



ADVANCING FAITH, FAMILY AND FREEDOM

Written Statement of Lt. Gen. (Ret.) William G. Boykin
Executive Vice President
Family Research Council

On Behalf of

Family Research Council

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

January 29, 2014

For the Hearing on “Religious Accommodations in the Armed Services”

FAMILY RESEARCH COUNCIL

801 G STREET NW, WASHINGTON, D.C. 20001 • 202-393-2100 • 202-393-2134 *fax* • (800) 225-4008 *order line* • www.frc.org

Dear Chairman Wilson and Ranking Member Davis,

Thank you for your leadership in convening a hearing in the House Military Personnel Subcommittee on the important issue of religious freedom in the military. In light of the hearing scheduled for Wednesday, January 29, 2014, the Family Research Council submits the following statement for inclusion in the record.

Religious Freedom: Our First Freedom

Given our nation's history as a country formed in large part by communities fleeing religious persecution, the principle of religious freedom has long stood as a core national ideal, enshrined in the Bill of Rights and guaranteed to all Americans. The freedom to express one's faith publically and practice one's faith according to conscience sets America apart in a world faced with increasing levels of militant and state-driven religious persecution.¹

Significantly, the historic principle of religious freedom in the United States includes not just the freedom to attend the religious services of one's choice (worship), but also the freedom to apply the teachings of a chosen faith to one's daily life in practical and public ways (exercise) so long as the exercise of faith does not threaten the U.S. Constitution. This freedom has required the cultivation of tolerance and goodwill amongst a citizenry which may hold divergent views on faith. In a pluralistic society, views may be expressed with which a listener does not agree; however, disagreement with a person's beliefs does not afford a listener grounds for a veto over such expression. Rather, religious freedom affords every person the right to exercise their faith at the same time it requires of every person respect for another's beliefs. The values of respect and goodwill thus fostered contribute to the strength of our society and also equip the men and women of our military with values essential for unit cohesion.

The practice of religion contributes to our military in another major way. Given the unique stresses and dangers of military life, a conscious focus on spiritual matters often accompanies military service. The ability to live out one's faith openly with the support of one's peers and the military chaplaincy can afford the comfort, certainty, and security so necessary to service members otherwise faced with serious injury and death on a regular basis. As members of the military cultivate extraordinary levels of self-discipline, it is imperative that they have the ability to draw upon the moral and religious beliefs which sustain them emotionally, mentally, and spiritually. A respect for religious freedom in the military thus means that men and women should be able to access the teachings and support structure of their particular faith, worship with other believers, and be free to apply, exercise, and vocalize their beliefs without fear of reprisal.

Threats to Religious Freedom in the Military

Because the ability to practice and express one's faith is a long-cherished American freedom and is so important for one's wellbeing and morale in the military context, any effort to restrict or penalize a member of the military for religious exercise should be immediately suspect.

Unfortunately, a growing trend in the military reveals a remarkable disregard for what have been assumed as basic religious liberties of service members in the past. The Family Research Council

¹ See *Religious Hostilities Reach Six-Year High*, Pew Research Center, January 14, 2014, available at, <http://www.pewforum.org/2014/01/14/religious-hostilities-reach-six-year-high>.

(FRC), as a non-profit organization dedicated to the defense of the family, faith, and freedom, has grown increasingly concerned as military chaplains and service members share their stories of career reprisals, discriminatory and retaliatory actions, and muzzling of speech all occurring because of particular religious beliefs that others have decided to no longer respect or tolerate.

Rather than encourage mutual respect and understanding, increasingly, military officials have taken on the role of determining what are and are not “acceptable” religious beliefs to be expressed in the military context. This move away from the constitutional baseline of robust religious freedom and towards a controlled canon of officially sanctioned beliefs smacks of state control of religion and marks a distinct turn away from our Constitution’s requirements for upholding liberty.

Because of FRC’s growing concern, we joined a coalition of concerned organizations in forming the “Restore Military Religious Freedom Coalition” in the summer of 2013 to analyze incidents of religious restriction and to aid service members facing career reprisals for expressing their faith while sacrificing to serve their country. Our “A Clear and Present Danger: The Threat to Religious Liberty in the Military” report documents dozens of these examples.² In multiple categories of military life, restrictions have targeted religious speech. For example:

- An Army chaplain’s assistant was ordered by her commander to remove a personal social media post expressing her own religious and moral views on a matter of church teaching, simply because the posted opinion was deemed potentially unfriendly by her commander. Rather than acknowledge this Army chaplain’s assistant right to hold religious beliefs and express those beliefs, the commander instead placed himself in the role of determining what was an “acceptable” religious belief, an authority neither proscribed by the Constitution nor Department of Defense (DOD) policy.
- A chaplain stationed at Joint Base Elmendorf-Richardson (JBER) wrote an essay referencing a simple and historic phrase (“No Atheists in Foxholes”) with the purpose of describing the role chaplains played in World War II. Despite the chaplaincy’s requirement of a belief in God *by very definition*, this chaplain faced an inquiry by his commander and the initial removal of his essay from base posting. Rather than immediately defending the chaplain’s ability to write about the nature of religious faith, JBER’s commander instead defaulted to restraint of religious speech.
- An officer with years of service in the Air Force was instructed to remove a Bible from his desk because of a hypothetical risk of offending someone. Other types of non-religious books or printed materials were not singled out for removal—only a religious book.
- A Senior Master Sergeant in the Air Force was initially relieved of his duties because he did not agree with his commander’s conclusion that voicing a religious objection to homosexuality was grounds for punishment of another Airman. Despite assurances from DOD (in the November 2010 “Support Plan for Implementation” of the repeal of “Don’t Ask, Don’t Tell”) that no service member would be forced to condone homosexuality against their

² See *A Clear and Present Danger—The Threat to Religious Liberty in the Military*, Family Research Council, December 12, 2013, available at <http://frc.org/clearpresentdanger>.

religious or moral beliefs, commanders have punished multiple service members for stating their beliefs about marriage or sexual ethics.

Furthermore, an alarming pattern of labeling incidents in which longstanding religious ministries and organizations have been categorized as “hate groups” and “extremists” by military trainers has occurred in the past two years during military equal opportunity (MEO) training programs. Due to these Christian organizations’ historic and mainstream religious positions regarding the definition of marriage and the moral standards that govern human sexuality, several MEO trainers have dismissed their work as extreme and radical, by extension condemning the views of any service members who share those same religious beliefs.

Even if these troubling occurrences of targeted discrimination against religious service members or religious organizations are later corrected by a commander, lingering consequences for troop morale remain. Because of the military’s unique culture, harsh career consequences for expressing a religious belief, even if reversed later, leave a profoundly chilling effect on the culture of speech and religious exercise that exists within a unit’s social environment. Career reprisals for speaking with a fellow soldier about one’s moral or religious convictions communicate to fellow soldiers that voicing or describing one’s beliefs is unprotected in the military. This conclusion is erroneous, but is being fostered by a command culture that defaults to restriction of religious expression rather than to protection of religious liberty.

Widespread confusion at the command level over a service member’s religious liberty rights has contributed at least in part to the growing culture of restriction in the military. Because of this variance in understanding and protection of religious expression, the Family Research Council supported legislative efforts in both the 112th and 113th Congress to affirm in statute the fundamental requirement to protect religious liberty in the military.

Legislative Response in the Fiscal Year 2013 National Defense Authorization Act

The FY 2013 NDAA (P.L. 112-239) contained a requirement in Section 533(a) to accommodate and protect a service member’s conscience, moral principles, or religious beliefs. Section 533(a) specifically forbade the military from discriminating or taking adverse action against a service member because of their religious beliefs. Due to the unique nature of life in a military setting, common sense exceptions were included in the statute to maintain prohibitions on conduct that were previously proscribed by the Uniform Code of Military Justice (Chapter 47 of Title 10, United States Code) including actions and speech that threaten good order and discipline

Additionally, Section 533(b) required the Armed Forces to protect the liberty of a military chaplain to refuse to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain. Section 533(b) also forbade the Armed Forces from discriminating or taking an adverse action against a chaplain for their refusal to perform a rite, ritual, or ceremony because of conscience, moral principle, or religious belief.

Finally, Section 533(c) required the Secretary of Defense to issue regulations implementing the protections outlined in the above sections. In a blatant disregard for the law and the intent of Congress, the Secretary of Defense failed to comply with Section 533(c) and issue the required regulations despite service members’ continued fear that they would not be allowed to live in

accordance with their religious beliefs. Throughout 2013, the Secretary of Defense continued to ignore the law even in the face of high profile complaints of religious discrimination and a growing threat to troop morale.

While the Secretary of Defense failed to obey the law, one branch, the Air Force, did issue a partial interpretation of Section 533's requirements. The Air Force Judge Advocate General (Air Force TJAG) issued a memorandum in early 2013 distinguishing between religious *beliefs* and *actions or speech* informed by those beliefs: "Section 533 pertains to the accommodation of beliefs . . . [a]ctions and speech, however, are distinct from beliefs, and may serve as bases for administrative and punitive action."

The Air Force TJAG's interpretation of Section 533 not only gutted the concept of religious freedom as historically understood in this country, but contradicted the intent of Congress which was to protect a service member's ability to talk about, verbalize, and apply his or her faith to daily life. Prompted by this highly injurious interpretation of P.L. 112-239, FRC supported additional legislative efforts in the 113th Congress to clarify Congress' intent and to demand greater accountability from the Department of Defense.

Legislative Response in the Fiscal Year 2014 National Defense Authorization Act

Language was introduced in both the House and Senate Armed Services Committees in 2013 to amend Section 533 of P.L. 112-239. Proposed language in both chambers clearly stated Congress' desire to protect religious speech and expression in the military (not just the ability to hold a religious belief) in order that no deliberate or inadvertent misinterpretation of the statute would be possible. Wide margins of bi-partisan support backed the effort, and the FY 2014 NDAA (P.L. 113-66) included Section 532's restatement of Congress' intent to protect religious expression.

Section 532 of P.L. 113-66, as signed into law on December 26, 2013, requires the Armed Forces to "accommodate individual expressions of belief." In addition to allowing service members the ability to exercise their faith, the Armed Forces are prohibited from using such expression of beliefs "as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training or assignment."

Additionally, Congress set clear parameters in Section 532(c) to ensure Administrative compliance with the law's requirements for implementing regulations. Section 532(c) established a ninety day deadline from the date of the law's enactment for the Department of Defense to issue the regulations required by statute (March 26, 2014). Section 532(c) required the Secretary of Defense to "consult with the official military faith-group representatives who endorse military chaplains" in developing regulations on Section 532(a) and (b).

Implementing Regulations Issued January 22, 2014

Given DOD's earlier failure to comply with the requirements of Section 533 of P.L. 112-239, DOD's issuance of DOD Instruction 1300.17 on January 22, 2014 marked a small step forward in the effort to protect the religious liberties of the Armed Forces. Though cautiously optimistic that DOD has taken an initial step to comply with the law, FRC remains concerned with the need for further implementing regulations and further interpretation from the military departments.

DODI 1300.17 contains an expansive update to the former DOD religious accommodation policy in DOD Directive 1300.17 (“Accommodation of Religious Practices Within the Military Services).” As such, DODI 1300.17 establishes new policies, procedures, and definitions on a host of issues related to personal grooming standards, personal apparel and jewelry, and religious body art. While such policies and definitions have been long overdue, DODI 1300.17 did not develop substantive guidelines in accordance with the requirements of Section 533 of P.L. 112-239 (language ignored entirely) or Section 532 of P.L. 113-66 (partial language was referenced in the Instruction without any explanatory guidance to the military departments).

One particular concern is DODI 1300.17’s failure to more clearly define “Exercise of Religion” in Section (3)(f) to include a service member’s ability to talk about, discuss, and share their faith as delineated in the parallel clause in Section (4)(b)’s protection for “expressions of sincerely held beliefs.” While DODI 1300.17 frames religious accommodation as a process that service members must go through to seek approval for wearing a particular piece of jewelry or following a certain grooming standard, it is imperative to distinguish between such practices and the everyday practice of verbalizing one’s moral or religious beliefs in conversation and explanation. A service member should never be required to seek an accommodation in order to talk about their faith. Subsequent clarification must more clearly capture the deference and protection to religious liberty that is required by the Constitution and the FY 2013 and FY 2014 NDAA.

FRC remains deeply concerned that the Secretary of Defense failed to consult with official military faith-group representatives who endorse military chaplains in developing the initial regulations in DODI 1300.17’s Sections (4)(b) and (4)(d). Given the unique challenges faced by military chaplains presently and the unique understanding of religious expression that they offer, the Secretary of Defense’s failure to follow the law is inexcusable. The Secretary of Defense must adhere to all statutory requirements when developing additional regulations and consult with official military faith-group representatives who endorse military chaplains as required by Section 532(c).

Continued Defense of Religious Freedom Necessary

In sum, religious freedom and expression is not something to be given begrudging accommodation. It is a core value of our nation, necessary for strengthening individual troop wellbeing and instilling the values of respect and goodwill. Religious freedom must be celebrated, affirmed, and cherished within our military just as our men and women sacrifice to defend that freedom for those outside the military.

Continued instances of discrimination and retaliation against members of the military for speaking about, sharing, or explaining their faith cannot be tolerated in a free society. Careful phrasing in regulations, while necessary, only goes so far. Unless the new policies required by P.L. 112-239 and P.L. 113-66 are backed by action that is faithful to Congress’ legislative intent, those policies will remain empty words on a piece of paper.