



ADVANCING FAITH, FAMILY AND FREEDOM

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Hearing on Religious Accommodations in the Armed Forces

FAMILY RESEARCH COUNCIL

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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

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

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>.

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 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 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.

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).

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 Fiscal Year (FY) 2013 National Defense Authorization Act (NDAA) (P.L. 112-239), Congress required DOD to 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 fully with the official military faith-group representatives as demanded by law. While DOD consulted with chaplains regarding the creation of chaplain-specific regulations, DOD did not consult with faith group representatives regarding the creation of required conscience rights protections for all service members, as outlined in Section 533(a) of the FY 2014 NDAA. Furthermore, despite issuing some regulations in January 2014, DOD has not cultivated a clear comprehension of required religious expression protections in military leaders across all of the branches.

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. Three 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.

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's response to this incident rests the faulty assumption that potential offense to a bystander from a cadet's religious expression justifies restricting the cadet's speech.

In the fall of 2014, the Commander of the Ohio Air National Guard's 180th Fighter Wing required the Medical Group Commander to remove an essay from a newsletter because of the Medical Group Commander's reference to his personal religious faith as an important element of his life. Such censorship of religious speech, uncorrected as of early November 2014, reveals that the Air Force has continued to view religious expression by an officer as immediately suspect because of misplaced concerns that such communication may run afoul of the First Amendment's Establishment Clause.

In reality, the Air Force's approach puts it in the role of determining what are and are not acceptable religious beliefs for any officer to voice publically. While the Air Force announced in early November 2014 that older restrictive policies on religious expression had been revised (Air Force Instruction 1-1 Sections 2.11-2.12), clearly the Air Force culture of viewing religious expression as suspect must be corrected so that the religious expression of Air Force leaders is protected as required by law.

Indeed, while military necessity 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 by entering the military. 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 may need to accomplish that job? Again, the question before the military is not one involving legal coercion of religious beliefs (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 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 chose 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 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.

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.

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

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

- 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, and proactively educate commanders, chaplains, and JAG officers about such changes.
- 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 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.