



LIBERTY INSTITUTE®

RELIGIOUS LIBERTY PROTECTION KIT *—for—* THE U.S. MILITARY

HOW SERVICE MEMBERS
AND CHAPLAINS
CAN EXERCISE THEIR
LEGAL RIGHTS

FIRST



LIBERTY



Dear Friend,

Thank you for your desire to protect **the religious liberty rights of members of the U.S. military, including chaplains**, against increasingly hostile legal threats. I hope you find this **Religious Liberty Protection Kit** a simple but high-quality tool for helping you guard the most precious freedom you or anyone in our society has: religious liberty, our first liberty in the Bill of Rights.

Please let us know any further way we can help you.

A handwritten signature in black ink that reads "Kelly Shackelford". The signature is fluid and cursive, with a large loop at the end.

Kelly Shackelford, Esq.
President, CEO & Chief Counsel

LIBERTY INSTITUTE® RELIGIOUS LIBERTY PROTECTION KIT FOR THE U.S. MILITARY

Cover and page design: David Malphurs

The Liberty Institute® *Religious Liberty Protection Kit for the U.S. Military* provides general guidance concerning the religious liberty rights of members of the U.S. military, including chaplains. These Religious Liberty Guides are not to be used as a substitute for legal advice. Because the law is constantly changing and each factual situation is unique, First Liberty and its attorneys do not warrant, either expressly or impliedly, that the law, cases, statutes, and rules discussed or cited in these Religious Liberty Guides have not been subject to change, amendment, reversal, or revision. If you have a legal question or need legal advice, please contact an attorney. First Liberty's attorneys may be contacted by going to FirstLiberty.org, selecting the "Contact" menu option at the top of the page, and then selecting "Request Legal Assistance."

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5 PRINCIPLES OF RELIGIOUS FREEDOM IN THE U.S. MILITARY

Here are five basic principles to remember about religious freedom within the U.S. Military:

1. Under most circumstances in the military, religious expression—including evangelism or proselytizing—is protected by the First Amendment.
2. Greater care must be exercised when the speaker is senior in rank to the listener so as to avoid the appearance of coercion or official government endorsement of the superior's religion.
3. Generally speaking, the military cannot restrict off-duty religious expression.
4. The military can only restrict on-duty religious expression if it can demonstrate that the restriction furthers a compelling governmental interest by the least restrictive means.
5. The military cannot engage in viewpoint discrimination, and must treat religious expression in the same way it treats similar non-religious speech such as politics or controversial social issues.

Given the seemingly endless efforts of those devoted to targeting religious freedom in the military, it's easy to get the misimpression that such freedom doesn't exist, is vanishing, or can't be reclaimed. But the truth is that those who oppose religious freedom in the military are on the wrong side of the law.. We have every reason to confidently assert our constitutional religious rights as applied to the armed services.

If you experience, or know of, potential abuses of religious liberty in the U.S. military, call First Liberty's Military Hotline at 1-800-259-9109.

MILITARY MEMBERS: FAST FACTS ABOUT YOUR RELIGIOUS RIGHTS

If not prohibited by the Uniform Code of Military Justice (UCMJ), YOU HAVE THE RIGHT to:

Practice and follow the teachings of your faith.

Express your sincerely held religious or moral beliefs in action and speech.

Be free from government censorship, discrimination, threats, or punishment.

Please note: The government may deny your religious expression only when it can show a compelling governmental interest and uses the least restrictive option in accomplishing that interest.

If you believe your religious liberties are being violated or threatened, you should respectfully:

1. Seek confirmation of the order, command or instruction at issue.
2. Ask for the order, command or instruction in writing.
3. Request an accommodation of your sincerely held religious beliefs.
4. Contact your Chaplain, military attorney, or member of your command for guidance.
5. **Contact First Liberty for free legal guidance and help at** FirstLiberty.org/request-legal-help or call toll-free at 1-800-259-9109 (all communications are confidential).

MILITARY CHAPLAINS: FAST FACTS ABOUT YOUR RELIGIOUS RIGHTS

If not prohibited by the UCMJ, YOU HAVE THE RIGHT to:

Conduct religious services, worship, teaching, counseling, and ecclesiastical or sacramental functions in accordance with their endorsing faith group's beliefs.

Provide and care for the religious, spiritual, and moral needs of service members.

Observe the tenets of their faith.

Express your sincerely held religious or moral beliefs in action and speech.

Be free from Government censorship, discrimination, threats, or punishment.

Please Note: The Government may deny your religious expression only when it can show a compelling governmental interest and uses the least restrictive option in accomplishing that interest.

If you believe your religious liberties are being threatened, you should respectfully:

1. Seek confirmation of the order/command/instruction that you believe violates your religious liberties.
2. Ask for the order/command/instruction in writing.
3. Request an accommodation of your sincerely held religious beliefs.
4. Contact your endorser for guidance.
5. Contact your senior chaplain, military attorney, or member of your command for guidance.
6. **Contact First Liberty for free legal guidance and help at** FirstLiberty.org/request-legal-help or call toll-free at 1-800-259-9109 (all communications are confidential).

COMPLETE FAQs FOR MILITARY RELIGIOUS RIGHTS

INTRODUCTION

*“Members of the military
are not excluded from
the protection granted by
the First Amendment”*

The First Amendment to the Constitution of the United States protects the “free exercise” of religion: *“Congress shall make no law... prohibiting the free exercise”* of religion.

However, because of the unique nature of the military and its mission,[1] courts sometimes apply the First Amendment rights of service members differently than in other contexts. This is because, unlike civilian society, less individual autonomy exists in the military. Obedience to orders, good order, and discipline are vital to a military force that is capable of fighting and winning wars. As the United States Supreme Court stated:

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.[2]

But this must not be read to mean that service members forfeit their religious freedom simply because they join the military. Indeed, members of the military are never excluded from the protection granted by the First Amendment. Instead, the different character of the military community and the military mission simply 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.[3]

This fundamental concept of the “needs of the service” being greater than the “desires and interests of the individual” is central to how courts view the religious liberties of service members. As a result, the Department of Defense and the five branches of the military created policies that govern how the military must accommodate the religious needs of service members.

1 *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.”)

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

3 *Parker*, 417 U.S. at 758.

QUESTIONS AND ANSWERS

The following information is only intended to provide general guidance and should not be construed as legal advice.

RELIGIOUS EXPRESSION POLICIES

Q: What is the Department of Defense’s (DoD) policy regarding religious expression?

Short Answer:

Service members are free to act and speak in accordance with their religious beliefs as long as there is no demonstrable negative effect on mission accomplishment.

Legal Answer:

The official Department of Defense policy states: “The Department of Defense places a high value on the rights of members of the Military Services to observe the tenets of their respective religions. The Department of Defense will accommodate individual expressions of sincerely held beliefs unless it could have an adverse impact on military readiness, unit cohesion, or good order and discipline.” This broad policy applies to the entire Department of Defense.

Regulations:

DoD Instruction 1300.17, of February 10, 2009. The DoD implemented significant changes to DoD Instruction 1300.17 on January 24, 2014. Those changes are reflected in these FAQs.

Q: What is the Department of Defense's religious accommodation policy?**Short Answer:**

A request for religious accommodation should usually be approved unless it adversely interferes with the mission.

Legal Answer:

The official Department of Defense policy states:

“The U.S. Constitution proscribes Congress from enacting any law prohibiting the free exercise of religion. The Department of Defense places a high value on the rights of members of the Military Services to observe the tenets of their respective religions. It is DoD policy that requests for accommodation of religious practices should be approved by commanders when accommodation will not have an adverse impact on mission accomplishment, military readiness, unit cohesion, standards, or discipline.”

This broad policy applies to the entire Department of Defense.

Regulations:

Instruction 1300.17, of February 10, 2009

Q. What are the religious accommodation policies for the military branches?**Short Answer:**

Each branch of the military is responsible for devising its own policy consistent with DoD Instruction 1300.17. To date, only the U.S. Air Force has revised its policy to be consistent with DOD Instruction 1300.17

Legal Answer:

United States Army policy provides:

The Army places a high value on the rights of its Soldiers to observe tenets of their respective religious faiths. 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. As used in this regulation, these factors will be referred to individually and collectively as "military necessity" unless otherwise stated. Accommodation of a Soldier's religious practices must be examined against military necessity and cannot be guaranteed at all times.

United States Navy/United States Marine Corps policy provides:

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. Accommodation of a member's religious practices cannot be guaranteed at all times and is subject to military necessity. Determination of necessity rests entirely with the commanding officer.

United States Air Force policy provides:

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.

Balance of Free Exercise of Religion and the 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.

United States Coast Guard policy provides:
In keeping with the provisions of reference and Coast Guard policy, unit commanding officers shall provide for the free exercise of religion for Coast Guard personnel, their dependents, and other authorized persons, and seek to accommodate the religious practices and observances of individual members when they will not have an adverse impact on military readiness, unit cohesion, health, safety, or discipline.

Chaplains assigned to Coast Guard commands shall provide ministry and facilitate the free exercise of religion for all members of the Coast Guard, their dependents, and other authorized persons through the Command Religious Program (CRP).

Regulations:

Army Regulation 600-20, of March 18, 2008
Secretary of the Navy Instruction 1730.8B, of October 2, 2008

Air Force Instruction 1-1, revised November 12, 2014

USCG Commandant Instruction M1730.4B, of August 30, 1994

Q: What are my options if my requested religious accommodation is denied?

Short Answer:

Service members can appeal the denial of a religious accommodation request via their chain-of-command. Service members may also file a complaint with their commanding officer or higher echelon commanders for grievances.

Legal Answer:

Article 138, Uniform Code of Military Justice, provides a formal complaint/grievance procedure when a service member believes he/she has been wronged by his/her commanding officer. Each military branch has detailed instructions on how to file Article 138 complaints. As an alternative to Article 138, each military branch also provides for informal filing of grievances. You should contact your installation military attorney for specific information and guidance on how to pursue an informal grievance within your command.

Regulations:

Article 138, UCMJ (10 U.S.C. §938)

Q: What should I do if I believe the military violated my religious freedom?

Short Answer:

If you believe that the military is discriminating against you because of your religious beliefs, please contact First Liberty.

Legal Answer:

Although we cannot guarantee that we will represent you, we may be able to assist you in determining what rights you have. There are several options for contacting First Liberty:

Phone:

First Liberty Armed Forces Hotline:
1-800-259-9109

Internet:

FirstLiberty.org/request-legal-help

PERFORMANCE OF MILITARY DUTIES

Q: Can I request excusal from some of my military duties for religious reasons?

Short Answer:

Yes, excusal should usually be granted unless it will have a negative impact on the unit or mission.

Legal Answer:

Depending on the nature of your request and the military duties from which you seek excusal, you may request that your chain of command provide accommodation for your religious practice. Generally speaking, your command should grant your request for accommodation unless it will have an adverse impact on the unit or the mission. However, the accommodation may be very limited in scope (e.g., you may be excused from duty only on Sunday mornings in order to attend a worship service).

Regulations:

Department of Defense Instruction 1300.17

Q: Am I required to perform military duties if I have a religious objection to them?

Short Answer:

Yes, religious objection does not excuse service members from the duty to follow orders.

Legal Answer:

You must request and be granted a religious accommodation to be excused from performing your military duties. Refusal to follow orders, even for religious reasons, may be a criminal violation in the military. This includes the requirement to perform military duties on Sabbath days, holy days, and/or religious observances. The only exception is if the order at issue is unlawful. However, all orders from superiors are presumed lawful unless a judge rules that the order was unlawful. Some courts may be receptive to the “religious objection” if the service member sought a religious

accommodation, or applied for Conscientious Objector status prior to their objection (See Conscientious Objector FAQ for more information).

Case Precedents:

United States v. Wilson, 41 C.M.R. 100 (C.M.A. 1969) (“If the command was lawful, the dictates of the accused’s conscience, religion, or personal philosophy could not justify or excuse disobedience.”)

United States v. Avila, 41 C.M.R. 654 (A.C.M.R. 1969)

United States v. May, 41 C.M.R. 663 (A.C.M.R. 1969)

Q: Can the military deploy me if I have a religious objection to the mission?

Short Answer:

Yes.

Legal Answer:

There is no “right” to not deploy, and the military does not violate your First Amendment rights by requiring you to deploy with your unit.

Case Precedent:

United States v. Webster, 65 M.J. 936 (2008)

**FREEDOM TO ATTEND CHURCH
OR PLACE OF WORSHIP**

Q: Can the military prohibit me from attending a particular place of worship?

Short Answer:

Generally speaking, no.

Legal Answer:

Generally speaking, the military cannot interfere with your right to worship as your faith tradition dictates. However, certain affiliation or participation with certain faith groups are incompatible with military service. For example, because polygamy is illegal in the military, service members may not engage in polygamy

even if their religion permits it. If you are unsure whether your religion or religious practice is incompatible with military service, you should seek the advice of your installation military attorney (judge advocate/JAG).

Regulations:

Department of Defense Instruction 1300.17

Q: Are there any exceptions to these rules?

Short Answer:

It depends. The member's commanding officer has final approval for religious accommodation.

Legal Answer:

The final authority for approval of a requested accommodation rests with the service member's commanding officer. For example, a unit commander has authority to approve the use of certain illegal substances for religious ceremonial purposes.

Regulations:

Department of Defense Instruction 1300.17

**EVANGELIZING AND PROSELYTIZING IN
THE MILITARY**

Q: Can I evangelize/proselytize/share my faith with others in the military?

Short Answer:

Yes, but caution should be exercised when the speaker is senior to the listener.

Legal Answer:

Under most circumstances in the military, religious speech is protected by the First Amendment. However, greater care must be exercised when the speaker is senior to the listener. This could lead to the appearance of coercion or official endorsement of the superior's religion because the subordinate may perceive that he/she has no choice but to listen.

Regulations:

Equal Employment Opportunity Commission Compliance Manual, of July 22, 2008, promulgated by Department of Defense Directive 1020.02, of February 5, 2009.

Air Force Instruction 1-1

Q: Can the military restrict my ability to speak about religion in the workplace?**Short Answer:**

No, unless the commander can demonstrate the religious speech is causing a problem and the commander restricts nonreligious speech that causes the same kinds of problems.

Legal Answer:

Commanders have authority to restrict **on-duty** religious speech if they can demonstrate that it will have an adverse effect on the unit or mission. However, if a commander exercises this authority, he must also restrict nonreligious on-duty speech that may have an adverse effect on the unit or mission. For example, if a commander prohibits on-duty religious speech because he/she believes it will have a divisive effect on the unit, the commander must apply the same prohibition to similarly divisive nonreligious speech (e.g., politics, controversial issues, etc.).

As a general rule, commanders cannot restrict **off-duty** religious speech. Please note that this only pertains to religious speech. Other forms of speech, such as political speech, are usually given less protection than religious speech.

Regulations:

EEOC Compliance Manual

Department of Defense Instruction 1300.17

THE LEGAL AND HISTORICAL CASE FOR RELIGIOUS RIGHTS IN THE U.S. MILITARY

For an online version of these documents go to:
FirstLiberty.org/kits

*“It is crucial that men
and women in the military
know the strong legal basis
for their rights”*

Religious liberty in the U.S. military is under fire from politically correct government officials and radical legal organizations. Recently, we were asked by Members of Congress to provide legal and historical analysis in light of the argument that service members must leave their religious rights at the base gate. Our answer was an emphatic, “No, they keep their rights.”

This answer is not just important for Congress and courts to hear. It is crucial that men and women in the military—or who are thinking of serving in the military—know the strong legal basis for their right to openly live and express their faith while in uniform.

Here is a brief summary of the legal and historical analysis supporting our claim that members of the military do not forfeit their religious liberty:

I. AMERICANS HAVE MORE RELIGIOUS FREEDOM THAN WE THINK

Despite serious attacks on religious expression, the American legal basis for religious liberty is strong and has withstood many challenges. Usually, we lose when we fail to stand up for our rights. When we do stand up, we win. Consider:

The U.S. Constitution itself is pro-religious freedom. The First Amendment **outlaws government interference with the “free exercise” of religion.**

In 1789, Congress passed a law providing for the payment of **legislative chaplains**.

194 years later, in *Marsh v. Chambers* (1983), the Supreme Court upheld the payment of 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.”

In *Zorach v. Clausen* (1952), the Supreme Court acknowledged, “we are a religious people whose institutions presuppose a Supreme Being” and that the First Amendment **“does not say that in every and all respects there shall be a separation of Church and State. . . . Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly.”**

In *Corporation of Presiding Bishop v. Amos* (1987), the Supreme Court stated “this 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.”

In *Westside Board of Education v. Mergens* (1990), the Supreme Court held that the **Government “does not endorse or support . . . speech that it merely permits on a nondiscriminatory basis.”** In other words, permitting religious speech is not establishing that religion as a state church.

In *Rosenberger v. Rector* (1995), the Supreme Court stated: “private religious expression receives preferential treatment under the Free Exercise Clause,” and warned that **“discrimination against speech because of its message is presumed to be unconstitutional.”** In other words, don’t suppress private religious expression even in public places like a college! The *Rosenberger* decision said that unconstitutional “viewpoint discrimination” even includes unreasonable restrictions on “proselytizing . . . or even acts of worship.”

In *Van Orden v. Perry* (2005), the Supreme Court held that a Ten Commandments monument on public grounds did not violate the Establishment Clause, noting that “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.”

In *Salazar v. Buono* (2010), the Supreme Court held that a memorial cross in a public park to honor WWI veterans did not violate the Establishment Clause.

II. MILITARY LAW PROTECTS FREEDOM OF RELIGIOUS EXPRESSION

Many secularists might read Point 1 and exclaim, “*But wait! That doesn’t apply to the military! The military has its own system of laws, and as an arm of the government has to be sterilized of all religious influence!*” This is incorrect. It’s a scare tactic aimed at frightening people of faith in the military into silence. So let’s look at actual military law.

The History of Military Law Favors Open Religious Expression

President Thomas Jefferson—often described as a strong church-state separatist—signed the Articles of War (the precursor to the Uniform Code of Military Justice) which “earnestly recommended to all officers and soldiers, diligently to attend **divine services**.”

In 1791, Congress passed the Military Establishment Act, which included the creation of the **U.S. Army chaplaincy**.

In 1799, Congress required commanders of U.S. Navy ships “to take care that **divine service** be performed twice a day, and the **sermon** preached on Sundays.”

In 1800, Congress required U.S. Navy ships’ crews “to attend at every performance of the **worship of Almighty God**.”

To this day, the U.S. Navy maintains the tradition of saying a **daily prayer** aboard each vessel.

In 1955, President Dwight Eisenhower signed Executive Order 10631, prescribing the Code of Conduct for Members of the Armed Forces. Article VI concludes: “*I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles that made my country free. I will trust in my God and in the United States of America.*”

Current Federal Law Favors Open Religious Expression in the Military

The **Free Exercise clause of the First Amendment** to the Constitution of the United States applies to members of the military.

The 1993 **Religious Freedom Restoration Act (RFRA)** applies to military service members to the same degree that it does to civilians. In order to be lawful, a statute or regulation that burdens a service member's religious expression must demonstrate that it: (1) furthers a compelling governmental interest; and (2) uses the least restrictive means to further the interest.

Department of Defense Policy Favors Open Religious Expression in the Military

Department of Defense Instruction 1300.17, Accommodation of Religious Practices Within the Military Services (2014) establishes the "policy, procedures, and responsibilities for the accommodation of religious practices in the Military Services."

This important regulation states that the Department of Defense "places a high value on the rights of members of the Military Services to **observe the tenets of their respective religions.**"

It specifies and therefore restricts the circumstances that give a commander the authority to deny religious accommodation.

DoD Directive 1304.19, Appointment of Chaplains for Military Departments (2004) states that commanders are required to provide comprehensive religious support to service members. Chaplaincies are established to assist commanders in carrying out this responsibility.

DoD Directive 1350.2, Department of Defense Military Equal Opportunity Program (2003) prohibits discrimination based on factors which include "religion."

U.S. Air Force Policy Favors Free Religious Expression

United States Air Force Instruction 1-1 (November 12, 2014) states that as a government entity, the U.S. Air Force **must allow free exercise of religion** of its members, with the reasonable caution that

superior officers must not appear to seem biased for or against those under their command because of religious beliefs.

This regulation also states: **“Supporting the right of free exercise of religion relates directly to the Air Force core values and the ability to maintain an effective team.** 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.”

U.S. Army Policy Favors Free Religious Expression

United States Army Regulation 600-20 (March 18, 2008) states that: “The Army places a high value on the rights of its Soldiers to **observe tenets of their respective religious faiths.**”

The only restrictions are those that reasonably apply to any religious activity that would overtly impair military functions and readiness.

U.S. Navy and Marine Policy Favors Free Religious Expression

Secretary of the Navy Instruction 1730.8B (October 2, 2008) states: “Department of the Navy policy is to **accommodate the doctrinal or traditional observances of the religious faith** practiced by individual members . . .”

Again, the only restriction allowed is when religious activity to overtly impair necessary military functions.

U.S. Coast Guard Policy Favors Free Religious Expression

United States Coast Guard Commandant Instruction M1730.4B (August 30, 1994) states: “In keeping with the provisions of Coast Guard policy, unit commanding officers shall provide for the free exercise of religion for Coast Guard personnel, their dependents, and other authorized persons, and seek to accommodate the religious practices and observances of individual members when they will not have an adverse impact on military readiness, unit cohesion, health, safety or discipline.”

III. FEDERAL CASE LAW SUPPORTS FREE EXERCISE OF RELIGION IN THE MILITARY

Some may object that in our “enlightened” age, the courts are striking down such pro-religion policies as violating the First Amendment by breaching the so-called “separation between church and state.” However, much the opposite turns out to be the case. For example:

In 2010, a U.S. District Court upheld the right of a civilian employee at the Camp Lejeune, North Carolina Marine Corps base to put decals on his car that included some carrying an overtly religious message. Even though the decals offended some base personnel, the Court ruled that the base commander engaged in “viewpoint discrimination” by permitting non-religious decals but banning those with a religious message, and ruled in favor of the religious rights of the base employee.

In 1997, a U.S. District Court ruled that Roman Catholic military chaplains could encourage their military parishioners to contact legislators regarding proposed laws they deemed of utmost spiritual importance. The military sought to prohibit the chaplains from engaging in such activity, but the Court ruled for the chaplains.

In 1985, a U.S. Court of Appeals rejected the claim that a government-funded chaplaincy violates the First Amendment’s Establishment Clause. In fact, the Court ruled 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.”

Amid the bluster of those who take aim at religious freedom in the military, it’s easy to get the misimpression that such freedom doesn’t exist, is vanishing, or can’t be reclaimed. The bluster is wrong. As we’ve seen, we have every reason to confidently assert our constitutional religious rights as applied to the armed services. Religious liberty is a military necessity.

HOW MILITARY LAW PROTECTS FREEDOM OF RELIGIOUS EXPRESSION

An analysis of the regulations for each branch

By Michael Berry, Esq.

Summary: Despite the efforts of many in the current “politically correct” military, there is no escape from military codes on the books that strongly favor religious liberty. If the military follows its own regulations it should allow broad religious freedom for its members.

*“The fact is that current
military code supports broad
religious free exercise in the ranks”*

There are common misconceptions, even within the U.S. military, about military regulations regarding open free exercise of religion among its members. One misconception is that the “new military” minimizes religious rights as a matter of policy. That assumption is dead wrong.

Another misconception is that any recourse for those wishing broad religious liberty in the military must be found outside military policy—the U.S. Constitution, for example. But while the religious liberty of every American is indeed anchored in the founding documents of the nation and court precedent that flows from it, the fact is that **current** military code supports broad religious free exercise in the ranks!

To understand that U.S. military policy, in black and white, actually favors religious liberty—and to violate religious liberty is often to violate military policy itself, which is a transgression of federal law—one needs only to review current military policy. Below are salient codes of the United States Department of Defense, and of each branch of the U.S. military:

Department of Defense Policy Favors Open Religious Expression in the Military

Department Instruction 1300.17, Accommodation of Religious Practices Within the Military Services (2014) establishes the “policy, procedures, and responsibilities for the accommodation of religious practices in the Military Services.”

This important regulation states that the Department of Defense “places a high value on the rights of members of the Military Services to **observe the tenets of their respective religions.**”

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U.S. Coast Guard Policy Favors Free Religious Expression

United States Coast Guard Commandant Instruction M1730.4B (August 30, 1994) states: “In keeping with the provisions of Coast Guard policy, unit commanding officers **shall provide for the free exercise of religion** for Coast Guard personnel, their dependents, and other authorized persons, and seek to accommodate the religious practices and observances of individual members when they will not have an adverse impact on military readiness, unit cohesion, health, safety or discipline.”

Victims Should Stand Up and Commanders Must Respect the Law

To sum up, any service member, within these guidelines, should be able to confidently exercise freedom of religion. Service members need to be familiar with these codes, and commanders need to understand that they have an obligation to allow religious freedom per these regulations.

Unfortunately, this is not always the case. Gross violations are occurring. When they do, victims of such violations need to know that they have a legal defense, and attorneys ready to defend them and secure their rights free from punishment.

Michael Berry, Esq., a U.S. Marine, former JAG officer and visiting instructor in law at the U.S. Naval Academy, is Director of Military Affairs and Senior Counsel at First Liberty. He may be reached at mberry@firstliberty.org.

HOW FEDERAL COURTS PROTECT RELIGIOUS FREEDOM IN THE MILITARY

*Three recent major federal court
decisions guard your rights*

By Michael Berry, Esq

Summary: Contrary to popular misconception, federal courts have enforced the principle that member of the military don't surrender their religious rights due to the circumstances of their job. Three key court rulings are emblematic of this reality. Both service members and authorities need to take such judicial decisions into account and work to uphold constitutional free exercise of religion in the military.

*“It is good to see federal
courts ruling that the military itself
retains freedom of religion.”*

Members of the U.S. military do not shed their citizenship when they join, nor does the United States Constitution suddenly stop applying to them, including the First Amendment guarantee of “free exercise” of religion. Moreover, the federal laws warning against prohibiting free exercise of religion do not stop applying to military personnel.

Yes, there are different circumstances in the military which, as in any institution, inform the application of these broad federal guarantees, but the guarantees are still there and must be enforced in a substantial manner.

The U.S. Constitution, federal laws, and even military policy guarantee broad exercise of religious liberty in the U.S. military. And federal courts have agreed.

For example:

In 2010, a U.S. District Court upheld the right of a civilian employee at the Camp Lejeune, North Carolina Marine Corps base to put decals on his car that included some carrying an overtly

religious message. Even though the decals offended some base personnel, **the Court ruled that the base commander engaged in “viewpoint discrimination” by permitting non-religious decals but banning those with a religious message**, and ruled in favor of the religious rights of the base employee.

In 1997, a U.S. District Court ruled that Roman Catholic military chaplains could encourage their military parishioners to contact legislators regarding proposed laws they deemed of utmost spiritual importance. **The military sought to prohibit the chaplains from engaging in such activity, but the Court ruled for the chaplains.**

In 1985, a U.S. Court of Appeals rejected the claim that a government-funded chaplaincy violates the First Amendment’s Establishment Clause. In fact, the Court ruled 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.**

Other cases could be cited, but the moral of the story is two-fold:

1. Service members should be confident that they have religious rights. If someone tells a member of the military that they don’t have religious liberty in a certain circumstance, I would advise them not to accept that claim at face value. Religious freedom is precious—it’s one of the American values that service men and women are working, fighting, and often dying to protect. Service members should not meekly surrender those rights. Contact a lawyer who is an expert in military religious liberty.
2. Commanders should respect religious freedom and avoid facing federal judges. In the cases I’ve cited above, those in authority believed they had the ironclad authority to step on the rights of members of the military. They were wrong. And they eventually had to be told they were wrong by a federal judge after arduous legal proceedings. Authorities can avoid such needless

hours and sweat by simply doing the right and legal thing: respect the religious freedom of those under your authority, and consult with legal experts in military religious liberty if you have questions.

Though the military is a very distinct sector of American society, it is not a separate nation. It exists to serve the greater good of the nation of which it is part—the United States of America—and must uphold the principles of that nation, including free exercise of religion, within its own community. When military authorities have failed to do that and stepped beyond the boundary of honoring the very religious freedoms they are sworn to defend against foreign enemies, then federal courts have stepped in and corrected them.

At a time when religious freedom is under attack globally by the very enemies of the United States that the brave men and women of the armed forces are up against, it is good to see federal courts ruling that the military itself retains freedom of religion. But cases like those I've cited show how we must remain vigilant against misguided military personnel who would be instruments of intolerance that goes against the grain of our nation's laws.

Michael Berry, Esq., a U.S. Marine, former JAG officer and visiting instructor in law at the U.S. Naval Academy, is Director of Military Affairs and Senior Counsel at First Liberty. He may be reached at mberry@firstliberty.org.

MILITARY MEMBERS WHO PROTECTED THEIR RELIGIOUS RIGHTS

Senior Master Sergeant Phillip Monk, U.S. Air Force (Ret.)



Summary: When Air Force combat veteran Senior Master Sergeant Phillip Monk was unlawfully pressed by his commander to affirm something that violated his sincerely held religious beliefs, Monk declined to answer and was relieved of duty. He filed a complaint of religious discrimination. The Air Force threatened him with possible court-martial and dishonorable discharge—and the loss of his pension (Monk filed his complaint only months short of the critical 20-year mark in the Air Force). After engaging First Liberty, Monk ended up receiving all medals due him, and was honorably discharged with full pension benefits.

“My military career was threatened by religious discrimination. I am thankful for the outstanding legal representation from First Liberty. They protected me with legal expertise. I don’t know what I would have done without them, and I urge every American who values religious freedom to get behind First Liberty’s efforts to put a stop to attacks on religious freedom in the U.S. military and in our entire nation.”

~Senior Master Sergeant Phillip Monk
United States Air Force, Retired

Lt. Col. Chuck Pudil, U.S. Army



Summary: When Army Lieutenant Colonel Chuck Pudil was threatened with a career-ending reprimand and accused of military crimes for questioning an Army policy that violates his religious beliefs, First Liberty's response caused LTC Pudil's commander to overturn his reprimand. In fact, Pudil was invited to use his experience to teach his fellow military officers how to dissent against harmful military policies!

"When my career was on the line because of my faith, First Liberty gave me the wise legal guidance and counsel I needed. My reprimand was torn up, and the Army actually opened a door for me to help others in the military protect religious liberty while preserving a strong, unified fighting force. I am thankful for every supporter of First Liberty!"

~Lieutenant Colonel Chuck Pudil
United States Army

Chaplain (Capt.) Joseph Lawhorn, U.S. Army



Summary: U.S. Army Chaplain Joseph Lawhorn was issued a “Letter of Concern” after giving a suicide prevention class to U.S. Army Rangers that included his testimony of how his faith had helped him counter depression. After legal intervention by First Liberty and an outpouring of support from fellow soldiers and members of Congress, the Army avoided any confrontation, and Lawhorn has publically stated, without any pushback, that he intends to include his faith in similar ministry situations. Importantly, First Liberty also succeeded in getting the Letter of Concern removed from Chaplain Lawhorn’s permanent record.

**Contact First Liberty for
free legal guidance and help at:**

FirstLiberty.org/request-legal-help

**or toll-free 1-800-259-9109
(all communications are confidential)**

FIRST LIBERTY'S MILITARY AFFAIRS DIVISION

First Liberty is our nation's largest legal organization solely dedicated to protecting religious liberty for all Americans.

Our Military Affairs Division is directed by Mike Berry, Esq., a U.S. Marine, former JAG officer and visiting instructor in law at the U.S. Naval Academy. Mike is Director of Military Affairs and Senior Counsel at First Liberty.

First Liberty has defended numerous members of the military, and has provided the U.S. Congress with crucial and ongoing expert legal opinions on the effort to protect and restore religious rights of members of the U.S. military. We have successfully protected the rights of members of the military, and have coordinated legal representation for them with our affiliate firms at no charge. These firms—some of the most powerful, influential law firms in the world—volunteer their time, resources, and personnel to work with First Liberty because they understand what is at stake, and they know First Liberty is the preeminent expert in religious liberty.



“Military members have broad religious rights. These rights can be, and recently have been, successfully defended.”

~Michael Berry, Esq. Senior Counsel and Director of Military Legal Affairs, First Liberty, Former Judge Advocate General Officer, U.S. Marine Corps

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First Liberty is our nation's largest legal organization solely dedicated to protecting religious liberty for all Americans, offering pro bono legal assistance to defend Americans' religious freedom in four vital areas:

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For our churches

In our military

Throughout the public arena

(including government and the marketplace)

First Liberty has guided people of faith through thousands of vital legal matters. We have won cases at all court levels, including the United States Supreme Court, federal and state courts, and administrative courts and agencies. Victories are won through a **nucleus of top-ranked staff attorneys** who coordinate a **national network of top litigators from firms that include 24 of the largest 50 in the world.**

First Liberty is a non-profit legal firm and a tax-deductible organization supported by like-minded Americans. Because we leverage pro bono work from the highest-level attorneys in America, every dollar spent on legal costs can provide up to six times that much in legal impact. This strategy has resulted in more than a 90 percent win rate in securing religious liberty for our clients.

Visit FirstLiberty.org to learn more about First Liberty, to donate, or to learn how to report a potential violation of religious liberty.



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