

‘Free-Thinking’ Atheists Don’t Want Prayers on Military Bases

Should a military chaplain be allowed to say a prayer during an event held on his or her base?

The question may sound absurd on its face, but it’s actually an issue being faced by an Air National Guard base commander after a complaint was filed last month by the Madison, Wisconsin-based Freedom From Religion Foundation. The “free-thinking” atheists issued the following statement at the time:

A concerned guardsman informed FFRF that ceremonies at the Pease Air National Guard Base regularly have chaplains delivering invocations. These include readings from the bible and references to a Christian god. Attendance at these ceremonies is mandatory for all guardsmen.

FFRF reminds the Air National Guard that such ceremonies are illegal under the Establishment Clause of the First Amendment.

“Federal courts have held that scheduling prayers or other religious exercises at mandatory meetings for government employees constitutes illegal government endorsement of religion,” FFRF Staff Attorney Sam Grover writes to the base’s legal department. “Prayers at military events similarly appear to reasonable observers to endorse religion over nonreligion. This is exactly the type of endorsement that is prohibited by the Constitution’s Establishment Clause and also creates a hostile work environment for minority religious and nonreligious guardsmen.”

Besides, FFRF emphasizes, these prayers are unnecessary and divisive. Calling upon soldiers, their families and guests

to pray is beyond the scope of a governmental entity such as the Air National Guard. It must refrain from lending its power and prestige to religion, since this amounts to a governmental endorsement that excludes the approximately one-fourth of military personnel who either express no religious preference or are atheists. (Not to mention that such official conduct is insensitive, too.)

“Air National Guard officials are being incredibly presumptuous in asking everyone to join in a Christian ceremony,” says FFRF Co-President Annie Laurie Gaylor. “Such forced recruitment at mandatory gatherings needs to cease.”

FFRF is asking the Air National Guard to protect the rights of conscience of every guardsman and end the practice of including prayers at official ceremonies and other base events.

FFRF frequently attacks public displays of faith, particularly those held in government facilities or involving government officials, and almost always due to “anonymous complaints.” In response to this latest attack, however, the Chaplain Alliance for Religious Liberty, an organization that speaks for nearly half of all chaplains in the military, asked First Liberty Institute to advise the air base’s command staff on the constitutionality of the practice.

First Liberty’s letter states:

On behalf of the Chaplain Alliance, I write to emphasize there is no legal requirement for you to give in to the FFRF’s demands. Their demands appear to be based on the flawed notion that military chaplains cannot offer invocations at ANG functions. The FFRF’s position and legal argument are incorrect. Federal law, military regulations and court precedents belie the FFRF’s specious claims. Uniformed chaplains are clearly permitted, indeed protected, when they offer invocations at military functions.

The Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb et seq., is a federal law that codifies longstanding religious freedom principles. RFRA forbids the federal government, including the Department of Defense (DoD), from substantially burdening a person's religious exercise absent a demonstrated compelling government interest that is achieved by the least restrictive means. This standard, known as "strict scrutiny," is a high hurdle for the government to clear when it seeks to censor or prohibit religious expression. Moreover, under Section 532 of the FY2014 National Defense Authorization Act, absent an adverse impact on military readiness, unit cohesion or good order and discipline, the DoD must accommodate individual expressions of religious belief, which undoubtedly include a military chaplain's invocation. Contrary to the FFRF's assertion, there is no exception when such individual expressions occur during military functions.

DoD Instruction (DoDI) , "Accommodation of Religious Practices Within the Military Services," promulgates Section 532 within the armed services. And by adopting RFRA's strict scrutiny standard within the military, DoDI arguably affords even greater protection than does Section 532. Air Force Instruction 52-1 reflects the legal principles set forth in DoDI . The Air Force also publishes a Book of Prayers for its chaplains. The Book of Prayers contains numerous sample prayers that can be used by Air Force chaplains. Notably, the Book of Prayers offers sample prayers for both religious and non-religious military occasions.

Unlike the FFRF, the Air Force's position is that invocations may be offered during nonreligious military functions. Case law also supports the right of military chaplains to offer invocations at military functions, and that such invocations do not constitute DoD establishment of religion. In *Rigdon v. Perry*, a federal court explained that when military chaplains are acting in a religious

capacity—such as when conducting a sermon or offering an invocation—they are not acting under color of military authority, and “it is wholly appropriate for them to advance their religious beliefs in that context.” Thus, when military chaplains engage in religious conduct, their conduct is protected under the First Amendment to the Constitution.

In conclusion, the Constitution, federal law and Department of Defense regulations all support your practice of permitting uniformed chaplains to offer invocations at command functions. Moreover, those legal authorities actually forbid military commanders from censoring or prohibiting such invocations.

Mike Berry, a former Marine Corps judge advocate and now senior counsel and director of military affairs for First Liberty Institute, is representing the CARL in this matter.

“Military chaplains exist to ensure all service members have the right to free exercise of their religion,” CARL Executive Director U.S. Army Chaplain Col. Ron Crews (ret.) said. “The prayers and Bible readings they offer at Pease Air National Guard Base are one of many ways they faithfully discharge that duty. Their faithful service should be respected, not attacked.” {eoas}