freethinker, pro-Atheist, and pro-Wicca—but we are primarily and fundamentally pro-Constitution, as are all of our clients. We are as aspirational as that most aspirational of documents, which is 227 years old as of this very week (17 Sept), by the way. We support a strong U.S. military in which all service members are free to practice their religion within the lawful time, place and manner restrictions placed by proper authorities pursuant to the Constitution, its construing federal and state case law and DoD directives, instructions and regulations. We seek a military in which every Soldier, Sailor, Airman, Marine and Coast Guard member is confident that no single *religious* perspective is a necessary or sufficient condition for honorable service—where they are all respected as individuals committed to the mission of defending this nation.

Our military is a different type of society than what most Americans have experienced or are capable of understanding. It is hyper-tribal, adversarial, communal, and ritualistic. Honorable members of the United States Congress, I beseech you all to please carefully and dutifully internalize this -- that, in the U.S. military, when you are told by your command leadership that you lack courage, integrity, intelligence, character, trustworthiness, competence and honor, solely because of your religious faith or lack thereof, there is NO difference between THAT abject bigotry and the searing prejudice of denigrating someone in the very same terms just because of the color of their skin or because they were born female.

As George Washington stated when he wrote to Edward Newenham on October 20, 1792:

“Of all the animosities which have existed among mankind, those which are caused by difference of sentiments in religion appear to be the most inveterate and distressing, and ought most to be deprecated.”

**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: Michael L. "Mikey" Weinstein

Capacity in which appearing: (check one)

Individual

Representative

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

FISCAL YEAR 2013

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

FISCAL YEAR 2012

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

FISCAL YEAR 2011

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

Michael L. "Mikey" Weinstein

Mikey Weinstein is a leader in the national movement to restore the obliterated wall separating church and state in the most technologically lethal organization ever created by humankind: the United States armed forces. Described by Harper's magazine as "the constitutional conscience of the U.S. military, a man determined to force accountability", Mikey's family has a long and distinguished U.S. military history spanning three consecutive generations of military academy graduates and over 130 years of combined active duty military service in every major combat engagement our country has been in from World War I to the current Global War on Terror.

Mikey is a 1977 Honor Graduate of the United States Air Force Academy. Mikey has been married for over 37 years to his wife, Bonnie. He is the proud parent of two sons, one daughter and one granddaughter. His oldest son and daughter-in-law are 2004 Graduates, Mikey's youngest son graduated in the Class of 2007, and his son-in-law is a 2010 graduate from the Air Force Academy. Seven total members of Mikey's family have attended the Academy. His father is a distinguished graduate of the United States Naval Academy. Mikey served for more than 10 years with the Judge Advocate General ("JAG") Corps.

A registered Republican, he also spent over three years in the West Wing of the Reagan Administration as legal counsel in the White House. In his final position there, Mikey was named the Committee Management Officer of the much-publicized Iran-Contra Investigation in his capacity as Assistant General Counsel of The White House Office of Administration, Executive Office of the President of the United States. Mikey has held numerous positions in corporate America as a senior executive businessman and attorney.

After stints at prominent law firms in both New York City and Washington D.C., Mikey served as the first General Counsel to Texas billionaire and two-time Presidential candidate H. Ross Perot and Perot Systems Corporation. He left Mr. Perot's employ in 2006 to focus his fulltime attention on the nonprofit charitable foundation he founded to directly battle the far-right militant radical evangelical religious fundamentalists: the Military Religious Freedom Foundation. (<http://www.militaryreligiousfreedom.org>)

Mikey has appeared innumerable times on all of the major cable and terrestrial TV news networks and is a frequent guest on national radio networks as well. His constitutional activism has been covered and profiled extensively in the print media including the Associated Press, The New York Times, the Washington Post, the L.A. Times, the Denver Post, The Guardian, and many other national and international newspapers and periodicals including Time magazine.

St. Martins Press in New York released Mikey's book, "With God On Our Side: One Man's War Against an Evangelical Coup in America's Military" in October 2006. The paperback version was released in February 2008 with the Foreword being written by Ambassador Joseph Wilson IV. The book is an expose on the systemic problem of religious intolerance throughout the United States armed forces. At this time, Mikey also made his international film debut in the Hollywood adaptation of James Carroll's New York Times best selling book detailing the 2,000

year bloody history between the Church and the Jews, entitled “Constantine’s Sword”, and directed by Oscar nominee Oren Jacoby.

In January, 2012, Mikey’s latest book “No Snowflake in an Avalanche: The Military Religious Freedom Foundation, its Battle to Defend the Constitution, and One Family’s Courageous War Against Religious Extremism in High Places” was released. It details MRFF’s prominent case studies, struggles, and the violent reactions to MRFF advocacy.

Mikey was named one of the 50 most influential Jews in America by the Forward, one of the nation’s preeminent Jewish publications. He also has received a nomination for the JFK’s Profile in Courage Award and received the Buzzflash Wings of Justice Award. In addition Mikey was honored by a distinguished civil rights organization, Jews for Racial and Economic Justice, with the Rabbi Marshall T. Meyer Risk-Taker Award for those who have taken risks in the pursuit of justice.

In December 2012, Defense News named Mikey one of the 100 Most Influential People in U.S. Defense. As a distinguished “Opinion shaper” exercising a hard-fought influence over the U.S. Armed Forces, Mikey’s influence has been recognized as exceeding that of former General David Petraeus himself by a publication that represents “the world’s biggest military newsroom.” Defense News is a Gannett publication – as are USA Today, The Arizona Republic, Detroit Free Press, The Indianapolis Star, The Cincinnati Enquirer, and many other prominent newspapers across the nation. Gannett Government Media consists of Defense News, Army Times, Air Force Times, Navy Times, Marine Corps Times, Armed Forces Journal and Federal Times.

On November 7, 2011, Americans United for the Separation of Church and State presented Mikey Weinstein with AU’s first ever Person of the Year Award. In their press release, AU describes MRFF as “the leading voice protecting church-state separation in the military.”

On November 1, 2013, for the fifth consecutive year, the Military Religious Freedom Foundation was officially nominated again for the 2014 Nobel Peace Prize (its sixth total nomination).

DOCUMENTS SUBMITTED FOR THE RECORD

NOVEMBER 19, 2014

Statement of Congressman Doug Collins (R-GA)
Military Personnel Subcommittee
Religious Accommodation in the Armed Services

November 19, 2014

I thank Chairman Wilson and this Subcommittee for its persistent efforts to protect the religious liberty of our men and women in uniform. As a military chaplain, I sincerely appreciate the opportunity to submit a statement for the record.

Over the last few years, a series of incidents targeting those serving in the military as well as the Department of Veterans' Affairs have formed an unacceptable pattern of opposition to faith. Numerous Army briefings reportedly cited evangelical Christians and Roman Catholics as "extremists" in the vein of al Qaeda. In 2012, two chaplains were harassed for their Christian beliefs during their participation in a Veterans' Affairs chaplain training program. Legal action has been

taken in an attempt to force the military to accept atheist chaplains. Last year, the Pentagon stated that soldiers could be prosecuted for sharing their faith. Reports also surfaced that the Southern Baptist Convention's website was blocked from Army, Air Force, Marine, and Navy bases. A member of the panel who will testify before the Subcommittee today has actively campaigned to remove the phrase "so help me God" from the U.S. Air Force Academy's honor oath.

Taken together, these incidents demonstrate a pattern of hostility to Christian organizations and those practicing the faith who are part of the military. Our men and women in uniform have chosen to put their lives on the line for all the freedoms we hold dear, including our First Amendment liberty to worship freely. Members of our military must not be denied this precious right. It's as simple as that.

Like many Members of this Subcommittee, I have been involved with legislative efforts to defend the religious liberty in the military. I authored legislation to protect our soldiers' free exercise of religion after the Administration used the government shutdown as an excuse to prevent chaplains from performing their duties overseas. I'm pleased that this legislation passed both the House and the Senate, which showed the Administration that Congress was united in believing that religious freedom should never be a political pawn. I joined my colleagues in publicly questioning the Department of Defense in letters regarding the Southern Baptist Convention website as well as other matters of religious liberty. Members also addressed a letter to the Superintendent of the U.S. Air Force Academy to inquire why a Scripture reference was removed from a Cadet's personal whiteboard in his room.

I have served Airmen of all faiths as a chaplain in the U.S. Air Force Reserve, which I considered my duty and privilege. The religious diversity in America's fighting force is no cause to elevate one faith – or no faith – over another; rather, it gives us all the more reason to protect the First Amendment principles millions of Americans have fought for over the centuries.

Any attack on expressions of faith in the United States military is not only unconstitutional, but an unacceptable way to treat those who have given the most in defense of our nation. America's bravest deserve better, and I stand ready to work with my colleagues on this Subcommittee to protect this right to all our men and women in uniform.



*Nurture the Living
Care for the Wounded
Honor the Fallen*

THE FORUM ON THE MILITARY CHAPLAINCY
P.O.Box 151655
Austin, TX 78715-1655

September 15, 2014

Rep. Joe Wilson
Chairman
Subcommittee on Military Personnel
Committee on Armed Services
2120 Rayburn House Office Bldg.
Washington, DC 20515

Rep. Susan Davis
Ranking Member
Subcommittee on Military Personnel
Committee on Armed Services
2120 Rayburn House Office Bldg.
Washington, DC 20515

Dear Representatives Wilson and Davis:

The Forum on the Military Chaplaincy (Forum) thanks the subcommittee for allowing us to submit statements for entry into the Congressional record.

One of the most significant issues facing the country today is the question of religious liberty provided to all citizens under the First Amendment to our Constitution. Those who are honored to wear our country's uniform are sworn to protect and defend our Constitution. They too have the right to religious liberty. For many, the support of Military chaplains is essential to their free exercise of this important liberty.

In the recent past, due to changes in regulations, particularly the repeal of the law commonly know as "Don't Ask, Don't Tell", and the finding by the United States Supreme Court that parts of the Defense of Marriage Act are unconstitutional, the military chaplaincy has been in some turmoil.

Incorporated by reference into the correspondence, we refer to the attached article "Evangelical Chaplains Respond to Dr. Albert Mohler". This piece was in response to one written by Dr. Mohler, President of the Southern Baptist Theological Seminary, which appeared in the Associated Baptist Press. Two retired evangelical military chaplains, both members of the Forum, authored this response. It addresses the conflict

Advocate for a Military Chaplaincy committed to free and diverse religious expression, and to the sacred traditions of personal integrity, selfless compassion, respect for others, and excellence in leadership.

that has arisen between the instructions given by certain endorsers to their chaplains and the duty of chaplains to "perform or provide" for ALL service members.

We anticipate this apparent conflict will become more problematic. As the services continue to provide chaplains to conduct family support undertakings such as the Army's Strong Bond Program, the participation of legally married gay and lesbian couples will likely bring this conflict into sharp focus.

Another area the Forum is concerned about is the make up of the military chaplain corps of all the services. The military chaplaincy now includes not only Christians and Jews, but also Hindus, Buddhists and Muslims. This is the way it should be in our pluralistic country. Certainly, the military should mirror the society it is sworn to defend. Recently, this more expansive view of religious liberty and the need for a diverse chaplaincy was handed a significant setback. Attached and included for the record by reference is a letter of support for the appointment of a humanist chaplain written last year by the Forum to the Secretary of Defense. Just last month we were disappointed to hear that the Navy had rejected the highly qualified candidate, Mr. Jason Heap. No reason was given but we fear it was because he is a humanist.

It is undeniable that the religious demographics of our society are changing with an increase in minority religions, as well as significant numbers of humanists, agnostics and atheists. In order to remain relevant, the military chaplaincy should recognize and embrace this change. This would include appointment of chaplains that service members will be able to identify with, and feel comfortable approaching for the support they are entitled to under the law.

Very truly yours,

Paul W. Dodd, Chaplain (Colonel), U.S. Army (Ret)
Co-Chair, Forum on the Military Chaplaincy
E-mail: doddpw@aol.com
Cell: (512) 731-7716

Thomas T. Carpenter, Esq. (CAPT USMC 1970-1982)
Co-Chair, Forum on the Military Chaplaincy
E-mail: tomcarpenter@roadrunner.com
Cell: (310) 562-7416

**Testimony of
Jason Torpy, President
Military Association of Atheists & Freethinkers
Before the
Subcommittee on Military Personnel
Committee on Armed Services (House)
Hearing on Freedom of Religion and Belief in the Military
September 19, 2014**

Mr. Chairman, Ranking Member Davis, Members of the Subcommittee, thank you for this opportunity to submit testimony on behalf of the Military Association of Atheists & Freethinkers concerning the need for support for people with nontheistic values and beliefs serving in our nation's military. We appreciate that the subcommittee is applying scrutiny to the treatment of religion and belief within the military. There is a great opportunity to increase resilience of the force by accommodating those service members who are good without a god.

The Military Association of Atheists & Freethinkers provides community for atheists and humanists in the military. We directly support those thousands of active duty and veterans who are members of our organization and indirectly represent those tens of thousands of additional service members who share a nontheistic and naturalistic approach to life. This hearing is evidence that the military cares very much about the moral fiber and foundation of our service members. One important question is whether an ethical foundation not based on a god will be given equal treatment.

The first step is to allow for recognition of our beliefs. The option "Humanist" is not among over 100 current options and could easily be added. The Army has done so just this year after years of pressure and only after legal pressure from the MAAF and the American Civil Liberties Union. But the Department of Defense and the other branches of service continue to deny requests. These requests have been presented by members of our organization through official channels and seem to end with the Chief of Chaplains of each branch. A survey conducted by the Defense Equal Opportunity Management Institute in 2009 showed 3.6% of the military identifies as Humanist. Yet this population is disenfranchised and unaccounted for in the current system. Freedom of religion and belief cannot happen when we deny the existence of these groups. Beliefs are not accommodated if they are not even accounted for, so I would ask that the subcommittee ensure these requests for Humanist accommodation on the Religious Preference listings at the Department of Defense (DMDC) and within each Branch of Service are accommodated.

A second area of great opportunity is Basic Training. Without asking, any recruit can expect easy access to organized, funded services for beliefs from Protestant to Jewish to Buddhist to Wiccan. These are important services for young men and women who need to lean on their personal values as they meet the greatest challenge of their young lives. Nontheists are no different. MAAF has helped to organize humanist services outside chaplain-provided services at each military academy and Air Force Basic Training. At each location the humanist services were among the most popular among trainees. Establishing these services has taken hundreds of hours of local and national volunteer work and the support of a few supportive local commanders. God-based religious services enjoy command funding, advertising, scheduling, and facilitation. Chaplains have directly denied requests for humanist support in most cases, interpreting such beliefs to be outside their scope while still claiming to support all personnel. Particularly during high-stress, low-freedom training, everyone benefits from the community of like-minded individuals and the mentorship of those who share their beliefs. Humanists should be afforded these services as well. Even if the chaplains opt not to help, these humanist services should be advertised and available, with humanist volunteer support, at every training location where time-off for church is offered.

At the core of all this is the Chaplaincy, a chaplaincy that has no humanists (in the nontheist sense) or even relationships with humanist organizations. We recognize the need and value of the chaplaincy and ask only that they include all core values and beliefs, not only theistic core values and beliefs. Chaplains have power in their command influence, access to personnel, influence on the religious preference list, organization of training services, and in other ways like resiliency/spiritual fitness training and marriage counseling. Chaplaincy recognition would go a long way to overcome discrimination against atheists and humanists.

Chaplains should be asked not simply whether they will counsel humanists, but whether they will provide Humanist support to Humanists just as they provide Wiccan, Muslim, and Christian support to those who hold those beliefs. Chaplains claim they are available for all personnel, yet they do not have humanist training, humanist materials, humanist services, or external endorser points of contact to provide authentic humanist support. To humanists, they claim humanism isn't 'approved', yet there is no approved religion list and no procedure to get on such a list. Lay leaders sought out by the chaplains to support minority groups such as Mormons and Wiccans are turned away when they seek to represent humanists. An endorsed Humanist Society chaplain candidate with two masters degrees in religion was recently turned away by the Navy. Fewer than 2% of chaplains are non-Christian and none are Humanist. Those demographics, especially in a military where less than 70% of military personnel identify as Christian, demand reform. We seek a military that embraces and celebrates diversity of belief that includes nontheists.

The Humanist Society, American Ethical Union, and Society for Humanist Judaism are denominations legally equivalent to the Catholic Church that the chaplaincy should rely upon for personnel, resources, and advice. The Military Association of Atheists and Freethinkers and other organizations are nonprofits providing values-based support equivalent to the National Association of Evangelicals, Cadence International, and other non-church ministries valued by the chaplaincy. Chaplains connect strongly with many agencies yet frequently refuse to learn from and work with humanist organizations. The military needs a chaplaincy that celebrates diversity of belief including nontheist beliefs.

These requests – equal chaplain support, humanist alternatives to church in basic training, and a humanist option in on the religious preference list – simply constitute equal support for nontheists. These are not requests for kickball or chess club or a simple hobby, but for core values and beliefs protected under the first amendment and critical to resilient military personnel.

I also want to point out a disturbing new policy in the Air Force to require personnel swear to God to serve. The enlistment oath just like oaths of office in the military, courts, and political positions, invariably include an option for a secular affirmation. Our Constitution states there shall be no religious test for public office. The current Air Force policy seems to be that atheists must either lie on their enlistment oath by swearing to God or be denied the opportunity to serve. The secular option was originally put in place to protect believers and it protects nonbelievers as well. The Committee should direct the Air Force to abandon their new religious test for public office.

It is important to put a spotlight on those military practices that marginalize humanists and foster anti-atheist prejudice in military culture. I have focused on providing for humanists but humanists cannot thrive when military leaders privilege Christianity above all other beliefs. Military lodging facilities proselytize Christianity by placing Bibles in hotel rooms. Chaplains are allowed to use their faith to discriminate against gays and lesbians. Prayers are broadcast over the loudspeakers on Naval vessels. Invocations and Benedictions are given at military ceremonies and even daily meetings. Religious language persists in military songs and creeds. Maintaining neutrality toward religion in government is an ideal we have not achieved. Personal faith should not need and does not deserve a captive military audience or special promotion at military events or facilities. So long as these Christian privileges persist, it is that much more important to extend accommodation to humanists and other nontheists. Though Christianity may be the majority, the majority should not be threatened by accommodating minority nontheistic beliefs.

At the last Military Personnel briefing on this issue on January 29th, Chaplains confirmed over and over again that chaplains are free to evangelize and it is the responsibility to junior

personnel to opt out, assuming it is not an official ceremony where they have no say at all. Members of Congress and chaplains supported defamatory statements by a chaplain in Alaska who declared in his official capacity on an installation news service that there were no atheists in foxholes. Ms. Penrod, to whom I presented many of these issues in person years ago (Aug 2011), entirely dismissed, in her comments to this subcommittee, atheists and humanists as simply "non-religious" and undeserving of protections under DoDI 1300.17. If it is the official DoD policy that humanists and other nontheists are entirely outside the scope of the chaplaincy, then that policy must be made clear in writing, in funding, in access to personnel, in training authority, and in the influence given to chaplains who, in that instance, would represent only a subset of the military rather than all personnel. It would be a difficult job for the command to recreate a non-chaplain replacement for all the privileges of the chaplaincy that would then be available only to those who profess a god-belief. If that is the case, the discrimination against atheists should be stated clearly and the Constitutionality and military value of the chaplaincy can be evaluated in that reduced god-only role.

Mr. Chairman, Ranking Member Davis, Members of the Subcommittee, the Military Association of Atheists & Freethinkers represents military personnel who have deeply held beliefs and core values that are nontheistic and naturalistic. We should not be pushed aside because our beliefs are different from or even offensive to some military chaplains or military leaders. We should be embraced as an ever-present and valuable part of the diversity of belief in our military. 5000 senior officers serve throughout the US military in all components and branches as chaplains, and chaplain facilities exist on nearly every military installation and ship, as they should. However, those officers and facilities currently have no education, resources, materials, or, apparently, respect for those in their ranks who are good without a god. Just as the military and the chaplaincy had to adapt to Muslims, Hindus, Buddhists, and Wiccans among the troops they serve, now is the time for them to adapt to Humanists.

**Testimony of
Roy Speckhardt, Executive Director
American Humanist Association
Before the
House Armed Services Committee
Subcommittee on Military Personnel
Hearing on Military Religious Freedom
September 19, 2014**

Mr. Chairman, Ranking Member Davis, Members of the Subcommittee, thank you for this opportunity to submit testimony on behalf of the American Humanist Association concerning the state of religious freedom in the military. We are encouraged by the recent news that the Army is permitting humanism to be used as a stated religious preference, and other changes in the military give us hope that the plight of humanists and other nontheists will soon be fully addressed. We were also pleased by the fact that so many congressional offices, especially those that sit on the House Armed Services Committee, sent representatives to attend a crucial congressional briefing on the need for humanist chaplains in the military, which is something that I will address today.

The American Humanist Association is an educational organization that strives to bring about a progressive society where being good without gods is an accepted way to live life. We are accomplishing this through our defense of civil liberties and secular governance, by our outreach to the growing number of people without traditional religious faith, and through a continued refinement and advancement of the humanist worldview. Humanism encompasses a variety of nontheistic views (atheism, agnosticism, rationalism, naturalism, secularism, and so forth) while adding the important element of a comprehensive worldview and set of positive ethical values--values that are grounded in reason, empathy, and driven by a desire to meet the needs of people in the here and now.

Our military is a diverse institution, with servicemembers coming from a variety of backgrounds and holding a variety of beliefs. While some assume that the military is uniformly religious, the *2012 MAAF Department of Defense Religious Preference and Chaplain Support Study* showed that over 13,000 active duty personnel identify as atheists or humanists, and that nontheist soldiers outnumber all non-Christian faiths, including Islam, Judaism, Buddhism, and Hinduism, in the military. Additionally, over 276,000 service members also identify as having no religious preference.

Unfortunately, humanist servicemembers are often subject to religious proselytization, and find their own needs being ignored by a military administration that is apathetic towards

the struggles of these men and women. Many of these humanistic servicemembers have faced discrimination at the hands of their fellow soldiers or even their superiors, and the refusal by the Chaplain Corps to allow for humanist chaplains means that these servicemembers don't have the same options in times of need as their religious counterparts. Essentially, the religious freedom of these soldiers is being jeopardized by the refusal of several institutions within the military to grant humanists the same rights and resources that theistic soldiers currently enjoy.

Allowing for the appointment of humanist chaplains would go a long way to addressing religious freedom concerns raised by humanist servicemembers. Humanist chaplains can provide vital resources and services to the sizeable nontheistic and humanist community in the armed services, and theistic chaplains would be better equipped to deal with the needs of nontheistic soldiers because of the information and resources provided to the Chaplaincy by humanist chaplains. Additionally, those nontheistic soldiers that feel uncomfortable going to a military psychologist because the meeting appears on their military record could speak in confidence with a humanist chaplain, as those meetings would be fully confidential and would not reflect negatively on a soldier's record.

It is also important to note that humanist chaplains are committed to serving all soldiers, including those who hold different religious beliefs. This means humanist chaplains would be expected to have prayer books and would be required to guide others in prayers according to their own religious traditions. In addition, an endorsing agency already exists for humanist chaplains. The Humanist Society, which was founded in 1939, prepares Humanist Celebrants to lead legal ceremonial observances in all 50 states and maintains programs to certify humanist chaplains and humanist Lay Leaders.

Mr. Chairman, Members of the Subcommittee, the American Humanist Association believes strongly that the United States government should do everything it can to help our humanist and nontheistic servicemembers who put their lives on the line to defend the very same freedoms they wish to enjoy. We have a moral obligation to ensure that the needs of all soldiers are accounted for equally, and our current failure to do so may require congressional action to remedy the problem. To that end, we would strongly support your leadership in supporting legislation in the future like the Polis Amendment, which would allow for the appointment of humanist chaplains in the military, and we urge you to hold military leaders accountable for their failure to ensure that humanist servicemembers are being treated fairly. I thank you again for the opportunity to speak to you today.

9/29/14
 Art Schulcz
 AGC-Greenville

**THE ASSOCIATED GOSPEL CHURCHES' SUPPLEMENT TO ITS
 PERSPECTIVE ON MILITARY RELIGIOUS LIBERTY,
 INCLUDING PRAYER AND RELIGIOUS SPEECH PROBLEMS**

The Associated Gospel Churches (AGC) submits this supplement to its previously submitted testimony to the House Armed Service Committee's Personnel Subcommittee for its September 19, 2014, Hearing on chaplains' religious liberty, "AGC's Perspective on Military Religious Liberty" (Perspectives).

This supplementation is necessary because immediately after submitting its Perspective, three incidents arose involving AGC chaplains illustrating the unsettling and prejudicial climate degrading religious liberty for chaplains and the military personnel they represent. These incidents again illustrate and emphasize the need for a statutory definition of a chaplain and a Department of Defense (DOD) policy establishing a uniform policy and procedures providing effective guarantees DOD remains neutral when addressing the theological issues which underlie and determine the different denominational approaches to ministry to same-sex couples. This continues Perspectives' incident numbering sequence.



D. Removal of an AGC Battalion Chaplain as a Leader of a Strong Bonds Retreat Following a Same-sex Couple's Late Registration

After organizing, planning, and coordinating a Strong Bonds retreat for his Battalion soldiers that was to begin Friday, 12 September 2014, the AGC chaplain was notified last Wednesday, 10 Sept., a same-sex couple had just signed up for the retreat. AGC chaplains cannot participate in such events because their historical, orthodox Christian theology and beliefs do not recognize same-sex marriages. To participate in events that in any way legitimize such unions is a violation of AGC's statement of faith and doctrine.

The AGC chaplain reported the problem to his commanding officer and suggested the couple be asked if they would prefer to attend a Strong Bonds retreat conducted by a chaplain who could specifically minister to their specific same-sex needs, a practice used by other chaplains in similar situations. The commander agreed. But the brigade chaplain, after being briefed on the situation, told

the AGC chaplain (a) he could not ask the same-sex couple if they would prefer an alternative and (b) another chaplain would replace the AGC chaplain.

When the AGC chaplain informed his commanding officer another chaplain would be conducting the retreat because he would be unable to attend it, the commander's initial reaction was he wanted his chaplain to conduct the retreat and told the chaplain he would be fired if he could not do that. That threat was removed after AGC informed the Chief of Chaplains Office's of the situation and informed the command the NDAA protected the chaplain's actions.

This incident illustrates the Army's polarizing, demonizing, and prejudicial policies that fail to recognize the same-sex marriage issue rests on a clear theological divide. The policy of not protecting historic, orthodox Christian chaplains when scheduling Strong Bonds retreats places the conduct of such events in the hands of same-sex couples, giving them a veto over a chaplain's role and responsibility to minister to his soldiers and compromising the chaplain's role and effectiveness as a unit chaplain. This raises serious questions concerning the Chaplain Corps' function and responsibility, and serious constitutional issues.

1. This policy, as the above incident illustrates, undermines the Battalion Chaplain's role as the unit's chaplain and his relationship with both his soldiers and commander. The Battalion chaplain knows his soldiers through the relationship he has with them on a daily basis, the confidentiality of communications with him, and the ability to follow up on issues between couples that may come to light during a Strong Bonds retreat makes him the ideal person to conduct unit Strong Bonds retreats.

The above commander's reaction illustrates his understanding of that fact. To remove a chaplain at the last moment raises questions in the unit such as: where is our chaplain; why aren't you conducting this; who's going to follow up; and for those soldiers who share the

chaplain's religious convictions about same-sex marriage, why wasn't I told so that I could withdraw rather than participate in something I know to be scripturally forbidden?

2. The sudden removal of a chaplain from an event he planned for his soldiers diminishes the chaplain in the eyes of the commander and some of his soldiers, undermining his role and threatening his career.

3. The failure to recognize that there are soldiers who, like AGC chaplains, have faith-based reservations about same-sex marriage and relationships and may choose not to participate in events involving same-sex couples can promote animosity. Changing chaplains at the last minute can be perceived as "bait and switch", and provides an incentive for soldiers to search elsewhere for their spiritual nourishment and community.

E. A Recent Army Judge Advocate General decision (A) treats same-sex couples differently than the Army and the Chaplain Corps have historically treated soldiers with different spiritual needs and (B) formalizes prejudice against historic, orthodox, Christian chaplains

While incident D above was unfolding, AGC became aware of the recent JAG policy decision in

Exhibit 1 which explains incident D's outcome. The JAG policy states:

providing an alternate Strong Bonds event for same-sex couples to attend (when a non-restricted chaplain is unavailable) is legally objectionable. Same-sex couples will not be asked to attend an alternate event.

1. This JAG directed policy fundamentally changes historic chaplain pluralistic faith-specific ministry

It has been the consistent policy of all chaplaincies that if a chaplain is unable to meet a service member's faith specific ministry need, the chaplain refers the service member to a chaplain with a similar faith perspective. A Protestant or Jewish chaplain would refer a Catholic service member to a Catholic chaplain or arrange a visit with a priest if the service member sought ministry on an issue with a Catholic perspective.

The different views on same-sex marriage are based on different theological and faith perspectives. The Army JAG decision essentially puts the Army on the side of those who believe

that same-sex marriage is perfectly acceptable and preferred. This official preference raises a host of practical, legal and constitutional questions.

An AGC chaplain encountered a situation similar to D above months ago. That issue was resolved when the same-sex couple decided it was in the best interest of the couple, the unit, and the chaplain to attend a later marriage enrichment event for same-sex couples.

The Army JAG policy fosters unit division and dissent rather than cohesion and undermines rather than strengthens the Battalion chaplain's relationship with his soldiers and commander.

2. The JAG policy formalizes institutional discrimination and prejudice against historic, orthodox, Christian chaplains

The Army Chaplain Corps publicly promised it would **not** categorize or penalize chaplains because of their faith perspective on same-sex marriage and homosexuality, the underlying issue, after the Defense of Marriage Act was struck down. The JAG policy revokes that promise and, in effect, establishes two theology-based categories of chaplains, **restricted** and **non-restricted**. The word "restricted" in and of itself denotes a lack of qualifications or something less than desirable while "non-restricted" conveys a message of "superiority" and compatibility with official administration policy. The commander with a "restricted" chaplain cannot but feel that his chaplain is less qualified than a non-restricted chaplain upon becoming aware of those terms.

AGC would also note the derogatory classification term "restricted" may seem to apply in practice primarily to historic, orthodox, Protestant chaplains because everyone knows that Catholics reject same-sex marriage.

F. JAG Censorship of an AGC Chaplain's religious article

As the above incidents were unfolding, an AGC chaplain reported his unit JAG requested he remove the term "Bible" from an article he was publishing for the unit paper lest the word "Bible"

offend someone and embarrass the commander. AGC does not doubt the sincerity or intent of the JAG involved in trying to protect his commander. However, this honest suggestion implies a woeful ignorance of Establishment and religious Free Speech principles, well-settled constitutional precedents forbidding content-based censorship or suppression, and ignorance of the recent *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), decision addressing religious speech. *Town of Greece* affirmed the rules that the government has no business evaluating religious speech, “offense [] does not equate to coercion”, and the Constitution does not protect citizens from ideas they find disagreeable. *Id.* at 1826. By implication, speech protections apply to written words as well as spoken. The fact a chaplain writes an article should put readers on notice it contains religious content and readers proceed at their own emotional peril.

SUMMARY

Congress has expressed its military religious liberty concern over the last several years. Despite this continuing expression of concern, DOD has refused to address the issues head on. These incidents reflect only those that have been brought to AGC’s attention because its chaplains have not been able to resolve them at the local level.

These incidents highlight (1) the threat to religious liberty caused by lack of clear direction and a clear understanding of the difference between “religious liberty” which the Constitution guarantees and “toleration” which the Constitution rejects; and (2) the need for a statutory definition of a chaplain that protects their right to represent their faith groups authentically to the military and its military personnel.

Exhibit 1 (copy and paste of email)

-----Original Message-----

From: Shin, Steve H MAJ USARMY MEDCOM HQ (US)
Sent: Wednesday, September 10, 2014 6:48 AM
To: Cooke, Christopher R SSG USARMY MEDCOM TAMC (US); Miller, John A SSG USARMY MEDCOM WRMC (US); Eaddy, Donovan D SSG USARMY MEDCOM AMEDDCS (US); Gladden, James W SFC USARMY MEDCOM ERMCM (US); Negrete, Marcos P SFC USARMY MEDCOM SRMC (US); Jackson, Frederick E SFC USARMY MEDCOM NRMCM (US); Penton, Corey G SPC USARMY MEDCOM AMEDDCS (US); Stewart, Ulysses C SSG USARMY MEDCOM KOR (US)
Cc: Boyd, O Wayne (Wayne) COL USARMY MEDCOM PRMC (US); Baker, Sherman W Jr COL USARMY MEDCOM LRMC (US); Bowerman, David S LTC USARMY MEDCOM PHC (US); Read, John D COL USARMY MEDCOM SRMC (US); Nygren, John G MSG USARMY MEDCOM HQ (US); Nishimura, Shinri M MAJ USARMY MEDCOM WTC (US); Brzezinski, Peter M COL USARMY MEDCOM NRMCM (US); Causey, Brent Victor COL USARMY MEDCOM AMEDDCS (US); Groseclose, Gordon G COL USARMY MEDCOM WRMC (US); Pittman, Jim L COL USARMY MEDCOM HQ (US); Hurst, Kenneth J LTC USARMY MEDCOM HQ (US)

Subject: FW: RFI (UNCLASSIFIED)

Everyone,

Recently I sent up a RFI, asking if a UMT can ask a same-sex couples to attend alternate event... please see legal response from OTJAG.

Per legal review provided by OTJAG, providing an alternate Strong Bonds event for same-sex couples to attend (when a non-restricted chaplain is unavailable) is legally objectionable. Same-sex couples will not be asked to attend an alternate event.

Please let me know if you have any concerns or questions.

His Servant,

Steve H. Shin
Chaplain (MAJ) USA
Plans & Ops/SBPM/RM Chaplain
Office of the MEDCOM Chaplain
Fort Sam Houston, TX 78234
Office: 210-221-8228
BB: 210-722-5267
steve.h.shin.mil@mail.mil

-----Original Message-----

From: Watlington, George Jr CIV USARMY HQDA OCCH (US)
Sent: Wednesday, September 10, 2014 11:11 AM
To: Shin, Steve H MAJ USARMY MEDCOM HQ (US)
Cc: Kirby, Randall D LTC USARMY HQDA OCCH (US); Guthrie, Kevin L MAJ USARMY HQDA OCCH (US); Nguyen, John T CTR (US)

Subject: RE: RFI (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Chaplain Shin,

Per legal review provided by OTJAG, providing an alternate Strong Bonds event for same-sex couples to attend (when a non-restricted chaplain is unavailable) is legally objectionable. Same-sex couples will not be asked to attend an alternate event.

George Watlington Jr., CIV
HQDA Strong Bonds Program Manager
DACH Soldier and Family Ministry
6000 6th Street, Bldg 1464, Suite 129
Fort Belvoir, VA 22060-5588
george.watlington.civ@mail.mil
(703) 545-5793

-----Original Message-----

From: Shin, Steve H MAJ USARMY MEDCOM HQ (US)
Sent: Monday, September 08, 2014 5:16 PM
To: Bowling, Jessica L CTR (US)
Cc: Nguyen, John T CTR (US)
Subject: RFI

Good Afternoon Ms. Bowling,

I pray you had an enjoyable weekend.

Do you have a document stating a same-sex couples may not be referred to a different event? In case where a command decided not take a restricted chaplain from a SB event and execute the event, and asking a same-sex couple to attend a different event in the future with a non-restricted chaplain.

Thank you.

His Servant,

Steve H. Shin
Chaplain (MAJ) USA
Plans & Ops/SBPM/RM Chaplain
Office of the MEDCOM Chaplain
Fort Sam Houston, TX 78234
Office: 210-221-8228
BB: 210-722-5267
steve.h.shin.mil@mail.mil

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

September 19, 2014

**House Armed Services Committee
Hearing on Freedom of Religion and Belief in the Military**

Testimony of the Freedom From Religion Foundation, Inc.

The Freedom From Religion Foundation is a nationwide nonprofit organization that works to protect the constitutional principle of separation between state and church. We are the nation's largest association of freethinkers (atheists and agnostics) and represent more than 21,000 nonreligious members nationwide. Over 5,000 of our members (24%) are active in the military or are veterans. We want to thank the Committee for allowing us to submit this testimony on behalf of those 5,000 members and the over 23% of active military members who are "atheists in foxholes," agnostics, or have no religious preference.¹

Service men and women regularly lodge complaints with FFRF about the military privileging religion generally, and Christianity specifically, while failing to accommodate the growing ranks of the nonreligious, which currently account for nearly 20% of adult Americans.² Although the circumstances of the complaints vary significantly, there are three particular issues that we wish to bring to the Committee's attention today: (1) the major disconnect between the religious and nonreligious makeup of our military and the religious affiliation of military chaplains; (2) military chaplains who regularly proselytize non-Christian service members, creating a hostile work environment; and (3) Air Force discrimination against atheists and agnostics in the requirement that recruits and candidates for reenlistment sign an oath to God.

These ongoing problems serve as examples of how the military gives preferential treatment to Christianity over minority religions and the nonreligious. Eliminating Christian privilege from the military is not the same as being hostile toward religion, as some groups claim. Privilege and hostility are not the only two options. Our secular Constitution calls for a middle position, one of neutrality toward religion. When Christians enjoy a privilege that is not extended to those who practice minority religions or no religion, that privilege represents an impermissible government preference for Christianity. Eliminating an unconstitutional preference is fidelity to the Constitution, not hostility to religion, and shows reverence for freedom of conscience for all. We are not advocating that the military go to the other extreme, which would be actively advocating atheism. The government and military may not take sides on religious matters. We ask that the military strive for the middle road: neutrality.

¹See MAAF Department of Defense Religious Preference and Chaplain Support Study (July 2012), available at <http://militaryatheists.org/demographics/>.

²*Nones on the Rise: One-in-Five Adults Have No Religious Affiliation*, Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012), available at www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx.

Military Chaplains Do Not Meet The Needs Of All Service Members

The overwhelming majority of military chaplains are Christian. This Christian dominance conflicts with the religious preferences of service members, 23% of whom are atheists, agnostics, or have no religious preference. The discrepancy is no accident. Advocacy groups like the Orwellian-named Chaplain Alliance for Religious Liberty actively lobby to exclude secular advocates from becoming military chaplains. And their efforts have been extremely effective. Most recently, the Navy blocked humanist Jason Heap, who holds master's degrees from Brite Divinity School and Oxford University, from becoming the first humanist chaplain in the Navy.

A secular chaplain is not oxymoronic and having secular points of view well represented in the military's chaplaincy program would have real, immediate effects for the 23% of military personnel who have no religious affiliation. Currently, chaplains provide basic counseling services to military members. The best practice would be to have licensed, secular counselors providing these services to all military personnel, regardless of religious identification. This would be a neutral solution. Under the current framework, Christian chaplains often use meetings as opportunities to promote religious doctrine, rather than comfort a nonreligious service member. Faced with a choice between dealing with the issue by themselves or working with a chaplain who is primarily interested in proselytizing, many atheists and agnostics forego counseling altogether.

Nonreligious service members should have the right to be counseled by a chaplain who understands what it means to be an atheist or agnostic and can speak to a service member's secular values rather than trying to change them. As long as the chaplaincy program continues to exist without equal access to secular counseling services, we owe our military members a nonreligious option.

Military Chaplains Use Their Positions To Proselytize

While military chaplains are claimed to be an accommodation for those service members who are religious and wish to practice religion while away from their homes, in practice, military chaplains use their positions to promote religion, including to service members who are not Christian. This inappropriate overreaching perpetuates a culture that is hostile toward non-Christians and the nonreligious.

One prominent example involves the Navy, where shipboard chaplains broadcast regular prayers throughout their ships, compelling all sailors to observe regular Christian prayer. FFRF has received reports of this practice aboard the USS Abraham Lincoln, USS Porter, USNS Comfort, and USS Momsen, although we have reason to believe it is more widespread. On the USS Abraham Lincoln, these daily prayers, according to our information, are initiated with the announcement "Tattoo, tattoo, stand by for the evening prayer." One of four chaplains or a person designated by the chaplains then delivers a prayer, which is nearly always in the Christian tradition and has included recitation of New Testament bible passages. The prayers are broadcast on all areas of the ship including service members' private rooms. During the prayers, the ship's televisions (including those in private rooms) are remotely turned off.

Each Navy vessel is meant to be a uniform fighting unit. Shipboard prayer broadcasts make religion a relevant factor in acceptance to that unit. Our nonreligious complainants, when in the presence of others, feel compelled to remain silent in observance of shipboard prayers. By broadcasting Christian prayers over the loudspeakers so that no sailor can avoid them, the Navy is effectively compelling attendance at a religious ritual. This practice is invasive, disrespectful, and goes far beyond accommodating the religious practice of Christian sailors. This is blatant, inescapable proselytizing of a captive audience.

In response to an FFRF letter of complaint, the Office of the Judge Advocate General attempted to justify the Navy's shipboard prayer practice by referencing Department of Defense Directive 1304.19, which calls for military commanders to provide comprehensive religious support to all authorized individuals within their area of responsibility. Because no DoD directive can trump the Constitution, this directive needs to be revised to place limits on chaplain activities so that no service members are compelled to submit to religious rituals. As one Navy lieutenant put it when writing to FFRF, "Chaplains should serve as an ear to those who need them and a voice to those who seek them, not as an overarching spiritual megaphone to an entire crew."

Military chaplains also proselytize by offering New Testament bibles to recruits and service members, to the exclusion of any other religious or secular text. FFRF has received numerous complaints about bibles being displayed or handed out in recruiting stations and on bases. In most cases, it is the base chaplain's office that is responsible for the distribution of religious reading materials to service members and invariably the bible is the only text offered. Most recently FFRF complained on behalf of military personnel about military-run hotels exclusively offering bibles to guests, under the direction of base chaplains. FFRF first asked for the removal of these bibles. We then offered to donate a variety of atheist and secular reading materials for similar distribution, but we have yet to be approved by any military installation to do so. The military's chaplaincy program has perpetuated this unconstitutional preference for years and will continue to do so until there are clear, written guidelines on the distribution of religious and secular reading materials that do not grant complete discretion to the chaplains.

The Air Force Requires Recruits And Reenlistment Candidates to Swear Oath To God

Air Force enlistment/reenlistment contracts currently contain an oath of office that candidates must sign. The oath is written as follows:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. **So help me God.**"

In October, 2013, AFI 36-2606 was modified by removing language that indicated "Airmen may omit the words 'so help me God,' if desired for personal reasons." According to the Air Force, the modification was made to bring AFI 36-2606 into conformance with 10 USC § 502, which

sets out the language of the oath and dictates who can administer it. Nothing in 10 USC § 502 indicates that the “so help me God” language is mandatory, and the option to affirm is logically inconsistent with the “so help me God” language, since an affirmation is, by definition, a pledge without reference to a supreme being. Yet the Air Force has steadfastly refused to return to its previous policy in which the phrase was explicitly optional.

The Air Force’s refusal to make the reference to God optional notably has resulted in problems for one candidate for reenlistment at Creech Air Force Base, Nevada. This service member is being denied the opportunity to continue to serve his country solely due to his nonreligious identity. Rather than attempting to foster an atmosphere of tolerance for all religious and nonreligious service members, the Air Force is using 10 USC § 502 to preserve Christian privilege. This service member should not have to engage in a protracted legal battle to protect his right of conscience. The military should follow the lead of the framers of our Constitution, who drafted a completely secular oath of office for the President, *see* U.S. CONST. art. II, § 1, cl. 8, and specifically provided that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” U.S. CONST. art. VI, ¶ 3.

The United States was first among nations to adopt a godless and entirely secular Constitution, which predicated sovereignty not in a divinity, but in “We the People.” In keeping with this vision of neutrality, the phrase “so help me God” should be dropped from 10 USC § 502 and other, similar provisions of the Code. Alternatively, a DoD directive could clarify that the phrase “so help me God” is an optional phrase within any military oath of office and that military personnel must be given the chance to opt out without reprisal.

Conclusion

The presidential oath of office is illustrative of the standard we encourage the military to adopt toward religion in all cases. Though the phrase “so help me God” does not appear in our entirely secular Constitution, no one, to our knowledge, has argued that this represents the framers’ hostility toward religion or the promotion of atheism. This is neutrality. Likewise, ending the Navy’s shipboard prayer practice is not hostile toward religion, it simply puts a stop to a privilege—an abuse of power—that Christian chaplains have inappropriately exercised over captive service members for years. Chaplains should provide religion to those who seek it out, not seek to impose it indiscriminately. Finally, allowing humanist and atheist chaplains in the military, and allowing the distribution of books other than the bible on military bases, does not encroach on the rights of Christians. It’s a simple recognition that there are many belief systems in the world and it is not the government’s place to choose between belief systems or between belief and nonbelief.

Thank you for your consideration of these three specific issues. While these are three easily rectified problems, they are not the only inequalities experienced by non-Christians and nonbelievers in the military. We encourage the Committee to do everything in its power to foster an atmosphere within the military that is respectful of the rights of all religious minorities and the nonreligious. The Constitution calls for the government to remain neutral on issues of religion. We hope that you will do your part to reinforce that neutrality.



Rabbi David Saperstein
Director and Counsel

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

202.387.2800

Fax: 202.667.9070 E-mail: rac@uri.org

Arthur and Sara Jo Kobacker Building
2027 Massachusetts Avenue, NW
at Kivie Kaplan Way
Washington, DC 20036

Visit our website at www.rac.org

Testimony of Rachel Laser
Deputy Director
Religious Action Center of Reform Judaism
Religious Accommodation in the Armed Forces
Friday, 09/19/2014
2118 Rayburn House Office Building
House Subcommittee on Military Personnel

On behalf of 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 a variety of issues related to religious accommodations in the Armed Forces.

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. Free exercise of religion is our nation’s “First Freedom” and one we defend and promote around the world. Victims of religious persecution are strengthened when they see religious freedom and tolerance celebrated in our Armed Forces; service members are the embodiment of American values overseas.

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 to protect the rights to which they are entitled.

If the functionality or safety of a unit is endangered, it is within reason for the commanding officer to consider suspending religious 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...” We were also pleased to learn of new regulations that allow Humanist service members to identify as such on their identification tags, a positive step that acknowledges the diversity of faiths and non-faiths in the military. The



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.



Armed Forces Chaplains Board should follow this change and consider employing a Humanist chaplain.

Although this NDAA and the new identification tag regulation were steps in the right direction for religious freedom, many of the improvements enshrined in the NDAA were undercut by revisions to Department of Defense Instruction number 1300.17, specifically sections 4(g) and 4(j). The new language of section 4(g) requires individuals who seek religious accommodations to comply with military regulations while waiting for official recognition of the accommodation. This is especially troubling when considering certain religious obligations for hair and garb, ostensibly making it near to if not completely impossible for individuals of certain faiths to serve their country in uniform. For example, a Jewish service member who wears a kippa (skullcap) would have to take off his kippa while waiting for an official accommodation. This situation is not only faced by Jews – Sikhs who do not cut their beards for religious reasons would have to comply with the military regulation against facial hair also while waiting for an accommodation, creating a difficult environment for these and other religious practices.

Section 4(j) raises another critical issue for religious accommodation. When members of the military receive an accommodation for certain religious needs, they must re-request the same accommodation each time duties change or the circumstances of their service changes. This is an onerous impediment to military service that adds unnecessary stress to an already high-intensity situation, and is not in line with our nation's longstanding commitment to religious freedom for all individuals. These rights, responsibilities and special considerations extend to religious leaders of many faiths who serve in the military.

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. Religious freedom is just one of the critical values that shape and guide military service. Duty, responsibility, courage and respect are others that are deeply ingrained in the meaning and function of serving in the Armed Forces. For these reasons, it is important to acknowledge that if a service member is uncomfortable with the nature of sectarian prayer, he or she may be unlikely to speak up or report an incidence of proselytization to a commanding officer. The religious practices and conscience rights of chaplains are indubitably protected under the First Amendment, but an appropriate balance must be struck between the religious freedom of chaplains and the service members who seek spiritual guidance.

At the same time, it is never acceptable for those in a position of authority to engage in proselytization, and sectarian prayer at mandatory, official functions is not acceptable. 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's religious beliefs may never be an excuse for refusing to serve alongside a fellow soldier because of his or her sexual orientation.

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.

137

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”

November 19, 2014

On behalf of Americans United for Separation of Church and State, 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 for 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. Key to this discussion is an understanding of the military's unique atmosphere.

First, under the command structure of the military, 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. The military teaches soldiers to respect their leaders and discourages challenging their orders.¹ By necessity, dissent and debate have no role in the military.² This atmosphere "presents particular dangers of coerced religious activities and the perception of religious endorsement."³ Thus, it is of particular importance that the military protect service members—particularly those of minority faiths and non-theists—from unwanted pressure to engage in certain religious activities or adopt particular religious beliefs.

Second, the military has a clear and prevailing interest in maintaining military readiness, cohesion, good order, and discipline. Indeed, failure to maintain any of these factors could be the difference between life and death. Decisions concerning religious freedom and accommodations in the military, therefore, cannot be made without consideration of how they will affect these goals.

¹ William J Dobosh, Jr., *Coercion in the Ranks: The Establishment Clause Implications of Chaplin-Led Prayers at Mandatory Army Events*, 2006 Wis. L. Rev. 1493, 1525 (2006).

² *Id.*

³ *Id.* at 1527-28.

Religious Freedom for Service Members

The Armed Services have long had policies governing the issues of religious accommodations. These policies have generally balanced 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 been designed to allow service members of different religious beliefs and none at all, to serve together with respect and dignity.

Congress revised these policies in both the FY2012 and FY2013 National Defense Reauthorization Acts (NDAA). In the FY2012 NDAA, 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.⁴ In the FY2013 NDAA—which was actually adopted the very same year as the FY2012 and before law was even implemented—Congress amended a new standard.⁵ 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."⁶

In early 2014, the Department of Defense adopted instructions to implement this language⁷ and it is currently engaged in the congressionally mandated inspection regarding enforcement of these new policies. The Air Force revised its policy on the matter just this month.⁸

At this point, Congressional action is unnecessary and even unwise. Rewriting the statutory language each year adds more confusion than clarity to the matter. Furthermore, 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.⁹

Plus, these provisions strike a sufficient balance: they recognize the realities of military service, the importance of accommodating religion, and the need to protect service members from coercive and unwanted proselytization. Most often, violations of religious freedom arise from failure to enforce this policy rather than a defect in the policy itself. Reaching the end result, however, is not always simple, and, unfortunately, these incidents are frequently exaggerated, misreported, and politicized¹⁰ by those outside the military. Indeed, Mark Welsh, the Air Force

⁴ Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, §533 (a) (2013) (FY2013 NDAA).

⁵ National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, §532 (2013) (FY2014 NDAA).

⁶ *Id.* at §332.

⁷ Department of Defense Instruction No. 1300.17: Accommodation of Religious Practices within the Military Services (Jan. 22, 2014), <http://www.dtic.mil/whs/directives/corres/pdf/130017p.pdf>; Department of Defense Instruction No. 1304.28: Guidance for the Appointment of Chaplains for the Military Departments, (March 20, 2014), http://www.dtic.mil/whs/directives/corres/pdf/130428_2004_ch3.pdf.

⁸ The U.S. Air Force, *Air Force Updates AF 101* (Nov. 10, 2014)

<http://www.af.mil/News/ArticleDisplay/tabid/223/Article/554096/air-force-updates-af-instruction-1-1.aspx>.

⁹ FY2013 NDAA, §533.

¹⁰ *E.g.*, Becky Bowers, *Bloggers Say Pentagon May Court-Martial Christian Soldiers: Mostly False*, POLITIFACT.COM (May 6, 2013), <http://www.politifact.com/truth-o-meter/article/2013/may/06/pentagon-court-martialing-christian-soldiers/>; Jesse DuBois and D'Angelo Gore, *Court-Martialed for Shoring Religious Faith?*, FACTCHECK.ORG (May

Chief of Staff, testified before Congress: “The single biggest frustration I’ve had in this job is the perception that somehow there is religious persecution inside the United States Air Force. It is not true. We have incidents like everybody has incidents.”¹¹

This is not to say that there are no legitimate concerns about the religious freedom in the military. Indeed, there are. The record of religious exercise violations, however, do not support the false narrative recently advanced that Christians are persecuted in the military.¹² Instead, those who suffer religious liberty violations are usually service members who adhere to minority faiths, are non-theists, or have no religious affiliation.

One does not have to look far to see the unique challenges facing service members as they seek accommodations or even just equal treatment. For example, it took more than a decade and a lawsuit for the military to recognize the pentacle as an “emblem of belief” permitted on military headstones for Wiccan service members.¹³ The process to obtain an accommodation for religious headgear or neat beards can still require years of legal maneuvering for some¹⁴ and can completely preclude others from serving altogether.¹⁵ Even once obtained, each accommodation for headgear and garb is merely temporary.¹⁶

In addition, the atmosphere of the military often dissuades these service members from even requesting an accommodation. For example, as recently as September, the Air Force’s formal policy prohibited atheist airman from reenlisting by forcing all enlistees to swear an oath including the phrase, “so help me God.”¹⁷ Of course, requiring an airman to recite a religious

10, 2013), <http://www.factcheck.org/2013/05/court-martialed-for-sharing-religious-faith/>; Oriana Pawlyk, *AF: Religious Intolerance Claim Unsubstantiated*, MILITARY TIMES (Oct. 11, 2013), <http://www.militarytimes.com/article/20131011/NEWS/310110013/AF-Religious-intolerance-claim-unsubstantiated>.

¹¹ Fiscal Year 2015 National Defense Authorization Budget Request from the Department of the Air Force: Hearing on H.R. 4435 Before the H. Armed Servs. Comm., 113th Cong. (2014) (statement of Gen. Mark A. Welsh III, Chief of Staff, U.S. Air Force).

¹² See e.g., Penny Starr, *Christians Face Culture of Fear, Intimidation in the U.S. Military Today*, CNS News.com (Nov. 11, 2013), <http://www.cnsnews.com/news/article/penny-starr/christians-face-culture-fear-intimidation-us-military-today>; Elisabeth Meinecke, *TH Magazine: Persecution of Christians...in America*, Townhall.com (Aug. 16, 2013), <http://townhall.com/tipsheet/elisabethmeinecke/2013/08/16/th-magazine-persecution-of-christians-in-america-n1662288>.

¹³ *Circle Sanctuary v. Secretary of Veterans Affairs*, 222 Fed. Appx. 981 (Fed. Cir. 2007).

¹⁴ James Dao, *Taking On Rules to Ease Sikhs’ Path to the Army*, N.Y. TIMES (Jul. 7, 2013), http://www.nytimes.com/2013/07/08/us/taking-on-rules-so-other-sikhs-join-the-army.html?_r=0 (granting case-by-case accommodations for Sikh service members to wear turbans and beards); Mark D. Faram, *Bearded Rabbi Sworn in as Army Chaplain*, ARMY TIMES (Dec. 9, 2011), <http://www.armytimes.com/article/20111209/NEWS/112090310/> (Orthodox Jewish chaplain allowed to keep beard).

¹⁵ Frank Eltman, *NY Sikh Student Says Army Rules Bar Him from ROTC*, ABC NEWS (Nov. 14, 2014) [HTTP://ABCNEWS.GO.COM/US/WIRESTORY/NY-SIKH-STUDENT-ARMY-RULES-BAR-ROTC-26910997](http://abcnews.go.com/US/WIRESTORY/NY-SIKH-STUDENT-ARMY-RULES-BAR-ROTC-26910997).

¹⁶ Department of Defense Instruction No. 1300.17, *supra* note 7.

¹⁷ See, e.g., Abby Ohlheiser, *Humanist Group: Air Force Airman Denied Reenlistment Because He Refused to Say ‘So Help Me God’*, WASH. POST., Sept. 5, 2014, <http://www.washingtonpost.com/news/checkpoint/wp/2014/09/05/humanist-group-air-force-airman-denied-reenlistment-because-he-refused-to-say-so-help-me-god/>;

oath in order to reenlist violates three provisions of the U.S. Constitution: Article VI, which prohibits religious tests; the Establishment Clause, which prohibits the government from establishing religion; and the Free Exercise Clause, which prohibits the government from restricting the free exercise of religion. The policy, at best, coerced non-theists into taking a religious oath with which they disagree, and at worst, barred all non-theists from the military. The policy was a blatant constitutional violation and, thus, it was not a surprise that the Air Force reversed its policy after the threat of a lawsuit. But, the message sent by the adoption of the policy—that non-theists are disfavored if not fully unwelcome—will endure.

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, 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-Christian¹⁸) 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,"¹⁹ "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."²⁰ 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 opportunity to access religious services. Furthermore, such behavior threatens military readiness, unit cohesion, and good order.

Recognizing this important dual role, military chaplains have fostered a reputation of putting the needs of their troops above themselves. The trust and respect that they have earned is

Stephen Losey, *Group: Airman Denied Reenlistment for Refusing To Say 'So Help Me God'*, AIRFORCE TIMES (Sept. 4, 2014), <http://www.airforcetimes.com/article/20140904/NEWS05/309040066/Group-Airman-denied-reenlistment-refusing-say-help-me-God>.

¹⁸ Religious Diversity in the U.S. Military, Military Leadership Diversity Commission, Issue Paper No. 22, June 2010.

¹⁹ Department of Defense Instruction No. 1304.19: Appointment of Chaplains for the Military Departments, Sec. 4.2 (April 23, 2007).

²⁰ Department of Defense Instruction No. 1304.28: Guidance for the Appointment of Chaplains for the Military Departments, Sec. 6.1.2 (Jan. 19, 2012).

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.

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 clarifying 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.”²¹

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.

Unfortunately, there are efforts to disrupt the chaplain/service member relationship. Some are advocating for allowing individual chaplains to proselytize and engage in sectarian activities to the detriment of the interests, rights, and needs of soldiers they are there to serve. Others are advocating for allowing chaplains to deny services to those who have different religious views, which would not only discriminate against certain service members and deny them their Free Exercise rights, but also threaten the unity and cohesion necessary for military effectiveness.

For example, the House version of the FY2015 NDAA contains a provision that would 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—reflects military values: It respects the diverse religious views of our service members and facilitates unit cohesion.

Another issue currently facing the military chaplaincy is whether the military should recognize humanist chaplains. Dr. Jason Heap, a humanist celebrant certified by the Humanist Society, recently applied to be a chaplain but was rejected. Dr. Heap is fully qualified to be a chaplain. He has earned theology degrees, has served as a licensed minister of the First Baptist Church of LaGrange, TX, and had conducted services and delivered sermons at Christian churches for nine years. But, unlike other military chaplains currently serving, he does not believe in God. Instead, he “believes in a system of ethical principles that are as central and guiding as the

²¹ FY2013 NDAA §533; Department of Defense Instruction No. 1304.28, *supra*, note 17.

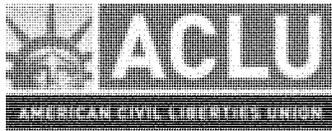
moral precepts developed in religious traditions that believe in a god or gods.”²² The fact that he fully met all of the qualifications of a military chaplain appears to have been outweighed by the fact that he does not believe in God and his certifying organization is non-theistic. The rejection of his application should be overturned and the military should admit him and other qualified humanist chaplains.

A significant number of service men and women are non-theists, and they often seek access to the same counseling sought by theists, such as counseling on matters of life and death. A humanist chaplain would serve the same function for humanists as other chaplains currently serve for people who adhere to their faith. Further, Jason Heap’s education qualifies him to serve people of faith in the same way that other chaplains are fit—and required—to serve non-theists and other individuals who adhere to different faiths than their own. There is no legitimate reason—other than religious discrimination—for the military to deny this humanist chaplain recognition.

Conclusion

As explained above, ensuring religious freedom for service members is vitally important. The military must permit service members to exercise their religion and also protect them from unwanted proselytizing and religious coercion. Although there is no need for Congressional interference at this point, the military should take steps to make service members who are of minority faiths and non-theists feel more welcome in the military and ensure that they are able to exercise their religion and be free of religious coercion.

²² Complaint *Heap v. Hagel*, 1:14-CV-1490-JCC-TCB (E. D. Va., Nov. 5, 2014).



Written Statement of the American Civil Liberties Union

Laura W. Murphy
Director, Washington Legislative Office

Dena Sher
Legislative Counsel

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

November 19, 2014

Religious Accommodations in the Armed Services

For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

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 one faith over others.

Religious freedom is one of our nation's most cherished liberties. It 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 religious beliefs freely. While over half of these cases were brought on behalf of those who are Christians, our work in this area knows no preference.¹ The ACLU also advocates for laws that heighten protections for religious exercise.²

Thank you for giving us the opportunity to submit this statement for the hearing on "Religious Accommodations in the Armed Services." The hearing will examine an important topic facing the military today—religious accommodation. Laws, policies, and regulations, including the recently revised "Accommodation of Religious Practices Within the Military Services,"³ guarantee religious liberty for all service members, regardless of faith or belief and should allow for appropriate religious accommodations while protecting against discrimination.

Accommodation of Religious Beliefs in the Military

The First Amendment to the Constitution 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.

Longstanding policies and regulations have provided guidance on how to carry out these constitutional protections.⁴ Under these policies, people of different religious beliefs and none at

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.

⁴ One very straightforward and appropriate example is that "[s]ervice members can share their faith (evangelize), but must not force unwanted, intrusive attempts to convert others of any faith or no faith to one's beliefs (proselytization)." *E.g.*, Dep't of Defense, DOD Knowledge Base, "Are Service members permitted to freely

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.

In the FY 2013 and FY 2014 National Defense Authorization Acts, Congress weighed in on this issue, and the Department of Defense has set forth revised regulations in accordance with these statutes. Religious liberty—in the civilian and military context—has never been without limits, nor should it be. The recently enacted laws and revised regulations embody this constitutional reality: The revised regulations call 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

Implementation of these regulations, however, has not lived up to its promise. On one hand, some religious minorities continue to be denied an accommodation and the opportunity to volunteer to protect and defend our country.⁶ When the regulations were revised, the Department of Defense stated it “places a high value on the rights of members of the military services to observe the tenets of their respective religions” and that the new regulations will “reduce instances and perception of discrimination.”⁷ Yet the process seems stacked against those seeking accommodations. The regulations would require religiously observant service members and prospective service members to remove their head coverings, cut their hair, or shave their beards—a violation of their religious obligations—while their request to accommodate these same religious practices is pending.⁸ This is so, even if they are otherwise qualified to serve and an accommodation is unlikely to undermine safety or other necessary objectives. Moreover, an accommodation, even when granted, is not valid for a service member’s entire commitment and must be resubmitted for a new assignment or transfer of duty station.⁹ The uncertainty associated with this requirement to repeatedly request an accommodation for the very same religious practices is stifling, and may needlessly limit career opportunities—or, in some cases, end careers.

practice their religious beliefs?”, available at https://kb.defense.gov/app/answers/detail/a_id/720/~religious-proselytizing.

⁵ See Dep’t of Defense Instruction 1300.17 §4.h. (requiring consideration of “the importance . . . of putting unit before self”); statement of Lt. Cmdr. Nate Christensen, to www.factcheck.org, May 2, 2013, <http://www.factcheck.org/2013/05/court-martialed-for-sharing-religious-faith/> (“We work to ensure that all service members are free to exercise their Constitutional right to practice their religion in a manner that is respectful of other individuals’ rights to follow their own belief systems; and in ways that are conducive to good order and discipline; and that do not detract from accomplishing the military mission.”)

⁶ David Alexander, “Two U.S. Soldiers Lose Bid to Dress According to Religious Custom,” *Reuters*, Apr. 28, 2014, available at <http://www.reuters.com/article/2014/04/28/us-usa-army-religion-idUSBREA3R1F320140428>.

⁷ Pamela Constable, “Pentagon Clarifies Rules on Beards, Turbans for Muslim and Sikh Service Members,” *Wash. Post*, Jan. 22, 2014, available at http://www.washingtonpost.com/local/pentagon-clarifies-rules-on-beards-turbans-for-muslim-and-sikh-service-members/2014/01/22/13b1fc22-83a9-11e3-9dd4-e7278db80d86_story.html.

⁸ Dep’t of Defense Instruction 1300.17 §4.g.

⁹ *Id.*, §4.j.

These aspects of the regulations serve as hurdles for some religious minorities to serve their country and will result in discrimination against them. Over 100 Members of Congress¹⁰ and advocacy groups from across the spectrum¹¹ have asked the Department of Defense to make changes. And on November 12, 2014, the ACLU and UNITED SIKHS filed a lawsuit on behalf of a Sikh college student who wants to enlist in Army ROTC.¹² The student, Iknor Singh, has requested a religious exemption to wear his turban, beard, and long hair that would allow him to pursue his lifelong dream of serving in the Army.¹³ Under the current regulations, the Army says it cannot grant Mr. Singh an accommodation until he enlists. But once he enlists, Mr. Singh will have to comply with Army grooming and dress standards “unless and until” an exemption is granted. The lawsuit argues that this Catch-22 as well as the refusal to accommodate Mr. Singh’s request violate the Religious Freedom Restoration Act, which is applicable to the military and incorporated in the regulations. We urge the Department to revise the regulations to appropriately accommodate Mr. Singh and others like him who wish to serve.

On the other hand, there are reports that under this policy, service members have received accommodations and as a result, have refused to carry out responsibilities if doing so involves serving lesbian and gay service members and their families. This is just the sort of barrier from which the military should be free. No interpretation of policy should sanction discrimination.

Non-theists and the religiously unaffiliated, or “nones” continue to face discrimination, even though they are one of the largest (and growing) groups in the military.¹⁴ The Army should be commended for recently adding Humanism to the already long list of religious-preference designations, but it is troubling that the request took years to fulfill.¹⁵ And last year, the Air Force changed its policy to require airmen taking the oath of enlistment or reenlistment to conclude the oath with the phrase, “so help me God.”¹⁶ This policy change has since been reversed, but it is alarming that this unconstitutional and discriminatory policy change was made in the first place.

¹⁰ Letter from Members of Congress to Sec’y of Def. Chuck Hagel, Mar. 10, 2014, http://sikhcoalition.org/images/documents/letter_to_secretary_hagel_re_sikh_american_service.pdf.

¹¹ Letter from Religious Liberty Advocacy Groups to Acting Under Sec’y of Def. for Pers. & Readiness Jessica L. Wright, Apr. 2, 2014, https://www.aclu.org/sites/default/files/assets/2014-04-02_-_faith_letter_concerning_dodi_130017.pdf.

¹² *Singh v. McHugh*, No. 1:14-cv-01906 (D.D.C. filed Nov. 12, 2014).

¹³ Iknor Singh, “The Army Is Making Me Choose Between My Faith and My Country,” *Huffington Post*, Nov. 12, 2014, http://www.huffingtonpost.com/iknor-singh/sikh-army-rotc_b_6147686.html.

¹⁴ 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).

¹⁵ Maj. Ray Bradley, “Army Humanists No Longer Invisible,” *ACLU Blog of Rights*, Apr. 22, 2014, <https://www.aclu.org/blog/religion-belief/army-humanists-no-longer-invisible>.

¹⁶ Chris Carroll, “Air Force Seeks DOD Ruling on Re-enlistment Oath,” *Stars & Stripes*, Sept. 9, 2014, available at <http://www.stripes.com/news/us/air-force-seeks-dod-ruling-on-re-enlistment-oath-1.302225>.

We know it is possible for the military to do better because we have seen it address other religion-related problems proactively with positive policy changes. For example, the Air Force Academy responded to a report documenting an environment of religious intolerance and inappropriate proselytizing by working with outside experts to create a better environment.¹⁷ The Academy implemented mandatory training for cadets on religious respect and established more inclusive worship spaces.¹⁸

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 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.¹⁹

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.²⁰ 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.²¹

Chaplains' free exercise rights are, of course, protected by the First Amendment and federal law.²² 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 unfortunately become controversial over the years, is that chaplains may close prayers according to their specific faith traditions when performing their religious services. Moreover, they cannot be forced to violate their consciences in matters regarding their religious ministry and can refuse, for example, to perform prayers or marriage ceremonies that violate their religious beliefs.

But these protections do not give chaplains an affirmative right to ignore their other duties to serve all service members and their families equally. 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 the understanding that they will uphold their duty to serve

¹⁷ U.S. Air Force, *The Report of the Headquarters Review Group Concerning the Religious Climate at the U.S. Air Force Academy* (June 22, 2005).

¹⁸ *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/.

¹⁹ *Religious Diversity in the U.S. Military*, Military Leadership Diversity Comm'n, Issue Paper No. 22 (June 2010).

²⁰ *E.g.*, Dep't of Defense Directive 1304.19, "Appointment of Chaplains for the Military Departments," § 4.2.

²¹ *E.g.*, Dep't of Defense Instruction 1304.28, "Guidance for the Appointment of Chaplains for the Military Departments," § E.2.1.5.

²² *E.g.*, National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 533(b) (2013); National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 544 (2011).

fellow service members and avoid taking advantage of their role by interfering with the rights of those they serve.

In recent years, there have been attempts by some to interfere with chaplains' roles and responsibilities by suggesting that they should be allowed 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. These proposed changes would put the desire of individual chaplains ahead of the interests, rights, and needs of those they are required to serve, demonstrating 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 consciences and faiths. 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.²³ Changes to chaplains' roles and responsibilities would interfere with commanders' obligation to ensure command functions are neutral with regard to religion.

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.²⁴ Therefore, we strongly oppose Section 525 of the House-passed Fiscal Year 2015 National Defense Authorization Act.

Chaplains have the duty to serve everyone, even those of no faith.²⁵ Thus, it is vital that chaplains be provided with the training and resources to enable them to serve everyone, including non-theists and the religiously unaffiliated, or "nones." In addition, because chaplains must advise the chain of command on matters of religious practice and accommodation,²⁶ they must be familiar with and thoroughly understand the belief systems of all service members they serve.

A second concern regarding chaplains is whether there is discrimination against chaplain candidates from minority religions and belief systems.²⁷ Currently the Armed Forces contract

²³ See Statement of Rt. Rev. James B. Magness, Bishop Suffragan for the Armed Forces and Federal Ministries, The Episcopal Church, for the House Armed Services Committee's Subcommittee on Military Personnel hearing on "Religious Accommodation in the Armed Services," Jan. 29, 2014.

²⁴ 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).

²⁵ 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).

²⁶ *E.g.*, Dep't of Defense Directive 1304.19, § 4.1.

²⁷ The ACLU is concerned about the current structure of the chaplaincy itself, but broader reforms are outside the scope of this hearing.

for some chaplains and have no chaplains from some of the religions or beliefs.²⁸ The lack of diversity in the chaplain corps may affect how the free exercise needs of service members and their families are met. Ensuring that there is absolutely no discrimination based on animosity toward or lack of understanding of a candidate's faith or beliefs in the selection process is, therefore, of paramount importance.

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 issue²⁹ 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 military readiness or its component dimensions, including cohesion, recruitment, retention, assaults, harassment or morale."³⁰

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.³¹

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.³²

²⁸ For example, there is no chaplain representing nontheist belief systems. Chris Carroll, "Rejection Doesn't Stop Campaign to Become Military's 1st Humanist Chaplain," *Stars & Stripes*, June 16, 2014, available at <http://www.stripes.com/news/rejection-doesn-t-stop-campaign-to-become-military-s-1st-humanist-chaplain-1.288769>.

²⁹ 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/>.

³⁰ *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.

³¹ 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>.

³² 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>.

In an August 13, 2013, memorandum, Secretary Hagel stated that “all spousal and family benefits . . . will be made available to same-sex spouses”³³ as required by the Supreme Court’s ruling striking down section three of the Defense of Marriage Act. In a memorandum from the same day, 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.”³⁴

An example of such a 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.³⁵ 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 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.”³⁶

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 provides 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.”³⁷ 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.³⁸

Counseling and relationship education assist commanders in building individual resiliency and increasing readiness of individual service members and their families. Thus, it must be available to all service members 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.

³³ 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>.

³⁴ 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>.

³⁵ *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.

³⁶ 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>.

³⁷ *Id.*

³⁸ *E.g.*, Joe Gould, “Fort Irwin Backtracks on Denying Retreat for Same-Sex Couple,” *Army Times*, Nov. 22, 2013, *available at* <http://www.armytimes.com/article/20131122/NEWS/311220025/Fort-Irwin-backtracks-denying-retreat-same-sex-couple>.

* * *

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.

Officers of the National Commission

National Chair
 Barry Curfiss Loefer
National Director
 Aksham H. Fozmen
Past National Chair
 Barbara S. Terner
 Howard E. Berkowitz
 Kenneth J. Siskin
 Burton S. Levinson
 Ellen S. Levey
 Mark S. Seligson
 David H. Swales
 Robert C. Saperstein
 Glen A. Tobias

Vice Chair
 Mayer Eisenberg
 James Crawford
 Nolan Hofflander
 Charles Krass
 Steven Lerner
 Cynthia Marks
 Ruth Mason
 George Stark
 Gerald Stompor
 Mark Wolf

Honorary Vice Chair
 Ruzi Boschwitz
 Edgar M. Goodman
 Jack Eckford
 Carl M. Joseph
 Max M. Kamparian
 Bernard Marcus
 Samuel H. Miller
 Lester Pollock
 Barry Sabin
 Michael Staudhardt

President
 Robert H. Naylor

Assistant Treasurer
 Ewan Hunt
Secretary
 Thomas C. Frohburger
Assistant Secretary
 Stanford Baratz

Standing Committee Chairs

Administration
 Howard W. Goldstein

Anti
 Robert H. Naylor

Budget
 Shellen Parler

Civil Rights
 Christopher Wolf

Development
 Eric Horvath

Education
 Eric Gordon Epstein

Information Technology
 Mitchell Venezia

International Affairs
 Lawrence Rapaport

Leadership
 Michael Shover

Funding for the Future
 Benjamin Sisk

Marketing & Communications
 Robert Klugman

Counsel & Intellectual Property
 Martin F. Bluet

Legal
 Gerry McDowell

Membership
 Marvin D. Nathan

Regional Operations
 Pamela Schwartz

Washington Affairs
 Stephen Adler

Deputy National Director
 Kenneth Jacobson

Chief Operating Officer
 Clifford Schneider

Division Directors

Civil Rights
 Deborah M. Lauer

Development
 Nina Haran

Education
 David S. Wilton

Finance & Administration
 Michael A. Kellner

Information Technology
 Sam Marmorberg

International Affairs
 Michael A. Seligson

Leadership
 Marvin S. Rapaport

Marketing & Communications
 Samuel Connor

Regional Operations
 Robert Wolfson

Washington Affairs
 Shelly Burkett

General Counsel
 Steven C. Steinberg



November 17, 2014

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

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 this week's Armed Services 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] Given that the military respects and honors the religious

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

Imagine a World Without Hate®

Anti-Defamation League, 605 Third Avenue, New York, NY 10158-3560, T 212.685.7700 F 212.867.0779 www.adl.org

diversity of service members who have made the ultimate sacrifice for our country, we certainly should be equally committed to honoring the religious beliefs and practices of our soldiers, sailors, and airmen and airwomen who risk their lives and make great sacrifices to safeguard our nation and its values, including individual religious liberty. As we wrote in our submitted statement for January 29, 2014 hearings on this topic by this Subcommittee, [2] 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. The recent decision by the Air Force to allow both enlisted members and officers to omit the words "So help me God" from enlistment and officer appointment oaths is a welcome recognition of the diversity of Air Force personnel, an affirmation of religious accommodation – and a demonstration that the religious liberty right of Airmen and Airwomen will be respected. [3]

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 [4] 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

2 <http://www.adl.org/assets/pdf/civil-rights/religiousfreedom/religionmilitary/ADL-statement-House-Armed-Services-Military-Personnel-Subcommittee-hearings-on-religious-freedom-3.pdf>

3 <http://www.af.mil/News/ArticleDisplay/tabid/223/Article/497535/af-to-change-instructions-for-oaths.aspx>

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

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 Hollman, General Counsel for the Baptist Joint Committee for Religious Liberty, has written, "...an important corollary of the military's duty to accommodate service members' rights to exercise religion is its obligation to protect members from religious coercion."⁵ 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 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 last year appears to strike the right balance. The 2014 Department of Defense Authorization measure ^[6] 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.

⁵ Hollman Report, Report from the Capital: July/August 2013 Vol. 68 No. 7
http://www.bjonline.org/index.php?option=com_docman&task=cat_view&qid=32&dir=DESC&order=date&Itemid=76&limit=5&limitstart=0

⁶ <http://www.gpo.gov/fdsys/pkg/BILLS-113hr3304enr/pdf/BILLS-113hr3304enr.pdf>

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.

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 [7] of the first year after repeal indicates 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. [8] Responding to efforts by several states to refuse to provide 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" [9] 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

7 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

8 http://www.adl.org/press-center/c/remarks-by-secretary-of-defense-hagel.htm#.UnPSg_msiSo

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

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, [10] 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 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. [11]

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.

¹⁰ http://commdocs.house.gov/committees/security/has179020_000/has179020_0.htm

¹¹ http://www.adl.org/misc/gen_speech.asp

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.

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 Instruction 1-1, **[12]** 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.

On November 12, the Air Force issued a revised Instruction 1-1 which included new sections on Free Exercise of Religion and Religious Accommodation and the Balance of Free Exercise of Religion and Establishment Clause:

¹² <https://app.box.com/s/ff512wnjafp9hbf0uig8>

2.11. Free Exercise of Religion and Religious Accommodation. Every Airman is free to practice the religion of their choice or subscribe to no religious belief at all. You should confidently practice your own beliefs while respecting others whose viewpoints differ from your own. Every Airman also has the right to individual expressions of sincerely held beliefs, to include conscience, moral principles or religious beliefs, unless those expressions would have an adverse impact on military readiness, unit cohesion, good order, discipline, health and safety, or mission accomplishment.

2.11.1. 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. Commanders and supervisors at all levels must fairly consider requests for religious accommodation. Airmen requesting accommodation will continue to comply with directives, instructions and lawful orders from which they are requesting accommodation unless and until the request is approved.

2.11.2. If it is necessary to deny free exercise of religion or an accommodation request, the decision must be based on the facts presented, must directly relate to the compelling government interest of military readiness, unit cohesion, good order, discipline, health and safety, or mission accomplishment, and must be by the least restrictive means necessary to avoid the cited adverse impact.

2.12. Balance of Free Exercise of Religion and Establishment Clause. Leaders at all levels must balance constitutional protections for their own free exercise of religion, including individual expressions of religious beliefs, and the constitutional prohibition against governmental establishment of religion. They must ensure their words and actions cannot reasonably be construed to be officially endorsing or disapproving of, or extending preferential treatment for any faith, belief, or absence of belief.

We are aware that some Members of Congress had urged the Air Force to modify its Instruction on government neutrality to religion and religious accommodation, under the mistaken belief that the previous guidance was hostile to religion.^[13] The 2014 language lacks the 2012 Instruction emphasis that leaders and commanders "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." Following the unfortunate series of inappropriate proselytizing and religious coercion at USAFA in 2004-2005, the Air Force has been a model in promoting religious respect for the other service branches over the past decade. We hope and expect that the revisions in Instruction 1-1 do not indicate any diminishment in the Air Force's demonstrated and vitally important commitment to promote religious respect and avoid undue religious coercion in its unique military command structure.

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."^[14] 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.

¹³ <http://lamborn.house.gov/2014-press-releases/congressman-lamborn-leads-the-fight-for-more-religious-freedom-in-the-air-force/>

¹⁴ <http://www.dtic.mil/whs/directives/corres/pdf/130017p.pdf>

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.

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.

On April 2, 2014, an unusually-broad coalition of 21 Christian, Jewish, Muslim, Sikh, and interdenominational religious organizations wrote to Jessica L. Wright, the Acting Under Secretary of Defense for Personnel and Readiness, to express concerns that the new guidance "still needlessly infringe on the rights of ...religiously observant service members and prospective service members."

As written, the revised Instructions will have the effect of limiting diversity in the ranks and preventing talented and patriotic Americans from serving in our nation's military because of their religion. As currently drafted, section 4(g) of the revised Instruction would require religiously observant service members and prospective service members to remove their head coverings, cut their hair, or shave their beards – a violation of their religious obligations – while their request to accommodate these same religious practices is pending. This is so, even if they are otherwise qualified to serve and an accommodation is unlikely to undermine safety or other necessary objectives. We urge you to reconsider this provision, which has the effect of forcing some religiously observant service members to make an impossible choice between their faith and their chosen profession.

Further, under Section 4(j) of the revised Instruction, even if an original accommodation request is approved, religiously observant service members would be required to submit a new request for the same accommodation every time they receive a new assignment, "transfer of duty station, or other significant change in circumstances." The uncertainty associated with this requirement to repeatedly request an accommodation for the very same religious practices is stifling, and may needlessly limit career opportunities – or, in some cases, end careers.

Without further revisions, Instruction 1300.17 will have an unwelcome and unnecessary chilling effect on religious liberty – and will limit opportunities for talented individuals of faith to serve in our nation's military. If service members can successfully perform their military duties, their religious practices, such as wearing head coverings or beards, should not be an obstacle to service. [15]

¹⁵ <http://www.adl.org/assets/pdf/civil-rights/religiousfreedom/religionmilitary/religious-accommodation-military-letter-2014-04-02.pdf>

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. In this regard, we very much welcome the news that the Air Force has recently accommodated the request of an Orthodox Rabbi serving as a Chaplain at the McCord Air Force Base at Fort Lewis, Washington to retain his beard.^[16]

This approval process would be 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,



Barry Curtiss-Lusher
National Chair



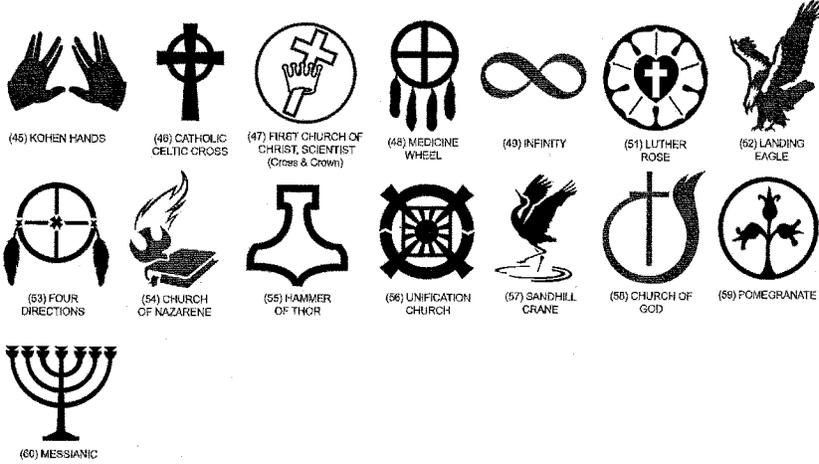
Abraham H. Foxman
National Director

¹⁶ http://www.huffingtonpost.com/2014/09/11/rabbi-beard-air-force-chaplain_n_5807518.html

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.



Rabbi Bruce E. Kahn, D. D.
CAPT, CHC, USN (Ret)
14316 Cantrell Road
Silver Spring, MD 20905
301.384.3309 kahn7@gmail.com

Thank you for the opportunity to submit a supplemental statement for the record.

I would like to address a few issues that were raised during the hearing.

Command Religious Program

An overarching reality to this discussion is that the religious program in any command does not belong to the chaplains. It is the command's religious program. Thus, the command's goals of good order and discipline, unit cohesion, building readiness, and excelling in mission accomplishment are also the chaplains' goals. Chaplains are not independent actors and nothing chaplains do should undermine achieving the command's goals. This is the military: the ministry within the military is not and cannot be the same as in the civilian realm.

Training to be Inclusive and Executing That Training

During the hearing, I respectfully disagreed with Representative Jones's view that chaplains should always be able to pray exclusively according to their personal or denominational practices and that this was the norm until the 1990s. Representative Forbes suggested that when a chaplain adjusts how he or she counsels to account for the beliefs and practices of the service member seeking assistance, the chaplain is engaging an inauthentic approach that is off-putting to the service member. I respectfully disagree with these views. Given time constraints, I was not provided the opportunity to respond and explain my perspective during the hearing. I would very much like to do so now.

My opinion is formed by my unbroken service, from 1974-2002, on both active duty and in the ready reserve. I attended the Chaplain School Basic Course and the Advanced Course, served a great many commands, had contact with my fellow chaplains afloat and ashore, and at professional development workshops and conferences. I worked several times in the Office of the Navy Chief of Chaplains. In the 1990s, I was the senior reserve chaplain for Operational Ministries, Atlantic Fleet and then for the Atlantic Fleet as a whole, with over 200 ships and thirty-two bases. I feel I have a good sense of the chaplain corps and what chaplains were taught well before the 1990s as well as what the military's religiously diverse population consistently sought and still seeks from its chaplains.

In 1974 the Chaplain School faculty included two Roman Catholics, two Presbyterians, one Southern Baptist, and one Methodist. Each of these chaplains taught us the same thing: to pray and counsel as inclusively as necessary given the troops in our presence.

That means, when a religiously diverse group of troops, perhaps preparing to go into battle, gather seeking me to lead them in prayer, I would not recite that prayer in Hebrew. I offered it in English invoking the Lord, God, the Creator, the Source of Life, the Maker of us all, the Almighty. And, I frequently ended it by saying "In Your holy name. Amen." That is not an

ending Jews and other non-Christians of faith would ever use. But it is one that would not exclude them and it is wording with which Christians are familiar. Such accommodations proved effective every time.

In the 1970s every Navy chaplain, including Jewish chaplains, had to know how to baptize someone. Every Christian chaplain had to know how to recite the She'ma in Hebrew (the vital Jewish statement of faith found in Deuteronomy 6:4 that is said when a Jew approaches death.) None of the chaplains I knew found these requirements confusing or troubling. No matter a service member's faith, all Navy chaplains were taught to minister to people of every faith and to adjust what we would say and do to make our ministry work for them. We embraced this mission.

Decades ago, when a Southern Baptist Marine Corps Colonel who was dying of Leukemia said he wanted me to conduct his funeral, I mentioned to him that there were Southern Baptist chaplains on the Navy side of the base who would surely make themselves available to him. He then asked me rather firmly, "Are you the Marine chaplain here, son?" I replied, "Yes sir, I am." He said, "Then I want you!" I conducted the colonel's funeral in a way that would honor him and comfort his family. I did not recite the Kaddish Yatom or the El Malei Rachamim prayers from a Jewish funeral service. Stepping aside from my own tradition to meet the needs of the colonel and his family was not inauthentic ministry, as some might suggest. Rather it was the right standard of chaplain ministry for them and for the armed forces and it remains so. The troops and the commands whose goals are so well served by this standard deserve no less.

When I was the sole chaplain assigned to a ship during Christmas, the crew wanted me to organize and lead a Christmas service and to preach the Christmas sermon. That is what I did. The crew was thoroughly appreciative, morale was elevated, and the command strengthened.

When counseling people, we chaplains were taught that caring competently for the troops also served command interests. Again, that meant taking into account each service member's beliefs and affiliations. I heeded that standard always. I didn't counsel by relying primarily on the ideas endorsed by my own faith tradition. That would surely create barriers between the non-Jewish troops and me.

In December 2001, I received orders to report to Camp Pendleton's MAG 39 which was going through intense activity in preparation for deployment to Operation Enduring Freedom. When I arrived, I found I was the only chaplain present for nine Marine squadrons. Given how many of these personnel were about to deploy, tension was high. I raced from squadron to squadron dealing with crisis after crisis. As I went, I did what I have always done as a military chaplain. I found out what were the beliefs of each person I counseled. I used my training and experience to work with each individual to reach a calmer and more confident place, to move that person closer to wholeness given who that person was. Is that not clearly what is required of chaplains, especially at a time of extreme stress?

It was clear and compelling during my decades of service that were I providing ministry to someone who was a Pentecostal Christian, Orthodox Jew, Sunni Muslim, Nichiren Shoshu Buddhist, or a nonbeliever, that person's religious persuasion should inform what I said and did.

That certainly was clear to me (and all my fellow chaplains) in the Basic and Advanced Courses of Chaplain School and throughout the sea services. It remained clear for my entire career.

Knowing and understanding the religious perspectives of each service member to whom we minister makes chaplains much more effective and serves the needs of the troops and the command. Becoming familiar with the myriad of different religious beliefs and practices of service members and their families is a challenging task. But it goes with the territory of being in the chaplain corps. Utilizing that understanding to better serve our personnel is not a path to inauthenticity. Rather it is the path to an authentic and effective chaplaincy. Along with maintaining confidentiality, this sensitivity to the individual wins trust among the troops and their families. It helps them move toward a better, more complete place, a religious goal. That is also right for good order and discipline, unit cohesion, readiness, and mission success.

I know some chaplains currently do not share this perspective and may limit their counseling to that which is based on the chaplain's views of the Bible, regardless of the belief system of the person seeking help. The chaplain may tell the service member to see someone else if a different counseling approach is needed. But, this option can only work well on a base with a lot of chaplains. It certainly would not work in commands with only one or two chaplains, which is very often the case on a ship, in a forward-deployed area, and in lots of other military environments. In these frequent instances how will the 'accept my way or see someone else' approach serve the individual service member and the command? No command in which I ever served wanted any of us to be inflexible counselors, especially given that counseling and advising are what chaplains do more than anything else.

Based on my training and experience, here are some guiding principles for chaplains when praying, counseling, teaching, and conducting other aspects of ministry:

- A chaplain working with troops from his or her denomination should be free to say and do what that denomination holds most dear. No one would suggest otherwise.
- A chaplain working with troops from a range of denominations within that chaplain's faith group (for instance, several Protestant denominations) should take into account denominational differences and adjust his or her words and actions so as to minister as inclusively as possible.
- A chaplain who is working with troops from a wide range of faith groups should adjust one's words and actions accordingly. This is especially true when participating in command functions other than religious services. A chaplain must not establish barriers among the troops and create a sense of not belonging.
- A chaplain who is counseling or advising an individual should find out what the convictions of that individual are and adjust accordingly. That wins trust and opens the door to more rapid problem solving.

Which seems likely to best serve good order and discipline, morale, unit cohesion, readiness and mission success: inclusion or exclusion? The challenge is to advance the well-being of the troops and their families while also advancing readiness and mission success. For example, when battle is at hand and prayer for the troops is a most serious matter, it is imperative that the prayers offered be as inclusive as possible.

No chaplain has the moral or professional right to trample on religious accommodation for the troops. It is simply a matter of caring and common sense. For most of my career there was no debate about this in the chaplain corps, because everyone I knew understood the reasoning and propriety of the practice, and that doing so also furthers the command's goals. It is disconcerting that there seems to be conflict about this standard today. Not every cleric is a good fit for the military chaplaincy. A cleric who wishes to have the same freedom to pray, preach, and counsel that one exercises in the civilian pulpit is probably not suited for this specialized ministry.

The Responsibilities of Commanders

Now, I would like to turn to what Representative Heck addressed. He has command experience and he knows how demanding it is. He does not want to worry about saying, for example, "God bless you," and he does not want to be driven to distraction concealing his religious identity. I agree with him.

I believe commanders should not have to worry every time they use the word "God." But, on the other hand, every commanding officer has to include, among all the other difficult considerations he or she faces, establishing and maintaining a climate of religious fairness and to show the command how it is done.

A commanding officer controls your life 24 hours a day, 7 days a week, 365 days a year. He or she directs what you do, where you do it, with whom you work and when. The commanding officer signs your fitness report or evaluation that can help you remain competitive for promotion or, depending on the particulars, may sink your career. Most significantly, he or she can order you to risk your life. Therefore, the commanding officer must be seen as the standard bearer of fairness. This means he or she must ensure within reason the prevention of religious coercion from the top down.

Most commanding officers I served understood the impact of their decisions. When it came to their responsibilities for meeting the religious needs within their command, they were intentional, consistent, and absolutely fair. Often, the more devout a commanding officer was the more devotion was given to making sure everybody clearly understood that no one would be helped by agreeing with the religious beliefs of command leadership, nor harmed by disagreeing; that there would be absolutely no pressure, direct or indirect, to change one's beliefs and practices to better match those of someone higher up the chain. This is not an easy assignment, and sadly, there are COs who could not get it right.

This means that personnel in positions of authority must be attuned to the religious exercise needs of all troops—and, as with any other topic or issue, attuned to how the troops are receiving what these leaders say and do. So, for instance, if a commanding officer has a Bible in his or her office, when not in use it is better practice to keep Scripture on a bookshelf rather than on a desk, so that when the CO meets with someone in the command, that Bible is not between them. The command member must be freed from the suggestion of religious coercion.

Moreover, pursuing the goals of unit cohesion, readiness, and mission accomplishment demand that commanding officers and their senior leadership teams—both officer and enlisted—say and do things that are inclusive and unifying. Plainly religious pursuits in most spaces could create

thoughts in some unit members that their importance to the command is less than that of other personnel of the "right" faith. This is just one of the reasons that it has long been Navy wardroom etiquette to refrain from discussions of religion in that space.

Our troops live, eat, sleep, work and go into harm's way side by side. When it comes to religious practice, it takes an extra level of empathy, mutual respect, and care to make the military environment successful, enhancing unit cohesion and mission accomplishment. Living and working in such close quarters requires enhanced protections that are not as critical in the more disbursed civilian sector, where privacy is easier to come by. For example, on a ship if some of the crew want to share the good news of their faith and bear witness to its glory and saving grace, all they need do is request a day, time and space for this purpose. An announcement about it would be placed in the Plan of the Day which every crew member must read daily. Those who wish to attend may do so while no other members of the crew have to be confronted by unwelcome religious advances.

But, if the appropriate command climate is not fostered, religious inequality can take hold and morale will decline. If religious favoritism is upheld and uninvited religious advances are tolerated, unit cohesion is fractured. Military leaders, from service secretaries to commanding officers to senior enlisted, must ensure that fairness, equality, and mission accomplishment remain what matters most and that any actions that undermine these interests are quickly addressed.

In conclusion, I am convinced you cannot legislate to resolution all the challenges that arise when considering religious accommodation in the military. Attempts to do so will likely create more difficulties than they solve. Chaplains must be trained, prepared for, and embrace inclusivity as needed. They must not disregard the wide range of beliefs and affiliations of those service members who seek chaplain assistance. Another focus must be on the standards of fairness and respect for religious diversity set by the CO and senior leadership. It calls for protecting the rights of religious privacy in an environment of near constant interaction. We must accommodate religious expression wisely with clear and empathic standards of fairness. These principles serve the interests of good order and discipline, unit cohesion, the strengthening of morale, readiness, and especially mission accomplishment.

Thank you for allowing me to supplement my statement for the record. I stand ready to engage in further and fuller discussions with you about your understanding of and approach to religious accommodation in the armed forces.



MLDC Research Areas

Definition of Diversity
 Legal Implications
 Outreach & Recruiting
 Leadership & Training
 Branching & Assignments
 Promotion
 Retention
 Implementation &
 Accountability
 Metrics
 National Guard & Reserve

This issue paper aims to aid in the deliberations of the MLDC. It does not contain the recommendations of the MLDC.

Military Leadership Diversity
 Commission
 1851 South Bell Street
 Arlington, VA 22202
 (703) 602-0818

<http://mldc.whs.mil/>

Issue Paper #22
 Definition of Diversity
 Version 2

Religious Diversity in the U.S. Military

Abstract

American youth are more religiously diverse than their elders in terms of both nontraditional religions and nonbelieving, and religious diversity in the U.S. military reflects the youthful composition of the forces. This issue paper (1) examines the variety of religious identifications reported by servicemembers based on two different sources of data and (2) compares the diversity of religion found in the military with that found in the U.S. civilian population. It also considers the interaction between religious diversity and other demographic attributes of concern to the MLDC and reflects on policy regarding accommodation of religious requests.

The Services have wrestled with establishing a holistic approach toward their personnel that embraces human diversity without sacrificing traditionally high standards of character, obedience, unit cohesion, esprit de corps, and mission readiness. This wrestling match is perhaps nowhere more confusing or complex than when addressing the sacred and the secular.

Religious issues surrounding military service have made their way into the nation's headlines frequently in the last decade. In some cases, the military has been found lacking in support of religious groups in their midst, perhaps most notably in 2005 with the investigation of religious treatment of cadets at the U.S. Air Force Academy (Cook, 2007). Other cases have highlighted prejudicial actions or words on the part of individuals (rather than institutions), resulting in highly visible and often embarrassing controversies (Sharlet, 2009). These public embarrassments regarding religious diversity issues have led to dissension in the ranks, as evidenced by lawsuits filed in civilian courts on behalf of military members against the Services.¹ Religious diversity,

and the successful accommodation thereof, appears to be a critical component of removing barriers to successful service by minority members.

This paper addresses religiosity within the context of current diversity efforts. It is based on quantitative research conducted in August 2009 by the Defense Equal Opportunity Management Institute (DEOMI) that examined the religious self-identification, beliefs, and practices of military personnel. Increased awareness of religious diversity provides Department of Defense (DoD) leaders with information that may assist them in fulfilling their statutory and policy responsibilities to provide for and accommodate the religious practices of servicemembers.

The Religious Identification and Practices Survey Study

The information presented in this paper is based primarily on the Religious Identification and Practices Survey (RIPS), a survey administered as Part B of the Defense Equal Opportunity Climate Survey (DEOCS) from July 1 to July 16, 2009. During this period the DEOCS was taken by 14,769 military participants, of whom 6,384 (38 percent) voluntarily elected to complete the RIPS. They did so with the assurance of complete privacy in their answers. Although DEOCS and RIPS participants were not a random sample of the population of concern, the demographic characteristics of those who took the DEOCS during this period closely match those of the force at large. In addition, no statistically significant variations, in terms of race, ethnicity, age, gender, or rank, were found to exist between those who took the RIPS and those who did not.

The RIPS consisted of 30 questions. Two addressed the respondents' self-identified religious affiliation, and the remainder addressed respondents' attitudes toward religion-related subjects and beliefs. Of those who completed the RIPS, only 0.25 percent did not provide valid responses regarding religious affiliation.

a gradual trend in the United States toward greater percentages of people claiming no religious affiliation, a phenomenon reflected in ARIS. This trend, combined with the younger demographic of the military in comparison with the population at large, leads to the religious-affiliation percentages reflected in RIPS.

The younger military demographic is also reflected in the *No religious preference* (NRP) category. Fully 25 percent of RIPS respondents claim this identification; the DMDC figure is 20 percent (see endnote 2 regarding differences between RIPS and DMDC); and ARIS and Pew report 12–15 percent for the overall U.S. population. This identification appears to be age dependent. Of servicemembers ages 18–30, 28 percent selected NRP as their religious identification, in contrast to those ages 31–40 (24 percent), 41–50 (16 percent), and 51 and older (10 percent).

Civilian surveys, such as ARIS, have documented the steady rise of the NRPs (often called *Nones*) during the past two decades, particularly among young adults (Dougherty, Johnson, & Polson, 2007; Kosmin & Keysar, 2008; Pew Forum on Religion in Public Life, 2010a). And although those who claimed some form of Christian identity constitute by far the largest single category (65.84 percent), the next-largest group of military members is NRPs (25.50 percent). This group is followed by the following separate Christian groups: some form of Catholic (20.11 percent) and some form of Baptist (17.56 percent). No other single category claimed a double-digit percentage, but the RIPS results indicate that the military contains nearly as many Humanists (i.e., Atheists or Agnostics) as Methodists (3.61 percent versus 3.7 percent) and more Pagans than Episcopalians (1.18 percent versus 0.86 percent).

Religious Diversity Interactions

Table 2 compares the three largest groupings of religious preference (NRP, Roman Catholic, and Baptist) with respect to the percentages of enlisted and officer/warrant service-

members claiming these faith groups. The table further distinguishes between the age brackets of age 40 and under and over age 40. Compared with enlisted servicemembers, a significantly smaller percentage of officer/warrant servicemembers identified as NRP, and this difference is greater at younger ages. Baptists evidenced the same pattern, but the differences between officer/warrant and enlisted were less dramatic. By contrast, Roman Catholics produced a higher percentage of officer/warrant than enlisted in both the younger and older age brackets.

Overall, RIPS indicates that servicemembers in the senior ranks tend to be more religious. This finding may provide important insights with respect to retention and promotion of junior personnel who claim NRP. Servicemembers in the senior ranks, many of whom are motivated by religious principles, should recognize that significant numbers of those they lead may possess no similar tenets and should ensure that the work environment accommodates those unlike themselves.

RIPS also asked 28 questions related to religious beliefs and attitudes. These questions permit further investigation of religious diversity in the context of demographic diversity. Tables 3 and 4 report responses to questions dealing with the importance of religion in respondents' lives and the extent to which respondents are willing to work with people from religious groups other than their own.

Table 3 shows responses to the following question: How important is religion in your life? The results point to significant differences in religiosity in the military demographic groups, both within the military and compared with the overall civilian population. Female servicemembers tend to believe religion is more important in their lives than do male servicemembers, and black servicemembers, male and female, view religion as more important than do members of other races. These findings regarding female and black servicemembers are in accord with current civilian population surveys (Pew Forum on Religion in Public Life, 2008, 2009). With regard to Hispanic military members, however, the percentage

Table 2. Religious Preference—NRP vs. Roman Catholic

	Religious Preference (%)	
	40 and Under	Over 40
No Religious Preference		
Officer/Warrant	15.65	9.68
Enlisted	27.63	17.27
Roman Catholic		
Officer/Warrant	24.94	26.88
Enlisted	17.30	23.45
Baptist		
Officer/Warrant	14.97	18.28
Enlisted	17.34	22.94

SOURCE: Authors' calculations based on Hunter & Smith, forthcoming.

of those who believe that religion is important in their lives is less than that of the general population (Pew Forum on Religion in Public Life, 2010b), among whom 68 percent of Hispanics indicate that religion is very important in their lives. The discrepancy between military and civilian Hispanics may indicate a difference in (1) the segment of the Hispanic population that finds the military an attractive option for service and (2) the relative proportion of the Hispanic population that is eligible to serve.

Religious diversity may also relate to aspects of servicemembers' views of the religious climate in which they serve. All RIPS respondents recorded their agreement, indecision, or disagreement with the following statement: If a person is willing to deal with me honestly, I can trust them regardless of their religious beliefs. Results are shown in Table 4, but note the scale shown in the table is compressed from the survey scale, which ranged from *Strongly agree* to *Strongly disagree*. The disparities presented illustrate how servicemember attitudes differ based on religious preference.

Majority religious traditions (i.e., Methodist, Roman Catholic, Other Protestant, Pentecostal/Charismatic, Evangelical, and Baptist) tend overwhelmingly to agree that they can trust those holding differing religious beliefs; indeed, with the exception of Evangelicals, few were in disagreement. Respondents identifying themselves as NRP agreed with the statement to a much lesser extent and disagreed at nearly twice the rate of those in majority religions, although not as strongly as did Evangelicals. Comparatively more Humanists agreed

with the statement than did those who identified with majority religions or NRPs, but they also disagreed by a larger percentage than did those who identified with majority religions, indicating a greater degree of polarization on this question. Adventists, whose long history of conscientious objection and unorthodox religious practices (e.g., Saturday Sabbath, dietary standards) distinguish them from members of majority religions, indicated an even higher rate of disagreement than NRPs, but their rate of disagreement was not as high as that of the Evangelicals.

Accommodation to Religious Diversity

Diversity may offer a way to look at the tendency among NRPs, Evangelicals, Humanists, and Adventists surveyed (compared with members of majority religions) to trust to a lesser extent those from differing religious traditions. The greater levels of doubt among these four groups may reflect discrimination that these groups have faced from members of the dominant religious culture, both in civilian life and within the U.S. military.

Perceptions of religious discrimination have occasioned legal action against the armed forces. In 2008, for example, an atheist soldier filed suit against DoD, alleging discrimination directed toward him by Christians offended by his disbelief, his unwillingness to participate in public prayers, and his desire to hold meetings with fellow military atheists (Kaye, 2008; Blumner, 2008). Another atheist soldier filed suit,

Table 3. How Important Is Religion in Your Life?

	Very Important	Important	Moderately Important	Of Little Importance	Unimportant
Race and Ethnic Origin					
White non-Hispanic					
Male	23.88	18.25	26.47	13.17	18.22
Female	27.69	21.98	25.71	12.09	12.53
Black non-Hispanic					
Male	49.02	21.94	18.76	3.93	6.35
Female	61.36	21.36	10.45	4.55	2.27
Asian non-Hispanic					
Male	32.57	21.71	21.71	11.43	12.57
Female	32.26	32.26	22.58	6.45	6.45
Other non-Hispanic					
Male	25.71	24.57	24.57	14.29	10.86
Female	40.54	18.92	27.03	8.11	5.41
Hispanic					
Male	29.73	22.6	25.34	9.45	12.88
Female	35.22	23.27	27.67	6.29	7.55

SOURCE: Authors' calculations based on Hunter & Smith, forthcoming.

NOTE: Race and ethnic origin categories accord with those presented in Military Leadership Diversity Commission, 2009.

insisting that the delivery by his unit chaplain of sectarian prayers at mandatory formations effectively forced religion on him in violation of his rights under the First Amendment.³ Evangelical Christians have also complained of prejudice. For example, a group of Evangelical military chaplains claimed that proposed restrictions on the use of sectarian language in public prayers, particularly at mandatory formations, constituted unwarranted institutional restriction on their freedom of speech (Shane, 2008). Although the evidence gained from RIPS is not conclusive, the levels of distrust among service-members, as evidenced in Table 4, indicate that more investigation on the part of military leaders may be needed to ameliorate instances of religious discrimination, perceived and actual, that occur within their units.

Perceptions of religious discrimination may also arise with respect to granting religious accommodations for apparel, practice, and personal grooming. In 1996, addressing religious apparel specifically, Congress provided a general rule, declaring that "a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force" (10 USC 774). The law provides for two exceptions to this provision: first, if the apparel in question would interfere with the member's military duties and, second, if the apparel is not neat and conservative. The DoD implementing instruction defines neat and conservative as items that (1) are discreet, tidy, and not dissonant or showy in style, size, design, brightness, or color; (2) do not replace or interfere with the proper wear of any authorized article of the uniform; and (3) are not temporarily or permanently affixed or appended to any authorized article of the uniform (DoD Instruction 1300.17).

The implementing instruction also tightens the standards for approval of requests to wear religious items to situations in which "accommodation will not have an adverse impact on mission accomplishment, military readiness, unit

cohesion, standards, or discipline," and it indicates that such requests should be made individually and be considered at the command level (DoD Instruction 1300.17, paragraph 4). Before approval or rejection of such requests, the instruction recommends that commanders take into account several distinct factors, including (1) the religious importance of the accommodation to the requester, (2) the cumulative impact of repeated accommodations, (3) and alternative means to meet the requested accommodation (DoD Instruction 1300.17, enclosure, paragraph 1). This recommended procedure requires individual commanders to weigh and make decisions about complex theological and praxis issues in a highly diverse environment.

Does the DoD instruction place an undue burden on commanders? These men and women receive no formal instruction in comparative religions or in the sociology or history of religion. This sets up the possibility that even the most fair-minded commanders may approve religious-accommodation requests with which they are reasonably comfortable or familiar but may not approve those with which they are uncomfortable or unfamiliar. Thus, in seeking protection from accusations of favoritism and capriciousness, some commanders may adopt the seemingly safe policy of uniformity: i.e., rejecting all (or most) requests on the basis that any approval would impair mission accomplishment by degrading unit esprit de corps. Dissenting in a landmark case involving the military and religious headgear, Supreme Court Justice William J. Brennan, Jr. commented on this tendency, writing, "[T]he military, with its strong ethic of conformity and unquestioning obedience, may be particularly impervious to minority needs and values."⁴

A recent accommodation ruling illustrates some of these points. Army policy since 1981 has prohibited its uniformed members from having a beard and wearing a turban over unshort hair, all three of which are religiously mandated

Table 4. Willingness to Work with Religious "Others"

Q27. If a person is willing to deal with me honestly, I can trust them regardless of their religious beliefs.

	Mean	Standard Deviation	Range
Very much	77.12	24.91	4-100
Quite a bit	70.14	28.43	3-100
Some	70.88	27.23	4-100
Not much	68.48	28.88	4-100
Not at all	74.72	24.41	4-100
Very much	80.33	13.40	6-100
Quite a bit	81.84	16.76	6-100
Some	80.78	18.32	6-100
Not much	78.88	20.17	10-100

SOURCE: Authors' calculations based on Hunter & Smith, forthcoming.

grooming or apparel practices for baptized Sikh men. Several years ago, however, the recruiting command allowed two Sikh doctors-in-training to retain their religious distinctiveness when they were commissioned and while they underwent basic and follow-on training. When their medical training neared completion, however, both faced the requirement to conform to standard Army grooming and apparel policies. The Army Deputy Chief of Staff, stepping into what had quickly evolved into a public controversy, approved the requests of both men to be granted an exception to policy during their current assignments. When they transfer or are deployed, their pursuit of the grooming and apparel exceptions will collide with a 23-year history of accommodation denial.

Conclusion

Given its young demographic, the military appears to reflect the religious diversity of U.S. society closely in terms of identification with minority faiths, identification with possessing no religious preference, and identification with groups traditionally considered outside the religious mainstream (e.g., Pagan, Eastern, Humanistic, and so on). In other words, religious diversity in the military parallels that of the civilian population, including the greater religious diversity of its youth.

The Millennial generation, which constitutes the focus of the military's current recruiting and retention efforts, is the most ethnically and racially diverse cohort in the nation's history (Keeter & Taylor, 2009). Its diverse religious beliefs and practices may differ from those commonly understood and accepted by the military's majority culture, and it demonstrates increased tolerance of religious difference (Pew Forum on Religion in Public Life, 2010b).⁵ Ad hoc and nonstandard approaches to requests for religious accommodation may have a deleterious effect on the quality of service of members from non-majority religions, and they may be viewed as unacceptable by an important segment of the military, the members of the Millennial generation. For example, as implemented, current DoD policy regarding wearing items of religious apparel while in uniform leads to nonstandard approaches to religious accommodation by directing that all requests for accommodations devolve to individual military commanders. Such devolution reinforces deterrence of religious accommodations and may be at cross-purposes with the range of religious diversity found in today's U.S. military.

Notes

¹Of the many such lawsuits, the following are among the most notable and contentious: *Mellen v. Bunting*, 327 F.3d 355 (4th Cir. 2003) (mandatory mealtime prayers at the Virginia Military Institute are unconstitutional); *Anderson v. Laird*, 456 F.2d 283 (D.C. Cir. 1972) (mandatory chapel attendance at the U.S. Naval Academy is unconstitutional); *Goldman v. Weinberger*, 475 U.S. 503 (1986) (the military may regulate religious apparel); *Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997) (religious speech of chaplains, in worship settings, may not be regulated). The cases that follow involve assertions on the part of Evangelical Navy chaplains that the Navy deliberately discriminates against them in favor of chaplains from liturgical faith groups: *Veitch v. England*, 471 F. 3d 124 (D.C. Cir. 2006);

Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290 (D.C. Cir. 2006); *In Re: England*, 375 F.3d 1169 (D.C. Cir. 2004), cert. denied 543 U.S. 1152 (2005); *Larsen v. U.S. Navy*, 486 F. Supp. 2d 11 (D.D.C. 2007); *Adair v. England*, 417 F. Supp. 2d 1 (D.D.C. 2006).

²Differences between DMDC and RIPS may be due to the different methods used in these two data-collection efforts. The confidentiality afforded to RIPS respondents combined with the likelihood that RIPS respondents, all of whom are active-duty personnel beyond military occupational specialty or A School training, feel more settled and secure within the military environment than they did upon entry and, consequently, possess a greater degree of self-confidence, may have fostered greater openness and, thus, a more accurate disclosure of their religious affiliation. This stands in contrast with DMDC respondents, the vast majority of whom are recruits providing such information in the stressful environs of a Military Entrance Processing Station. For more information see Hunter and Smith (forthcoming).

³His lawsuit was dismissed for failure to exhaust administrative remedies. *Chalker and Military Religious Freedom Foundation v. Gates*, No. 2:08-cv-02467, Memorandum and Order (D.Kan. Jan. 7, 2010); Milburn, 2010.

⁴*Goldman v. Weinberger*, 475 U.S. 503, 524 (1986) (Brennan, J., dissenting).

⁵Millennials are less religiously affiliated than previous generations of Americans but remain fairly traditional in their views of heaven and hell, life after death, and other religious beliefs. They are more accepting of homosexuality and evolution than older Americans even as they are more comfortable with churches' involvement in politics and the government's involvement in protecting morality. In being both more comfortable with racial and ethnic diversity and less supportive of traditional religious institutions, Millennials may continue to challenge current thinking on the role of religion in public life.

References

- 10 USC 774, section 774. Religious apparel: Wearing while in uniform. <http://www.law.cornell.edu/uscode/10/774.html>.
- Blunner, R. E. (2008, May 4). This atheist finds he needs a foxhole. *St. Petersburg Times*.
- Chalker and Military Religious Freedom Foundation v. Gates*, No. 2:08-cv-02467, Memorandum and Order (D.Kan. Jan. 7, 2010).
- Cook, H. (2007). Service before self? Evangelicals flying high at the U.S. Air Force Academy. *Journal of Law and Education*, 36, 1-13.
- Defense Manpower Data Center. (2009, September). *Data file on religious statistics of military members (active duty and reserve)* [Restricted data]. Compiled for the Defense Equal Opportunity Management Institute.
- Department of Defense Instruction 1300.17. (2010, February 10). *Accommodation of Religious Practices Within the Military Services*. <http://www.dtic.mil/vhs/directives/comres/pdf/130017p.pdf>
- Dougherty, K. D., Johnson, B. R., & Polson, E. C. (2007). Recovering the lost: Remasuring U.S. religious affiliation. *Journal for the Scientific Study of Religion*, 46, 483-499.
- Goldman v. Weinberger*, 475 U.S. 503 (1986).
- Goodstein, L. (2005, June 23). Air Force Academy staff found promoting religion. *New York Times*.

Hunter, C. E., & Smith, L. M. (forthcoming). *Religious identification and practices survey*. Defense Equal Opportunity Management Institute.

Kaye, R. (2008, July 9). Atheist soldier sues Army for "unconstitutional" discrimination. CNN.com. Retrieved March 11, 2010 from <http://www.cnn.com/2008/US/07/08/atheist.soldier/index.html#unSTCText>

Kector, S., & Taylor, P. (2009). *The Millennials*. Washington, DC: Pew Research Center.

Kosmin, B. A., & Keysar, A. (2008, March). *American religious identification survey (ARIS 2008)*. Hartford, CT: Trinity College.

Milburn, J. (2010, January 9). Atheist's lawsuit against DoD dismissed. *Navy Times*.

Military Leadership Diversity Commission. (2009, November). *How we define race and ethnicity categories for MLDC research* [Issue Paper #1]. Arlington, VA: Military Leadership Diversity Commission.

Paley, A. R. (2008, May 30). Marine in Iraq suspended over coins quoting gospel. *Washington Post*.

Pew Forum on Religion in Public Life. (2008). *U.S. religious landscape survey*. Washington, DC: Pew Research Center.

Pew Forum on Religion in Public Life. (2009). *A religious portrait of African Americans*. Washington, DC: Pew Research Center.

Pew Forum on Religion in Public Life. (2010a). *Changing faiths: Latinos and the transformation of American religion*. Washington, DC: Pew Research Center.

Pew Forum on Religion in Public Life. (2010b). *Religion among the Millennials*. Washington, DC: Pew Research Center.

Shane, L. (2008, July 23). Bill would lift limits on chaplains' language. *Stars and Stripes*.

Sharlet, J. (2009, May). Jesus killed Mohammed: The crusade for a Christian military. *Harper's Magazine*.

Stewart, A. (2010, January 12). Army to Chabad Rabbi: Get a shave! *Jewish Week*.

QUESTIONS SUBMITTED BY MEMBERS POST HEARING

NOVEMBER 19, 2014

QUESTIONS SUBMITTED BY MR. FORBES

Mr. FORBES. During your testimony, you discussed that a chaplain's job is both to perform and to provide for men and women in uniform. Can you elaborate on the meaning of this mission, both with respect to supporting service members of all faiths, as well as to the ways in which a chaplain is responsible to his or her endorser? As a retired chaplain and an endorser yourself, how do you advise the chaplains that you endorse in navigating these two complimentary missions?

Dr. CREWS. The terms "perform or provide" come from Army Chaplaincy training materials. The other services have similar designations, the Air Force says, "provide or provide for". What this means is that chaplains are expected to perform those ministries for service members from a similar faith background. For instance, as an Evangelical Presbyterian chaplain I could baptize both infants and adults either by sprinkling or emersion as long as the parents met the spiritual qualifications according to the Book of Government. That is "performing". However, if a Catholic soldier requested baptism for his child I would connect them to a Catholic chaplain or contract priest to perform that rite. That is "provide".

I encourage the chaplains I endorse to be faithful to our chaplain guidelines, to be true to their own consciences, and to minister with grace to those they are not able to serve directly. I encourage my chaplains to be clear up front that they provide counseling from a Biblical perspective and if a service member is not comfortable with that they should graciously offer to refer them to another chaplain or counselor.

Mr. FORBES. Can you provide a brief history of how and why George Washington formed the chaplaincy in 1775?

Dr. CREWS. At a time when preaching non-Anglican beliefs was punished by law in Virginia, then Colonel George Washington made sure the non-Anglicans under his command had a chaplain who shared their specific religious faith and could meet their spiritual needs.

In 1758, during the French and Indian War, the state of Virginia created and provided regimental chaplains at the request of Colonel George Washington. See Anson Phelps Stokes, *Church and State in the United States*, Vol. 1 at 268 (1950). These chaplains were not forced to suppress their distinct denominational or sectarian beliefs and practices. Rather, it was known and welcomed that they represented not only the official Church of England, but also minority religions including Congregationalists, Anglicans, Presbyterians, and Baptists. *Id.*; see also William J. Hourihan, *Pro Deo et Patria: A Brief History of the United States Chaplain Corps* at 3 (2004).

This spirit of accommodation and pluralism continued in the Revolutionary War. See Stokes at 268 (noting that on August 16, 1775, the Virginia Convention required that commanding officers "permit Dissenting clergymen to celebrate divine worship, and to preach to the soldiers"). On July 29, 1775, the Continental Congress authorized pay for chaplains and soon thereafter General George Washington ordered that chaplains be procured for the Continental Army. *Katcoff*, 755 F.2d at 225 (citations omitted).

Mr. FORBES. In your testimony before the committee, you discussed the recent Supreme Court case of *Town of Greece vs. Galloway*. Can you please elaborate that testimony based on the following questions:

Are there any court rulings indicating that "offense" in the military context should be grounds for restrictions on religious speech?

Mr. WEBER. No—"offense" alone cannot serve as a reason to restrict speech. Even in the military, with its concerns for good order and discipline, "we must be sensitive to protection of 'the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.'" *United States v. Priest*, 21 U.S.C.M.A. 564, 570 (C.M.A. 1972) (quoting *United States v. Schwimmer*, 279 U.S. 644, 654–655 (1929)).

Moreover, even in the military, "[t]he Establishment Clause clearly forbids that there should be any official judgments about the correctness of religious beliefs." *Veitch v. Danzig*, 135 F. Supp. 2d 32, 35 (D.D.C. 2001) (noting that any "religious orthodoxy mandated by the Navy—even one officially sanctioned as appropriate for a military population of diverse religious beliefs," such as requiring chaplains to

“preach ‘pluralism among religions’ and/or ‘inclusiveness,’” would cause serious First Amendment problems). Thus, “offense” at religious speech cannot justify government modification of such speech.

It is clear that speech which affects uniformity and order by directly attacking the military’s mission can be regulated. *Priest*, 21 U.S.C.M.A. at 566, 571–72 (publishing an underground newspaper denouncing the foreign policy of the United States in Vietnam and “calling for violent and revolutionary action”); *United States v. Gray*, 20 U.S.C.M.A. 63, 65, 68–69 (C.M.A. 1970) (public statement in logbook denouncing the United States and its policies and indicating intent to leave the country).

But even “offensive” speech must impact military readiness in some way before it can be regulated; the claim that it has offended an individual or group is insufficient to proscribe it. *United States v. Wilcox*, 66 M.J. 442, 448–49 (C.A.A.F. 2008) (finding that even racist speech made on the internet, though offensive, was protected by the First Amendment).

For example, purely religiously-motivated speech cannot be regulated absent a clear showing of how it affects military readiness. See *Rigdon v. Perry*, 962 F. Supp. 150, 161–62 (D.D.C. 1997). This is even the case when the government’s interest is arguably higher—such as when the speech touches on political matters. See *id.*

In *Rigdon*, the court ruled that chaplains’ speech urging parishioners to contact Congress in support of the Partial Birth Abortion Ban Act is protected by the Religious Freedom Restoration Act and the First Amendment and may not be restricted by the military. *Id.* While “military readiness and national defense” are compelling government interests, restricting chaplain speech—even “political” and possibly offensive speech—did not advance these interests, which “are outweighed by the military chaplains’ right to autonomy in determining the religious content of their sermons.” *Id.*

If advocating from the pulpit on a political issue does not disrupt military order, then advocating from the pulpit on a variety of other religious issues should also be protected.

Mr. FORBES. The military must simultaneously protect free exercise and freedom of expression for service members, while also preserving good order and discipline. How is this balance maintained?

Mr. WEBER. This balance is maintained carefully, by ensuring that constitutional rights are vigorously protected within the military as long as their exercise is not aimed at undermining the good order and discipline of the military. The Supreme Court has said that “[t]he fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it.” *Parker v. Levy*, 417 U.S. 733, 758 (1974). Thus, “[t]he test in the military is whether the speech interferes with or prevents the orderly accomplishment of the mission or presents a clear danger to loyalty, discipline, mission, or morale of the troops.” *United States v. Brown*, 45 M.J. 389, 395 (C.A.A.F. 1996). “Servicemembers as well as the public in general have a right to voice their views so long as it does not impact on discipline, morale, esprit de corps, and civilian supremacy.” *Id.* at 396.

Speech protected by the First Amendment outside the military can only be regulated in the military (1) when the government can show “a reasonably direct and palpable connection between the speech and the military mission or military environment,” and (2) when the military’s interests in regulating the speech outweigh First Amendment concerns. *United States v. Wilcox*, 66 M.J. 442, 448–49 (C.A.A.F. 2008). For “in speech cases, our national reluctance to inhibit free expression dictates that the connection between the statements or publications involved and their effect on military discipline be *closely* examined.” *United States v. Priest*, 21 U.S.C.M.A. 564, 569–70 (C.M.A. 1972) (emphasis added).

For instance, organizing a strike of Louisiana National Guard working conditions during a time of on-going military operations in Iraq constitutes unprotected speech because of its direct effect on military operations. *Brown*, 45 M.J. at 395–96. Because such actions—despite being protected in the civilian context—directly undermine military order, they can be proscribed.

On the other hand, online postings involving racist speech, though vile and offensive to many, are protected under the First Amendment even for servicemembers—when they are not directed at or connected the military mission. *Wilcox*, 66 M.J. at 448–49.

Recent restrictions of religious expression in the military cannot be justified under the legal framework outlined above. An Air Force Academy cadet sharing a religious saying on his whiteboard does not “interfere[] with or prevent[] the orderly accomplishment of the mission.” *Brown*, 45 M.J. at 395. Neither does it “present[] a clear danger to loyalty, discipline, mission, or morale of the troops.” *Id.* Personally sharing how faith has impacted one’s life also does not disrupt unit morale or cohesion—

whether the person sharing is an officer or enlisted servicemember. These matters do not threaten unit cohesion in the same way organizing a strike, *see Brown*, 45 M.J. at 395–96, or urging servicemembers not to fight in an on-going war would. *See Parker*, 417 U.S. at 758. Nor are they like a commander forcing subordinates to listen to a sermon—such a scenario would be coercive and would disrupt unit cohesion. The type of speech which has been suppressed by the military in the past year—such as an Ohio Air National Guard commander’s personal story in a base newsletter—is the type of entirely innocuous speech that no one would even *question* as coming close to disrupting military discipline. Yet the government has allowed such restrictions to occur, despite the clear legal requirement to show that military order and discipline is affected before speech can be suppressed.

Chaplains are entitled to these same protections. When chaplains’ messages are censored, violations of the Religious Freedom Restoration Act, *see Rigdon*, 962 F. Supp. at 161–62, and the First Amendment occur. *See Veitch*, 135 F. Supp. 2d at 35. Additionally, censorship puts the government in the unacceptable position of pronouncing “what shall be orthodox in . . . religion” and “force[s] citizens to confess by word or act their faith therein.” *West Virginia Bd. of Education v. Barnette*, 319 U.S. 624, 642 (1943). No government body—civilian or military—should be making such pronouncements.

Mr. FORBES. How is protecting the ability of a service member to freely practice their faith particularly important in the context of military service, and how does it contribute to military readiness and morale?

Mr. WEBER. When Americans join our nation’s military, they give up certain liberties. Yet, they retain Free Exercise rights under the First Amendment to the Constitution. Thus, the military has a responsibility to provide them the means of Free Exercise—this includes in part, providing access to the chaplaincy. *Katcoff v. Marsh*, 755 F.2d 223, 234 (2d Cir. 1985) (“Unless the Army provided a chaplaincy it would deprive the soldier of his right under the Establishment Clause not to have religion inhibited and of his right under the Free Exercise Clause to practice his freely chosen religion.”). Chaplains meet spiritual needs of soldiers by providing counsel and teaching troops how to live one’s life in accordance with one’s religious beliefs. In so doing, chaplains ensure that readiness and morale do not suffer by lack of access to religious services.

However, providing access to chaplains is only *part* of the military’s responsibility to provide for Free Exercise rights. The military must also ensure that servicemembers can practice their faith outside of a military chapel by being free to speak about their faith in conversation and daily life. To limit the expression of spirituality to a chapel service or private conversation with a chaplain is to ignore the all-encompassing nature of religious belief. Indeed, it is specifically the *expression* of religious beliefs that Congress sought to protect in enacting language in the Fiscal Year 2013 and Fiscal Year 2014 National Defense Authorization Acts that reiterate the freedom chaplains and servicemembers alike have to speak about and practice their faith.

Notable military leaders have relied on religious faith to survive the ordeals of war. For instance, President Roosevelt recognized the importance of spiritual matters in considering military readiness when he penned an introduction to a Bible to be issued to troops as they headed off to fight in World War II. The introduction commended the reading of the Bible to all in the Armed Forces as a source of “wisdom, counsel and inspiration” and as a “fountain of strength.”

During the Vietnam War, when he was held for years by the North Vietnamese as a prisoner-of-war, Naval officer and pilot Jeremiah Denton relied on a deep Christian faith to help him endure his ordeal. Similarly, Jeff Struecker, an Army ranger who was sent back into a fire-fight in the streets of Mogadishu to rescue fallen comrades during the “Black Hawk Down” incident, has discussed his dependence on God for strength during that operation.

Yet when military leaders today seek to reference a reliance on faith, they face career consequences. Just this fall, Colonel Florencio Marquez of the Ohio Air National Guard wrote about the important role his religious beliefs played in his personal life in a unit newsletter. For mentioning God, his story was censored and removed from publication.

Such actions by misinformed commanders deny servicemembers the ability to confidently practice their own faith, removing a key source of strength and resiliency for many men and women. The uncertainty created by command actions that stifle religious speech contributes to a climate of distrust and fear. In an environment in

which military morale is at a new alarming low,¹ military leadership must not alienate religious servicemembers in actions that violate constitutional and statutory requirements to accommodate religious expression.

Additionally, limiting the ability of servicemembers to express religious faith can risk undermining the legitimacy of many servicemembers' ethical standards. A sense of accountability to God leads many servicemembers to behave with self-discipline, empowering many servicemembers to live up to military ideals of service. For "[a] Soldier seriously committed to his or her personal morality, whether grounded in a religious faith or not, is prone more than he or she would otherwise be to live up to the high ethical ideals of the Army Profession not in spite of, but because of his or her personal convictions."² Yet these same soldiers are in danger of leaving a military they see as "increasingly hostile toward religious expression."³

Mr. FORBES. Does fixating on "offense" rather than coercion as a standard for maintaining order potentially undermine larger goals for cultivating respect and tolerance for diverse viewpoints in the military?

Mr. WEBER. Yes. Using "offense" alone as the standard for censoring speech or viewpoints would result in an unworkable standard given the disagreements inherent in human interactions and any exchange of ideas. More importantly, limiting speech due to potential or actual threats of "offense" would produce a forum of uniform views, or at the very least, a forum where nothing of substance or controversy is ever discussed. Such a possibility should be alarming since it is only in a context of diverse opinions that the opportunity to practice true tolerance and respect occurs. Furthermore, regulation of speech based on its particular religious content constitutes viewpoint discrimination—an unlawful and even more "egregious form of content discrimination." *Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 829 (1995).

The inability to tolerate different views due to the slightest "offense" already inflicts certain sectors of academia but in particular should alarm those charged with oversight of our nation's military academies. Having been a Naval officer, I can testify to the need for mental resilience—a characteristic developed in part by learning to tolerate different views, to be disciplined in reactions, and to be secure in one's own convictions so as not to be threatened by another's. Though physical abilities undergird military readiness, mental toughness is also necessary for an effective fighting force. It's that mental grit which is threatened when today's soldiers learn to be quick to claim "offense" at ideas and opinions they don't like.

Such reflexive intolerance cannot produce the type of well-rounded citizens necessary for representing American democracy and defending her interests overseas. Furthermore, training servicemembers to be divisive by seeking the suppression of views different from their own threatens to undermine the ability to be unified in battle with their fellow soldiers—who no doubt have different views on at least *some* matters.

Our military men and women must learn to tolerate the different views of their fellow soldiers on things such as religion so that they then can be unified in the pressing, important business of warfighting. We do no service to our future military leaders by acceding to demands for suppression of religious speech out of a desire to promote a veneer of "unity." True unit cohesion involves building and retaining trust and confidence in one's fellow soldier to perform the core duties of military service, even when a fellow soldier may disagree with one's personal beliefs. Indeed, future officers being trained at our elite military institutions are better served when they understand that part of living in a pluralistic society is encountering different opinions.

The Supreme Court touched on this point in *Town of Greece* when it stated that in a democracy "[a]dults often encounter speech they find disagreeable; and an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views." *Town of Greece*, 134 S. Ct. at 1826. The Court was referring to a legislative forum in that case. But if this is expected of American citizens, we can and should expect that our tough men and women in the armed services, who we ask to bear the trials of war, will also be able

¹ Andrew Tighman, *McCain: Military Times report on low morale should spur Congress to act*, Military Times, Dec. 9, 2014, <http://www.militarytimes.com/story/military/pentagon/2014/12/08/john-mccain-low-military-morale-survey-statement-congress-military-times/20118517/>.

² *A Soldier's Morality, Religion, and Our Professional Ethic: Does the Army's Culture Facilitate Integration, Character Development, and Trust in the Profession?*, Don M. Snider and Alexander P. Shine, U.S. Army War College Strategic Studies Institute, Professional Military Ethics Monograph Series, Volume 6, Apr. 2014, page 29, available at <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1203>.

³ *Id.*

to bear hearing different views. Indeed, it would be insulting to them to suggest they could not.

QUESTIONS SUBMITTED BY DR. FLEMING

Dr. FLEMING. During your testimony, you mentioned your own personal experience as an example of the lack of training in First Amendment law that military attorneys receive. What key categories of First Amendment law are missing in current military legal education programs, and what steps do you recommend the various branches take to correct this?

Mr. BERRY. The greatest deficiency in First Amendment training is with respect to the Establishment and Free Exercise Clauses; issues regarding freedom of the press and assembly are exceedingly rare in the military context. This is a convoluted area of the law that requires a degree of subject-matter expertise to avoid legal issues. The fact that there are nuances specific to the military compounds this. I recommend the military institute formal First Amendment training for the 3 most critical audiences: military attorneys (“JAGs”), chaplains, and commanders. If this is not feasible, at the very minimum, military attorneys should receive this training. This could be accomplished at the service JAG schools with minimal impact to their existing academic calendars. Military attorneys currently receive substantial legal training in many areas of the law in which they are expected to possess competence (e.g., criminal law, fiscal law, ethics, etc.). The only logistical issue might be the lack of military attorneys with this subject-matter expertise. A possible solution might be to allow expert practitioners to provide this instruction.

Dr. FLEMING. During your testimony, you mentioned that military case law supports the concept that “offense does not equal coercion.” Can you offer specific examples or an explanation of this concept?

Mr. BERRY. Under existing Supreme Court and military case law, the critical inquiry is not whether someone is offended by religious expression, but rather it is whether there is actual or implied coercion. *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1826 (2014); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 44 (2004).

In 1972, the highest military court recognized that “we must be sensitive to protection of the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.” *United States v. Priest*, 21 U.S.C.M.A. 564 (C.M.A. 1972). The court went on to explain that service member expression is protected unless it undermines the effectiveness of response to command. One of my fellow witnesses, Mr. Weinstein, frequently cites the case of *Parker v. Levy* for the proposition that the military is a different, specialized society, and therefore the rules of free speech and religious expression are different. But *Parker* was not about religious expression. *Parker* involved a soldier who protested the Vietnam War by encouraging others to refuse to serve for political reasons. Indeed, nearly every case in which a court upheld the right of the military to censor or restrict speech involved political—not religious—expression. Religious expression, on the other hand, has historically enjoyed substantial protection in our courts.

In 1985, the United States Court of Appeals for the Second Circuit decided the case of *Katcoff v. Marsh*, 755 F.2d 223 (2d Cir. 1985). In *Katcoff*, two Harvard Law School students challenged the constitutionality of the U.S. Army’s chaplaincy, arguing that government provision and funding of chaplains in order to provide for religious practice violated the Establishment Clause. The court rejected that argument, reasoning that, because of the rigors of military life, a service member’s ability to freely practice their religion would be stifled unless the military provided chaplains. Importantly, the court held that the Constitution “obligates Congress, upon creating an Army, to make religion available to soldiers who have been moved by the Army to areas of the world where religion of their own denominations is not available to them.”

Therefore, religious expression by service members is not only permitted, but it is constitutionally protected. The only time the military can lawfully censor or prohibit it is when it prejudices good order and discipline, or degrades the ability to accomplish the mission. But it is insufficient to allege that religious expression undermines good order and discipline or unit morale merely because it offends someone. As stated, the critical inquiry is whether there is religious coercion, which the Establishment Clause of the First Amendment forbids. In the context of the Establishment Clause the United States Supreme Court has repeatedly, and recently, stated that, offense does not equal coercion. Moreover, in *United States v. Wilcox*, 66 M.J. 442 (C.A.A.F. 2008), the Court of Appeals for the Armed Forces stated that even racist or supremacist speech is not punishable under the Uniform Code of Military Justice (UCMJ) because it is protected by the First Amendment. If the First

Amendment protects racist or supremacist speech, then it certainly protects religious speech.

Dr. FLEMING. During your testimony, you described that the perception of religious hostility will result in a “chilling effect” on religious expression in the military. What can our military leaders do to reverse the perception of religious hostility?

Mr. BERRY. Our military leaders must address this issue in the same manner they have been trained to accomplish any military mission. First, we must acknowledge that a problem exists. If our senior military officials fail to recognize the moral injuries that depriving and chilling religious expression has on our service members, nothing will be accomplished. Second, there must be an understanding that protecting religious freedom is a positive attribute. Stated differently, our military leaders must recognize the intrinsic benefits that religious freedom imbues. By all measures, America’s military has always been, and continues to be, a religious force. If people of faith—any faith—do not feel free to live out their faith free from fear of harassment, punishment, or disapproval, we will see our force strength dwindle. Eventually, this degradation may lead to retention and recruitment issues, which in turn may become a national security issue. Finally, we must dedicate resources: time, energy, manpower, and money, to the problem. Our military has shown a remarkable ability to use the existing resources to tackle some of the most contentious social issues of our time: sexual assault, drug use, gang violence, etc. And although these issues continue to present, that is merely a reflection of our society as a whole, and not a lack of success or effort within our military.

Dr. FLEMING. During your testimony, you mentioned that military case law supports the concept that “offense does not equal coercion.” Can you offer specific examples or an explanation of this concept?

Mr. WEBER. When, in *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1826 (2014), the Supreme Court stated that “[o]ffense . . . does not equate to coercion,” it was saying that merely feeling affronted by others’ views or speech (“offense”) is not the same thing as being forced to act in accordance with another’s beliefs under threat of punishment (“coercion”). As Justice Kennedy also explained in that opinion, “impermissible coercion” does not occur “merely by exposing constituents to prayer they would rather not hear and in which they need not participate.” *Town of Greece*, 134 S. Ct. at 1827.

Offense is not a sufficient basis for an Establishment Clause claim. *Lee v. Weisman*, 505 U.S. 577, 597 (1992) (“People may take offense at all manner of religious as well as nonreligious messages, but offense alone does not in every case show a violation.”); see also *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 44 (2004) (O’Connor, J., concurring) (“[T]he Constitution does not guarantee citizens a right entirely to avoid ideas with which they disagree. It would betray its own principles if it did; no robust democracy insulates its citizens from views that they might find novel or even inflammatory.”). “*Town of Greece* made obvious” that feeling angry, upset, or offended at indications of religion “is insufficient to state an Establishment Clause violation.” *Elmbrook Sch. Dist. v. Doe*, 134 S. Ct. 2283, 2285 (2014) (Scalia, J., dissenting from denial of cert.).

On the other hand, coercion—defined as “coercion of religious orthodoxy and of financial support by force of law and threat of penalty,” *Town of Greece*, 134 S. Ct. at 1837 (Thomas, J., concurring) (quoting *Lee*, 505 U.S. at 640 (Scalia, J., dissenting))—is a sufficient basis for an Establishment Clause claim.

Similarly, in the military “offense” is not a principle upon which one can object to other views. For even in the military, “we must be sensitive to protection of ‘the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.’” *United States v. Priest*, 21 U.S.C.M.A. 564, 570 (C.M.A. 1972) (quoting *United States v. Schwimmer*, 279 U.S. 644, 654–655 (1929)). It is clear that speech which affects uniformity and order by directly attacking the military’s mission can be regulated. *Priest*, 21 U.S.C.M.A. at 566, 571–72 (publishing underground newspaper denouncing the foreign policy of the United States in Vietnam and “calling for violent and revolutionary action”); *United States v. Gray*, 20 U.S.C.M.A. 63, 65, 68–69 (C.M.A. 1970) (public statement in logbook denouncing the United States and its policies and indicating intent to leave the country). But where speech does not have a close connection to the military or military mission or environment, the military’s interest in regulating the speech is lower. *United States v. Wilcox*, 66 M.J. 442, 448–49 (C.A.A.F. 2008). In addition, the speech’s *offensive nature alone* is an *insufficient* basis to outlaw it under the Uniform Code of Military Justice. *Id.* (finding that even racist speech made on the internet, though offensive, was protected by the First Amendment).

Just as servicemembers’ Free Speech rights cannot be sacrificed to avoid “offense,” neither can their Free Exercise rights—nor can they be diminished in subjugation to a reading of the Establishment Clause requiring the government to scrub all reli-

gious expression from any program remotely associated with it. *See Katcoff v. Marsh*, 755 F.2d 223, 234 (2d Cir. 1985) (“Unless the Army provided a chaplaincy it would deprive the soldier of his right under the Establishment Clause not to have religion inhibited and of his right under the Free Exercise Clause to practice his freely chosen religion.”). Thus, both in and outside of the military context, when First Amendment rights are at issue, “offense” alone entitles no one to a legal remedy.

