

# Challenges to Freedom of Religion

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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. Our leadership, members, and partners are chaplain endorsers, chaplains and others who support our military. CALL speaks on behalf of almost fifty percent of chaplains currently serving in the military.

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.

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 many incidents of concerns including:

- An Army chaplain received a letter of concern after referring to the Psalms as a source of help when dealing with depression;
- A Marine Lance Corporal was court-martialed after refusing an order to remove a Bible verse posted on her personal workspace. The judge ruled that posting a Bible verse does not constitute religious exercise.
- 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 to remain;
- An Air Force Academy cadet required to remove 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;
- 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;<sup>1</sup>

- 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;<sup>2</sup>
- 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;<sup>3</sup>
- 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;<sup>4</sup>

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.

Many of these concerns over religious expression have come in the context of matters of sexual ethics, specifically homosexuality. Recent military policy changes and court rulings 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."<sup>5</sup> 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 associations, actively sharing religious beliefs with non-believers, and avoiding (or condemning) conduct understood as immoral.<sup>6</sup>

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 amended by section 532 in the 2014 NDAA. Unfortunately, the President indicated his opposition to the conscience protections by calling this provision, "ill-advised and unnecessary."<sup>7</sup>

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.

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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> However, chaplains who hold to traditional Biblical views of marriage are finding it increasingly difficult to support these programs, as same-sex couples are included.

This conflict illustrates a chaplain's complete willingness to serve whoever needs care, but not however the military demands. Chaplains represented by CALL want to minister to service members who are in same-sex sexual

relationships on any number of issues, but they cannot treat those relationships as the equivalent of marriage without violating both their conscience and the endorsement of their specific faith group.<sup>11</sup>

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.<sup>12</sup> Chaplains may be punished for declining to privately counsel same-sex couples on certain matters relating to a couple's relationship<sup>13</sup> or for counseling them according to their faith group's traditional religious beliefs on marriage.<sup>14</sup> 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 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 a marriage enrichment 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.<sup>15</sup>

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. No American, especially those serving in the armed forces, should be forced to surrender their religious beliefs.

### September 2016 Focus on Suicide Prevention

In the last few years, a tremendous amount of work has been put into the effort to prevent suicide among members of the armed forces and veterans as well as in the civilian community. The MCA has been a significant contributor to that effort, thanks to our members who have worked in the field and have published their experience and counsel for moderating, even solving this public health issue. We plan to publish the latest and best research and findings in the next issue of *The Military Chaplain* magazine. Please submit your original work (articles, poetry, prayers) and your recommendations about significant authors working in the field.

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Notes

- 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 Id.
- 5 Zorach v. Clauson, 343 U.S. 306, 314 (1952) (praising the State's efforts to accommodate, and thus respect, the "spiritual needs" of citizens).
- 6 See Emp't. Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872, 877 (1990).
- 7 See Statement on Signing the National Defense Authorization Act for Fiscal Year 2013, 2013 Daily Comp. Pres. Docs. 00004, p. 1 (Jan. 2, 2013).
- 8 See 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](http://armypubs.army.mil/eforms/pdf/A67_9.PDF) (last visited Jan. 25, 2013); see generally Army Regulation 623-3, Evaluation Reporting System.
- 9 See 10 U.S.C. § 632 (providing that, in most instances, an officer who twice fails to be selected for promotion must be discharged).
- 10 See 10 U.S.C. § 1789.
- 11 See, 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).
- 12 See 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).
- 13 See 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).
- 14 See 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).
- 15 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.").



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