

December 6, 2017

The Honorable Heather Wilson  
Secretary of the Air Force  
1670 Air Force Pentagon  
Washington, DC 20330-1670

Dear Secretary Wilson,

Thank you for your distinguished history of military and public service. Like yourself, we have sought throughout our careers to protect the liberties guaranteed by our Constitution. One of these liberties is religious liberty, and we are thankful that you observed during your confirmation hearing that “Air Force policy must continue to ensure that all Airmen are able to choose to practice their particular religion.”<sup>1</sup> We also recognize, as you have, that marriage is “a union between one man and one woman,” and that this is “something we should honor in law and in our communities.”<sup>2</sup> Your observation that “[t]here are things I am willing to tolerate that I am not willing to approve of”<sup>3</sup> perfectly encapsulates the matter about which we write to you today with quite serious concern—the blatant violation of Colonel Leland Bohannon’s religious freedom with respect to his beliefs about marriage.

In his Executive Order Promoting Free Speech and Religious Liberty issued earlier this year, President Trump stated that “it shall be the policy of the executive branch to vigorously enforce Federal law’s robust protections for religious freedom,” and that people should be “free to practice their faith without fear of discrimination or retaliation by the Federal Government.”<sup>4</sup> Yet despite his impressive decades-long career with the Air Force, Col. Bohannon’s life and service are about to be derailed by the violation of this fundamental principle. When recently presented with several awards and certificates to sign for a subordinate’s retirement ceremony, Col. Bohannon signed all of them except a “certificate of spouse appreciation”—which he could not do in good conscience because the “spouses” were of the same sex. He sought advice about what to do from his chaplain, who told Col. Bohannon to ask for a religious accommodation. He submitted one, but it was returned six weeks later “without action.” In the meantime, Major General Sami Said offered to sign this (optional) certificate instead, and it was signed and presented to the subordinate. Col. Bohannon thought the situation had reached a favorable resolution for all involved parties. Yet when the subordinate saw that Col. Bohannon was not the signatory, he filed an Equal Opportunity (EO) complaint against him, alleging discrimination.

The EO investigator found that Col. Bohannon violated Air Force regulations and unlawfully discriminated against the subordinate based on sex (the basis of the finding—AFI 36-2706, paragraph 1.1.1—includes “pregnancy, gender identity, and sexual orientation” in its definition of “sex”). The investigator admitted that a religious accommodation had been sought, but claimed that even if it had been granted, Col. Bohannon would *nonetheless be guilty of unlawful discrimination*. Consequently, his superior suspended Col. Bohannon from command, withheld his decoration, and submitted a letter to the Air Force Brigadier General promotion board (Col. Bohannon was eligible for that rank) recommending that he not be promoted.

The investigator seriously erred in this case. Not only is there no right to a certificate of spousal appreciation, an accommodation should easily have been granted here. Moreover, the investigator expresses complete ignorance of the law—and the very meaning of an “accommodation”—by claiming that the granting of an accommodation would not have altered the outcome. The very purpose of an accommodation is to exempt one from an otherwise applicable requirement! As explained below, federal law and DOD policy demand that Col. Bohannon be

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<sup>1</sup> Advance Policy Questions for Heather Wilson, Nominee for Secretary of the Air Force, at 24.

<sup>2</sup> Sunlen Miller, *Rep. Heather Wilson: Holding Strong in the Race of Her Life*, ABC News, Oct. 27, 2006, <http://abcnews.go.com/Politics/story?id=2611988&page=1>.

<sup>3</sup> *Id.*

<sup>4</sup> Exec. Order No. 13798, 82 Fed. Reg. 21675 (May 4, 2017).

granted an accommodation in an instance like this—where the objective is easily fulfilled with another signature on the certificate. His treatment in this matter was shameful, undeserved, and unlawful.<sup>5</sup>

Following the Executive Order Promoting Free Speech and Religious Liberty, as instructed by the President, Attorney General Sessions issued a memorandum to “guide all administrative agencies and executive departments in the execution of federal law” on the issue of religious liberty,<sup>6</sup> reminding us that religious freedom “includes the right to *act or abstain from action*,” and individuals do not lose religious freedom because they participate in the public square.<sup>7</sup>

This memorandum relies on current law—the First Amendment, the Religious Freedom Restoration Act (RFRA),<sup>8</sup> and Department of Defense Instruction (DODI) 1300.17—which all protect religious freedom in the military, and thus protect Col. Bohannon. Indeed, DODI 1300.17 *requires* an accommodation to be granted unless a military interest overrides it. These authorities clearly require the government to protect Col. Bohannon’s religious freedom by not forcing him to *personally* sign the certificate.

Moreover, the understanding of “sex” in AFI 36-2706 as cited by the investigator is at odds with the view of the federal government recently announced by the Department of Justice in the context of Title VII—that “sex” does not include “gender identity” or “sexual orientation.”<sup>9</sup> If the Air Force policy reflected the view of DOJ on this issue, those in Col. Bohannon’s situation would have no need to be concerned for their religious liberty in the first place, and we urge the Air Force to bring its policies into line with the understanding of the DOJ in this area. Regardless, instruction and training should be given to commanders and military lawyers regarding how to properly apply current religious freedom legal protections when applied to AFI 36-2706.

To date, we have received 77,024 petition signatures in support of Col. Bohannon (flash drive included). In addition to correcting Air Force policy to ensure this does not happen again, we respectfully request that you reverse the complaint against Col. Bohannon and remove any unfavorable materials related to this complaint from his record.

Sincerely,



Lt. General William G. Boykin, USA Ret.  
Executive Vice President  
Family Research Council

cc:

General David L. Goldfein  
Air Force Chief of Staff  
1670 Air Force Pentagon  
Washington, DC 20330-1670

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<sup>5</sup> See Appeal Letter of Colonel Leland B.H. Bohannon, Oct. 5, 2017, <http://firstliberty.org/wp-content/uploads/2017/10/Colonel-Bohannon-Appeal-to-AFRBA-FINAL1.pdf>.

<sup>6</sup> Dep’t of Justice, Federal Law Protections for Religious Liberty, 82 Fed. Reg. 49668 (Oct. 6, 2017).

<sup>7</sup> *Id.* (emphasis in original).

<sup>8</sup> RFRA clearly “applies to the military.” *United States v. Sterling*, 75 M.J. 407, 415 (C.A.A.F. 2016).

<sup>9</sup> Dep’t of Justice, Revised Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964 (Oct. 4, 2017), <https://www.documentcloud.org/documents/4067437-Sessions-memo-reversing-gender-identity-civil.html>.

cc:

Lt. General Anthony J. Rock  
Air Force Inspector General  
4800 Mark Center Drive  
Alexandria, VA 22350-1500

Signed:

Jim DeMint  
Former United States Senator  
South Carolina

Col. Edwin J. Meese, USA Ret.  
Former United States Attorney General

The Honorable J. Kenneth Blackwell  
Chairman  
Constitutional Congress, Inc.

Bob McEwan  
Former United States Representative  
Ohio

Lt. Col. Kerry A. Knowles, USMC Ret.

Maj. Ray Sundman USA Resv. Ret.  
GS 14, USA Material Command, Ret.

Col. J. Keith Morgan, USA Ret.  
Family Ministries  
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Donald Moore  
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Gary L. Bauer  
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Founder/President  
Freedom X

Frank Gaffney  
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