

April 12, 2023

The Honorable Lloyd Austin
Secretary of Defense
1000 Defense Pentagon
Washington, D.C. 20301

Dr. Lester Martinez-Lopez
Assistant Secretary of Defense for Health Affairs
1200 Defense Pentagon, 3E1070
Washington, D.C. 20301

Re: Religious Discrimination Against Catholic Service Members

Dear Secretary Austin and Assistant Secretary Martinez-Lopez:

First Liberty Institute is the nation's largest legal organization dedicated exclusively to protecting religious liberty for all Americans. The Chaplain Alliance for Religious Liberty is an organization comprised of more than 30 ecclesiastical endorsing agencies; those agencies collectively endorse more than 2,500 chaplains and approximately 40% of the current armed forces chaplaincy. We write collectively to express our dismay at the Department of Defense's shameful decision to end its longstanding relationship with the Holy Name College Friary, and to instead dole out pastoral care services to a for-profit defense contractor who is incapable of fulfilling the Department's constitutional obligation to provide for service members' free exercise of religion.

The Department's decision is both legally and morally wrong.

The Department publicly proclaims that "spiritual fitness is critical to overall wellness."¹ In fact, the Department's *Religious Identification and Practices Survey* reveals that a substantial majority of service members claim that religion is either "important" or "very important" in their lives. The *Survey* also reveals that Catholics comprise the single largest religious demographic, accounting for more than 1 in 5 service members. It is hard to see how a for-profit defense contractor can provide Catholic service members with basic elements of their faith practices, like communion and confession, as only particular clergy may provide these sacraments. Thus, if the Department truly believes spiritual fitness is important, it must make sincere efforts to provide for the spiritual needs of its largest demographic instead of excluding them.

Excluding Catholics from the benefits of religious ministry is not only unsupported by the data, but also unconstitutional. As one federal court observed, the Constitution "*obligates* Congress, upon creating [a military], to make religion available to [service members] who have been moved by the [military] to areas of the world where religion of their own denomination is not available to them."² In other words, the Constitution requires the Department to provide every service member access to chaplains of their own denomination.

This principle is reflected in Joint Publication 1-05, Religious Affairs in Joint Operations:

¹ <https://www.health.mil/Military-Health-Topics/Total-Force-Fitness/Ideological-and-Spiritual-Fitness>

² *Katcoff v. Marsh*, 755 F.2d 223, 234 (2d Cir. 1985).

Uniformed chaplaincies are essential in fulfilling the U.S. Government's, and specifically the Department of Defense's, responsibilities to all members of the Armed Forces of the United States and authorized civilians.

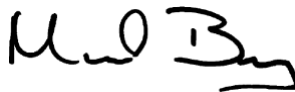
Denying service members access to Catholic priests also violates the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb *et seq.* RFRA codifies longstanding religious freedom principles enshrined in our Constitution. It forbids the federal government, including the Department, from substantially burdening a person's religious exercise absent a demonstrated compelling government interest that is achieved by the least restrictive means. In other words, RFRA creates a high hurdle for the government to clear when it seeks to censor or prohibit religious expression. Clearly, depriving service members access to Catholic priests is a substantial burden on their religious exercise that is unlikely to withstand strict scrutiny.

Finally, the government cannot provide for chaplains of other faith groups while excluding Catholics. This kind of preferential treatment and discrimination is abhorrent to the Constitution and violates the Establishment Clause. The Department of Defense must provide for chaplains in a manner that reflects the relative populations of the groups they serve within the military. Thus, if 1 in 5 service members identify as Catholic, we should expect to see a relatively commensurate proportion of Catholic chaplains.

We would never allow America's sons and daughters to march off to war without the physical means to accomplish their mission. Likewise, we cannot allow our service members to enter battle without the spiritual means to accomplish the mission. Indeed, as the *President's Committee on Religion and Welfare in the Armed Forces* reported to President Truman as America emerged victorious from World War II:

It follows, therefore, that if we expect our Armed Forces to be physically prepared, we must also expect them to be ideologically prepared. A program of adequate religious opportunities for service personnel provides an essential way for strengthening their fundamental beliefs in democracy and, therefore, strengthening their effectiveness as an instrument of our democratic form of government.

Our military faces many challenges on many fronts. As Americans, we are obligated to ensure that our service members are equipped to perform their noble mission. We urge you to take immediate and affirmative steps to remedy this situation. Thank you for your attention to this matter, and for valuing the principles of religious freedom upon which our nation was founded, and which our service members defend.



Michael Berry
Director of Military Affairs
First Liberty Institute



The Right Reverend Derek LS Jones
Executive Director
Chaplain Alliance for Religious Liberty