

CLEAR AND PRESENT FALSEHOODS:

The Real State of Religious Freedom in the Military

A report from Americans United for Separation of Church & State

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Introduction

Issues related to religious freedom in the military have become prominent lately. Religious Right groups and their political allies have accused the armed forces of being hostile to evangelical Christianity. Americans United for Separation of Church and State and other critics have retorted that these claims are overblown and have pointed out that the military, like the rest of American society, is marked by growing religious diversity.

Indeed, Americans United fully appreciates the need for and value of religious accommodations in the armed services. Yet, even as we support religious accommodations, we recognize the equally important and coextensive need to ensure that service members are not subject to coercive religious practices or unwanted proselytizing. Religious freedom means both the right to practice religion and the right to be free from government endorsement and coercion. The military must find a way to protect the rights of a variety of believers (as well as those who hold to no faith) while not lapsing into the promotion or sponsorship of religion.

Key to understanding issues surrounding religion in the military is recognizing that the military occupies a unique position in American society and presents special challenges. In the military, for example, men and women may be stationed far away from their homes (often in foreign countries) and don't have access to the houses of worship they may have attended. Thus, a system of military chaplains has been created to meet the religious needs of the men and women who serve in our nation's armed forces. At the same time, under the command structure of the military, instructors, officers, and upper class cadets have virtually absolute command authority over their students and subordinates, creating a unique potential for undue pressure on an individual to conform in order not to jeopardize his or her military career.

Americans United created this document in response to the Family Research Council (FRC) report entitled *A Clear and Present Danger: The Threat to Religious Liberty in the Military*.¹ The FRC published the report, which details instances of alleged violations of religious freedom in the military, in an effort to prove that these types of violations are a growing problem. Of course, every claim of a religious liberty violation in the armed forces must be

¹ *A Clear and Present Danger: The Threat to Religious Liberty in the Military*, FAMILY RESEARCH COUNCIL (Mar. 21, 2014), <http://downloads.frc.org/EF/EF14C52.pdf>.

taken seriously, but as it turns out, the examples listed in the FRC's report do not amount to actual violations of religious freedom.

Furthermore, the report, which covered the years 2004-14, listed just 61 examples. Even if all these allegations were true, that would amount to about six violations per year – a drop in the bucket when one considers that there are more than 1.3 million men and women on active duty.

This report by Americans United examines the FRC document in detail. We researched each alleged violation and discovered that the FRC often left out relevant details or failed to tell the whole story. Additionally, they based many of their claims on hearsay or allegations that were later called into question.

We found that the alleged “violations” identified by the FRC fall into four broad categories:

- *Overblown and Inaccurate Claims.* Many of FRC's claims lack context and accuracy, thus misstating or overstating any alleged violation of religious freedom. Other claims lack verification. Some have even been proven false by military investigations.
- *Attempts by the military to uphold the separation of church and state.* This category of claims includes incidents such as the military prohibiting officials, programs, and materials from making or containing messages of endorsement and proselytization. It also includes the military disinviting speakers from military events because the speakers had a history of disparaging faiths adhered to by many service members. These claims do not constitute a threat to religious freedom but rather the protection of religious freedom, respect for service members of all faiths, and adherence to the Constitution.
- *Examples of unclear policies that were quickly fixed.* On a few occasions, military officials have propagated unclear policies that resulted in confusion. In every case, these were quickly revised. The September of 2011 incident at Walter Reed Medical Center (discussed in detail in this report) is a prime example. A minor problem was resolved years ago, but Religious Right groups continue to cite it as an example of “persecution.”
- *Prominent individuals saying critical things about military policy.* The FRC report lists several examples of criticism of the military leveled by Mikey Weinstein of the Military Religious Freedom Foundation and others. Some people have indeed been vocal and pointed critics of many of the military's policies and actions when it comes to religious liberty. However, the decision by these critics to speak out hardly violates anyone's religious freedom. Most of these claims focus less on demonstrating the legitimacy of any religious freedom violations in the military and more on trying to paint a narrative that some individuals' interactions with military officials and personnel are a threat to religious freedom.

Although the FRC report didn't contain any serious violations of religious liberty, it still had an impact: it has been used as support in the effort to weaken religious liberty protections in the military. By telling these stories over and over (and failing to mention that many have been judged to be baseless or have been resolved), groups like the FRC create the false impression in the public mind that there are deep-seated problems with the rights of evangelicals in the military.

The FRC report and its accompanying rhetoric also distract from real problems of religious liberty in the military: those who suffer religious liberty violations are usually service members who adhere to minority faiths, are non-theists, or have no religious affiliation. This provides a great disservice to the men and women serving in uniform.

Despite its reputation for hide-bound conservatism, the military has often led the way on social issues. The armed forces became integrated before civilian society. The military accepted greatly expanded roles for women, and, most recently, integrated openly gay service personnel into its ranks with little fuss. The military can lead the way again on religious freedom issues. This can only happen, however, if military leaders are allowed to do their jobs and enforce the policies already in place that govern religion in the military, rather than constantly being forced to respond to unfounded claims from the Right.

Analyzing the Claims

This document will respond to each claim of FRC's claims individually. It will first list their claim, followed by our analysis of that claim. The text of each claim is taken directly from FRC's report and written as it appears in *A Clear and Present Danger*.

Claim 1: Casey Weinstein – 2004. *United States Air Force (USAF) Academy grad (1977) and attorney, Michael "Mikey" Weinstein's son, Casey, was a USAF Academy cadet at this time. Casey complained that flyers that were placed on all cadets' breakfast plates advertising Mel Gibson's The Passion of the Christ. Distribution of the flyers stopped after that. (In 2005, Mikey Weinstein founded the Military Religious Freedom Foundation [MRFF], headquartered in Albuquerque, NM).*

Facts: This incident did occur, but it cannot plausibly be considered a violation of an evangelical Christian's religious freedom. If anything, it is an example of a violation of the rights of non-Christians. A 2005 in-depth study conducted by a 16-member task force convened to investigate the religious climate of the Air Force corroborated Casey Weinstein's complaint.² The task force confirmed that more than 4,000 flyers were placed on breakfast

² Josh White, *Intolerance Found at Air Force Academy*, WASH. POST (June 23, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/22/AR2005062200598.html>.

plates to advertise a showing of the movie *The Passion of the Christ*.³ According to the report, “Cadets felt they were being proselytized and pressured to see the movie,” and “Jewish cadets told the team they encountered anti-Semitic comments that they believe ‘The Passion of The Christ’ flyer event inspired.”⁴

The task force also confirmed that there was a “perception of religious bias” at the Air Force Academy and “evidence that officers and other faculty members periodically used their positions to promote their Christian beliefs and failed to accommodate the religious needs of non-Christian cadets.”⁵

Claim 2: Weinstein emerges as a major critic of the USAF Academy – February 19, 2005. *Mikey Weinstein emerged as a critic of the Air Force Academy and appeared on Good Morning America. Weinstein warned: “What you’ve got is a lusty and thriving religious intolerance that is objectively manifesting itself in prejudice and discrimination and is obliterating the First Amendment, civil rights and the US Constitution.” According to Weinstein one group in particular posed a risk at the Academy: “There are senior people that view evangelical Christianity at the Air Force Academy the way that you and I would view gravity. Pick up a pen and drop it and it falls on the desk. Well, it just exists, it’s gravity.”*

Claim 3: Air Force Superintendent General John Rosa responds - February 19, 2005. *After apologetically telling the Good Morning America audience that misdeeds had taken place at the Academy, the Superintendent, General John Rosa, presciently warned of an overreaction that could threaten religious liberty.*

Facts (Claims 2 & 3): Mikey Weinstein did appear on *Good Morning America* to discuss the harassment his younger son, Curtis, was experiencing as a Jew at the Air Force Academy.⁶ His public criticisms in no way violated anyone’s religious freedom. Ironically, if anyone’s rights were violated, it was Curtis and other members of minority religious groups who are the aggrieved parties. They maintained that they had been subject to name-calling and discrimination because of their faith while at the Academy.⁷ Mr. Weinstein filed a complaint against the Air Force Academy claiming, among other things, that the non-Christian cadets at

³ *The Report of the Headquarters Review Group Concerning the Religious Climate at the U.S. Air Force Academy*, U.S. AIR FORCE 8 (June 22, 2005) available at

http://www.foxnews.com/projects/pdf/HQ_Review_Group_Report.pdf [hereinafter *Religious Taskforce Report*].

⁴ *Id.*

⁵ Laurie Goodstein, *Air Force Staff Found Promoting Religion*, N.Y. TIMES (June 23, 2005),

http://www.nytimes.com/2005/06/23/politics/23academy.html?pagewanted=all&_r=0.

⁶ ABC News Transcripts, *Air Force Academy Under Fire: Religious Intolerance*, GOOD MORNING AMERICA (Feb. 19, 2005).

⁷ Dan Harris, *Religious Intolerance Alleged at Military Academy*, ABC NEWS (Feb. 19, 2005),

<http://abcnews.go.com/US/US/story?id=1028372&page=1&singlePage=true>.

the Academy were subject to Christian prayers at mandatory events, were called “heathens” when they did not attend chapel, and were coerced to attend events, such as the screening of *The Passion of the Christ*.⁸

Lt. Gen. Rosa said: “Quite frankly, some of the incidents that we looked at and heard about over the last four or five years were vicious And that's totally unacceptable. It's not part of our profession of arms.” Rosa did not warn about any impending threat to religious liberty, but clarified that the actions taken to protect minority cadets were not intended to censor any religion: “That's the last thing we're trying to do. That's what we're defending. That's why we wear this uniform, so you can believe.”⁹

Claim 4: Weinstein complains about USAF Academy course on religious sensitivity – May 2005. *In response to critiques from Weinstein and others, the Air Force created a task force to review the religious climate at the Academy. The Air Force sent a warning about “religious respect” to all installations worldwide, and the Academy started a course, “Respecting the Spiritual Values of All People” (RSVP) that, as described by the Washington Post, made a good-faith effort to correct problems at the school. Weinstein called this effort “putting lipstick on a pig” and blamed the religious climate on “a leadership that encourages the evangelicals and tolerates bias.”*

Claim 5: USAF Academy Task Force reviews Academy’s religious policies – June 22, 2005. *The Task Force found no widespread religious discrimination at the Air Force Academy. However, some cadets and staff were deemed insensitive to various religious beliefs. Weinstein responded by saying the Academy’s religious climate is “Inquisition 2.0,” and charged that evangelical Christians have “weaponized the gospel of Jesus Christ.”*

Facts (Claims 4 & 5): The 2005 Air Force task force¹⁰ issued a report, in which it found that a perception of religious intolerance at the Academy persisted and that although the RSVP program was a good step forward, it would not be “adequate, by itself, to address the issue of religious respect for the entire USAFA community.”¹¹ The task force determined that there was a “religious climate that does not involve overt religious discrimination, but a failure to fully accommodate all members’ needs” and a “lack of operational instructions that commanders and supervisors can use as they make decisions regarding appropriate exercise of religion in the workplace.”¹² It also found that schedules were not made to accommodate

⁸ *Id.*

⁹ *Id.*

¹⁰ *Supra* text accompanying claim 1.

¹¹ *Religious Taskforce Report* at 35.

¹² *Id.* at i and iii.

minority religions and that methods of reporting complaints were available but not integrated to the point where cadets adequately knew how to use them.¹³

The report recommended several policy guidelines for the U.S. Air Force, including: developing guidance on religious expression for commanders; reemphasizing the policy for endorsing events; increasing oversight of affiliated and unofficial Air Force Academy groups; addressing the policy for religious accommodation requests; introducing cultural awareness education requirements; creating a plan to promote respect for diversity of beliefs; creating a position for both staff and cadets to lodge concerns; continuing to enforce internal controls for corrective action; and providing opportunities for cadets and staff to have discussions and debates with peers.¹⁴

The claims related to Mikey Weinstein's statements about the culture of the Air Force Academy, are generally true. We could not find evidence that he called the climate "Inquisition 2.0," but, his quote about the RSVP program, though incomplete, is accurate.¹⁵ Additionally, during a press tour for his book, Mr. Weinstein did refer to an extreme branch of Christianity as having "weaponized the gospel of Jesus Christ" for what he believed was the group's attempts to subordinate the U.S. Constitution to religious doctrine.¹⁶ Some may believe that Weinstein's language choices were audacious, but as explained in the above paragraph, the Air Force itself agreed that the RSVP program alone would not solve the problems it was then facing.

Claim 6: Weinstein sues the Air Force – October 2005. *Weinstein sues the USAF alleging "severe, systemic and pervasive" religious discrimination in that service. In particular he objected to a statement by Brig. Gen. Cecil R. Richardson, the Air Force's deputy chief of chaplains, in the July 12th New York Times saying, "We will not proselytize, but we reserve the right to evangelize the unchurched."*

Claim 7: Weinstein dismissed – October 26, 2006. *Weinstein's suit is dismissed by U.S. Judge James A. Parker in Albuquerque, New Mexico, because "it contained only vague allegations that the academy is biased in favor of evangelical Christians and improperly allowed evangelizing. Parker also ruled the group of graduates making the allegations lacked legal standing to bring the claims."*

Facts (Claims 6 & 7): The lawsuit was prompted by a document the National Conference on Ministry to the Armed Forces (NCMAF) issued to chaplains in training at Maxwell Air Force

¹³ *Id.* at 37.

¹⁴ *Id.* at 38-39.

¹⁵ David Kelly, Non-Christian Air Force Cadets Cite Harassment, L.A. Times (Apr. 20, 2005), <http://articles.latimes.com/2005/apr/20/nation/na-academy20>.

¹⁶ Book Discussion on *With God on Our Side* (C-SPAN.org) <http://www.c-span.org/video/?200006-1/book-discussion-god-side&start=2672>.

Base. A specific quotation from the document read: “I will not actively proselytize from other religious bodies. However, I retain the right to instruct and/or evangelize those who are not affiliated.”¹⁷ After the filing of the lawsuit, Air Force General Counsel, Mary Walker, disclosed “the section of the code about evangelizing the unaffiliated . . . had been withdrawn,” and that it was not official Air Force policy to allow chaplains to proselytize.¹⁸ Brig. Gen. Cecil R. Richardson reiterated the statement in a *New York Times* interview, saying: “We will not proselytize, but we reserve the right to evangelize the unchurched” and was cited in the lawsuit as an indication that it was official policy.¹⁹

Eventually, U.S. District Judge James A. Parker dismissed the lawsuit for failure to clearly state “specific incidents demonstrating support for the proposition that there is an unwritten policy of many evangelical chaplains to continue proselytizing and evangelizing...members of the Air Force.”²⁰ The lawsuit could be argued to have been a success nonetheless, as it led to the disclosure and repeal of the Air Force code that permitted evangelism.

Claim 8: Christian Embassy targeted by anti-Christian group December – 2006. *Weinstein asked for—and received—a Department of Defense (DOD) Inspector General investigation of seven officers who appeared in a video for Christian Embassy ministry. The Inspector General (IG) concluded in August 2007 that the video was inappropriate, but Weinstein was not satisfied. After seeing the IG’s report, Weinstein told Belief.net that even though the Air Force suggested corrective actions MRFF “wanted to see courts martial.” In its press release MRFF also stated, “MRFF intends to file expeditiously a comprehensive Federal lawsuit that will rapaciously pursue legal remedies to the multitude of horrific Constitutional violations this DOD/IG report reveals.”*

Facts: In 2005, four generals and three other military officers appeared in their offices, dressed in uniform, in a 10-minute promotional video for the “Christian Embassy,” “a group that evangelizes among military leaders, politicians and diplomats in Washington.”²¹ The Department of Defense Inspector General, in a 47-page report, concluded that these military officers “inappropriately offer[ed] support for the religious organization while appearing to

¹⁷ Goodstein, *supra* note 8.

¹⁸ *Id.*

¹⁹ Laurie Goodstein, *Evangelicals Are a Growing Force in the Military*, N.Y. TIMES (July 12, 2005), http://www.nytimes.com/2005/07/12/national/12chaplains.html?pagewanted=all&_r=0.

²⁰ *Weinstein v United States Air Force Academy*, 468 F. Supp. 2d 1366, 1371 (D.N.M. 2006) (internal quotation mark omitted).

²¹ Josh White, *Officers’ Roles in Christian Video Are Called Ethics Breach*, WASH. POST (Aug. 4, 2007)<http://www.washingtonpost.com/wp-dyn/content/article/2007/08/03/AR2007080301907.html>

operate within the scope of their official government duties.”²² No lawsuit was ever filed, nor did any court martial take place.

Again, some may dislike the language chosen by Mr. Weinstein to discuss these issues, but the Air Force investigation did confirm that a violation had taken place. Disagreements about how the Air Force should have addressed the violations do not abate the severity of the violation.

Claim 9: Anti-Christian leader finds an ally in the USAF: Chief of Staff – February 2009. *Early in President Obama’s first term, in a major turning point for Weinstein’s relationship with military leaders, he met with Air Force Chief of Staff Norton A. Schwartz. Weinstein said that Schwartz “acknowledged that there [was] a problem” regarding religious freedom in the military.*

Claim 10: Anti-Christian group praises USAF leadership – December 2009. *In a sharp turnaround from the previous four years, by the end of 2009 Weinstein was praising Air Force leadership. The Academy Superintendent complimented Weinstein as well.*

Facts (9 & 10): These claims are factually true,²³ but they do not support the implication that these interactions and statements are detrimental to religious freedom. The larger message of these two claims is that it is somehow inappropriate for military leaders and Mr. Weinstein to find any grounds for agreement or speak to each other about these issues in a respectful way. That military leaders met with a critic is not a “threat” to religious freedom. One would expect that our military and officials would engage in conversations with people with differing perspectives on a spectrum of issues facing the military.

Claim 11: Calling Commissioner Gordon – February 2010. *As a measure of how cozy the relationship between Weinstein and the Air Force Academy Superintendent, Lt. Gen. Mike Gould, had become, Weinstein and Gould devised a secret code word to ensure that Weinstein could have instant access to Gould. “We have our own bat-signal,” Weinstein boasted.*

Facts: Weinstein’s and Gould’s working relationship did improve following the positive developments regarding the protection of religious freedom at the Academy.²⁴ After working

²² *Id.*

²³ Eric Lichtblau, *Questions Raised Anew About Religion in Military*, N.Y. TIMES (Feb. 28, 2009), http://www.nytimes.com/2009/03/01/washington/01church.html?pagewanted=all&_r=0; Dan Elliott, *Air Force Academy Says Religious Climate Improving*, ASSOC. PRESS, Dec. 16, 2009, http://www.denverpost.com/ci_14009436 (Weinstein credited Air Force Lt. Gen. Michael Gould “for a turnaround of the academy” and Gould said of Weinstein, “I think there are some real benefits to the message he has out.”).

²⁴ Lance Benzel, *Secret Code Will Alert AFA Leader of Religious Intolerance*, GAZETTE (Feb. 19, 2010), <http://gazette.com/article/94451>.

with Gould to handle an alleged hate crime whereby a cross had been placed inside the Wiccan circle used by Wiccan cadets, Weinstein claimed that the two had devised a “code word” to facilitate communications, which was similar to a “bat signal.”²⁵ Lt. Gen. Gould has neither confirmed nor denied this claim.

Claim 12: *Conservative religious leader disinvented to Air Force Base – February 25, 2010.* *Family Research Council President Tony Perkins, a Marine Veteran and ordained minister was disinvented to address the National Prayer Luncheon at Andrews Air Force Base outside Washington, D.C. after he spoke publicly in opposition to the Obama Administration’s effort to repeal the ban on open homosexuality in the military. The invitation was revoked even though Mr. Perkins had made clear he had planned to give a devotional, non-political message.*

Facts: The Chaplain’s office at Andrews Air Force Base did rescind its speaking invitation to Mr. Perkins following a statement he made on the Family Research Council website. His “statement in response to President Obama’s first State of the Union Address” read in part:

At a time of enormous economic challenge, two on-going wars in which Americans are fighting and increased terrorist threats to Americans at home, President Obama seems untethered from that reality as he called on Congress to force the military to allow open homosexuality. As a veteran of the Marine Corps, the timing of the President’s call in the midst of two wars shows that he is willing to jeopardize our nation’s security to advance the agenda of the radical homosexual lobby.

The military is a warrior culture for a reason: Our service members wear the uniform to fight and win wars, not serve as liberal social policy guinea pigs. The sexual environment the President is seeking to impose upon the young men and women who serve this country is the antithesis of the successful warfighting culture and as such should be rejected.²⁶

Subsequent correspondence from the chaplain’s office made it clear that the concern was not over the disagreement with the initiatives proposed by President Obama, but with the criticism of the president himself.²⁷ The Chaplain’s office explained that military members “are forbidden to make or support statements that run counter to our roles as members of

²⁵ Dan Elliot, *AF Academy Critic Satisfied with Investigation*, DENVER POST (Feb. 19, 2010), http://www.denverpost.com/breakingnews/cj_14433786.

²⁶ JP Duffy, *FRC Pledges to Oppose President’s Proposals to Sexualize the Military, Socialize Child Care and Penalize Married Couples*, FAMILY RESEARCH COUNCIL, <http://www.frcblog.com/2010/01/frc-pledges-to-oppose-presidents-proposals-to-sexualize-the-military-socialize-child-care-and-penalize-married-couples/>.

²⁷ E-mail from Chaplain’s Office (Jan. 29, 2010) (on file with Judicial Watch), *available at* <http://www.judicialwatch.org/files/documents/2010/usaf-tonyperkins-docs-10222010.pdf>.

the Armed Services.”²⁸ Perkins was still able to attend the luncheon, but was not extended the privilege of speaking.

Claim 13: International ministry leader disinvented to Pentagon – May 6, 2010.

Franklin Graham, son of Billy Graham, and President of the international relief ministry, Samaritan’s Purse, was disinvented to the Pentagon’s National Day of Prayer service by the Army because of his comments about Islam. His invitation was revoked because Graham referred to Islam as an evil religion and “horrid” for its treatment of women. Graham expressed regret for the decision, but maintained his strong support for the military.

Facts: The National Day of Prayer Task Force, a private group in Colorado²⁹—not the Pentagon’s chaplain office—had invited Graham to speak.³⁰ After learning about the invitation, Army spokesman Col. Tom Collins expressed concern about Graham's involvement: “The bottom line here is that his presence would be inappropriate. His past statements are not consistent with the multi-faith emphasis and inclusiveness of this event.”³¹

Franklin Graham had repeatedly criticized Islam, and not solely for his views on its treatment of women. Following the September 11, 2001, attacks, Franklin Graham appeared on NBC Nightly News and “denounced Islam as ‘a very evil and wicked religion.’”³² Although this statement was made several years before the 2010 National Day of Prayer invitation, more recent statements from Graham made clear that he had not swayed from this view. In 2009, he appeared on CNN calling Islam “too violent to be practiced in the United States.”³³ Again in 2010, he said in an interview: “I love the people of Islam -- but their religion -- I do not agree with their religion at all. And if you look at what the religion does just to women, and women alone, it is just horrid. And, so yes, I speak out for women. I speak out for people that live under Islam, that are enslaved by Islam, and I want them to know that they can be free -- free through faith in Jesus Christ and Christ alone.”³⁴ (Graham has also made a number of harsh comments against LGBT Americans.)

The military determined that Graham’s inflammatory rhetoric was counterproductive to the message of interfaith cooperation that the armed forces seek to project.

²⁸ *Id.*

²⁹ FAQ, NATIONAL DAY OF PRAYER TASK FORCE, nationaldayofprayer.org/faq (last visited Nov. 24, 2014).

³⁰ Phil Stewart, *Pentagon Disinvites Evangelist Who Scorns Islam*, REUTERS (Apr. 22, 2010), <http://www.reuters.com/article/2010/04/22/us-pentagon-muslims-idUSTRE63L6IU20100422>.

³¹ *Id.*

³² *Franklin Graham conducts services at Pentagon*, CNN (Apr. 18, 2003), <http://www.cnn.com/2003/ALLPOLITICS/04/18/graham.pentagon/> (Graham was allowed to conduct prayer services in 2003, even despite controversy over previous anti-Muslim comments).

³³ Stewart, *supra* note 32.

³⁴ *Fox Hosts Franklin Graham Who Attempts to Convert Muslims Away from Evil Islam So They Don’t Have to Die in a Car Bomb*, MEDIA MATTERS, (April 22, 2010), <http://mediamatters.org/video/2010/04/22/fox-hosts-franklin-graham-who-attempts-to-conve/163629>.

Claim 14: Christian prayer is banned at military funerals – July 26, 2011. After going undercover, U.S. Rep. John Culberson (R-TX) confirmed that the Houston National Cemetery was preventing Christian prayers from being said at military funerals. According to Todd Starnes' report, "[Culberson] witnessed volunteer members of the honor guard from the Veterans of Foreign Wars being prohibited from using any references to God." In October 2011, the Veterans Administration (VA) settled a lawsuit filed by the Liberty Institute regarding religious freedom and free speech at the cemetery. The VA agreed to numerous terms that helped to restore prior policies there and paid \$215,000 in legal fees.

Facts: A group of veterans, together with the American Legion and the National Memorial Ladies, filed a lawsuit against the Department of Veterans Affairs to stop enforcement of a policy that prohibits volunteer honor guards from reciting prayers at funeral services *unless* the families of the deceased specifically ask for prayers and religious references.³⁵ The policy was put into place under President George W. Bush, as a response to complaints from families that religious words and symbols were being inserted into funeral ceremonies without the families' approval.³⁶ Veterans Administration (VA) spokesperson Josh Young explained that "the idea that invoking the name of God or Jesus is banned at VA national cemeteries is blatantly false The truth is VA's policy protects veterans' families' rights to pray however they choose at our national cemeteries."³⁷ Arleen Ocasio, Director of the Houston National Cemetery, said that the focus of the policy was to ensure that untrained volunteers did not use the occasion to insert their own religious beliefs onto mourners rather than respect the religious views of the family.³⁸

Under the terms of the consent decree,³⁹ the VA would no longer officially sponsor the honor guard volunteers; instead they would serve solely as private actors. In turn, the VA would not censor or ban prayers or the use of religious language at services, which was already VA policy.⁴⁰ The VA also agreed to pay the plaintiffs' attorneys fees. The consent decree will remain in effect for 15 years.⁴¹

³⁵ James Dao, *Final Resting Place, and Battleground*, N.Y. TIMES (Aug. 30, 2011)

<http://www.nytimes.com/2011/08/31/us/31funerals.html?pagewanted=all>.

³⁶ *Id.*

³⁷ Todd Starnes, *Texas Lawmaker Calls for Congressional Probe Into Ban of Christian Prayers at Military Funerals*, FOX NEWS (July 26, 2011), <http://www.foxnews.com/politics/2011/07/26/texas-lawmaker-calls-for-congressional-probe-into-ban-christian-prayers-at/>.

³⁸ Lindsay Wise, *VA Defense Houston National Cemetery Staff*, HOUSTON CHRONICLE (July 18, 2012), <http://www.chron.com/news/houston-texas/article/VA-defends-Houston-National-Cemetery-staff-2079035.php>.

³⁹ Consent Decree, *Rainey v. U.S. Dep't Veterans Affairs*, No. 4:11-cv-01992 (S.D. Tex. Oct. 19, 2011), *available at* <https://www.libertyinstitute.org/document.doc?id=29>.

⁴⁰ *Id.*

⁴¹ Assoc. Press, *Veterans Group, VA Settles Religious Discrimination Suit*, FIRST AMEND. CTR. (Sept. 23, 2011), <http://www.firstamendmentcenter.org/veterans-groups-va-settle-religious-discrimination-suit>.

Claim 15: Air Force pulls ethics course from curriculum at air base – July 27, 2011. For 20 years, an ethics training course for nuclear missile officers was conducted by a chaplain at Vandenberg Air Force Base, Calif. It included texts from the Bible and materials related to just war theory by Saint Augustine. This course was pulled for “thorough review” by the Air Force primarily due to its use of Christian reading materials.

Facts: The Air Force did properly pull a presentation, nicknamed “Jesus Loves Nukes” by both cadets and officers, for its overt religious character.⁴² The presentation, which was mandatory for all training missile officers,⁴³ contained multiple slides that expressed explicitly religious content. For example, six slides addressed “Christian War Theory,” and provided numerous “Old Testament,” “Inter-testamental,” and “New Testament” sources for the theory.⁴⁴ An additional three slides contained sources for religious counseling and services for Jews, Christians, and Muslims.⁴⁵

Claim 16: Air Force Chief of Staff chills religious speech in service-wide memo – September 1, 2011. Chief of Staff Gen. Norton Schwartz issued a service-wide memo entitled, “Maintaining Government Neutrality Regarding Religion.” Schwartz wrote: “Leaders at all levels must balance Constitutional protections for an individual’s free exercise of religion or other personal beliefs and its prohibition against governmental establishment of religion.” For example, they must avoid the actual or apparent use of their position to promote their personal religious beliefs to their subordinates. “Commanders ... who engage in such behavior may cause members to doubt their impartiality and objectivity. The potential result is a degradation of the unit’s morale, good order and discipline.” In the 9/1/11 memo, Schwartz also warned commanders against open support of chaplain-run events stating that they “must refrain from appearing to officially endorse religion generally or any particular religion.” He adds, “Therefore, I expect chaplains, not commanders, to notify Airmen of Chaplain Corps programs.” Finally, Schwartz advises anyone who has concerns “involving the preservation of government neutrality regarding religious beliefs” to contact a military attorney.

Facts: Chief of Staff General Norton Schwartz did release a memo with the subject “Maintaining Government Neutrality Regarding Religion.”⁴⁶ He issued it shortly after the

⁴² Markeshia Ricks, *Air Force Reviewing All Ethics Training*, AIR FORCE TIMES (Aug. 14, 2011), <http://www.airforcetimes.com/article/20110814/NEWS/108140321/Air-Force-reviewing-all-ethics-training>.

⁴³ *Id.*

⁴⁴ Chaplain, Captain Shin Soh, *Nuclear Ethics* (power point presentation) (on file with Judicial Watch), available at http://www.truth-out.org/files/nuclear_ethics.pdf (last visited Nov. 17, 2014).

⁴⁵ *Id.*

⁴⁶ Memorandum from U.S. Air Force General Norton Schwartz for ALMAJCOM-FOA-DRU/CC on Maintaining Government Neutrality Regarding Religion (Sept. 1, 2011), available at

slides for the “Jesus Loves Nukes” presentation were released. His statements were proper, and applauded by many supporters of religious freedom.⁴⁷

Claim 17: Walter Reed Medical Center bans Bibles and religious material – September 14, 2011. *Walter Reed National Military Medical Center, the leading medical institution for the U.S. armed forces, issued an official patient and visitor policy banning Bibles. It stated, “No religious items (i.e. Bibles, reading material, and/or artifacts) are allowed to be given away or used during a visit.” In December 2011, the policy was rescinded after a political firestorm erupted in the House of Representatives.*

Facts: Section 8(f) of a memo released by Col. C.W. Callahan, Chief of Staff of Walter Reed Medical Center, did state that “no religious items (i.e. Bibles, reading material, and/or artifacts) are allowed to be given away or used during a visit.”⁴⁸ As explained by the *Army Times*, “patients often are visited by volunteers from benevolent organizations as well as strangers, ranging from celebrities, politicians and well-meaning VIPs, and the guidelines were developed to respect patients’ own beliefs.”⁴⁹ The policy was put in place after “patients and families reported that these groups were proselytizing and making disparaging remarks about [service members’] service, sometimes using threatening and condemning language. According to the patients some visits were persistent and repeated.”⁵⁰

The Department of Defense quickly rescinded the policy, recognizing that the policy, as applied to *all* visitors including friends and family, was overly broad. According to Factcheck.org, “it was a short-lived policy memo, never enforced, and quickly corrected.”⁵¹

Walter Reed issued an apology for the confusion over the policy and posted a statement on its website:

The September 14, 2011 visitation policy has been rescinded and a new policy was released on January 24, 2012. We apologize for any confusion. Please

http://msnbcmedia.msn.com/i/MSNBC/Sections/NEWS/z_Personal/Huus/gen_schwartz_letter_religion_neutrality%5B1%5D.pdf.

⁴⁷ See e.g., Letter from the Anti-Defamation League to Air Force Chief of Staff Schwartz Regarding Memorandum on Government Neutrality Towards Religion (Sept. 23, 2011), *available at* http://archive.adl.org/civil_rights/letter-to-air-force-chief-of-staff-schwartz.html (letter “to applaud” the memorandum).

⁴⁸ Memorandum from C.W. Callahan, Chief of Staff of Walter Reed National Military Medical Center re: Wounded, Ill, and Injured Partners in Care Guidelines (Sept. 14, 2011) *available at* <http://downloads.frc.org/EF/EF11L05.pdf>.

⁴⁹ *Gohmert Piles Distortion Upon Distortion*, FactCheck.org, <http://www.factcheck.org/2013/07/gohmert-piles-distortion-upon-distortion/>.

⁵⁰ *Id.*

⁵¹ *Id.*

know that at admission, all patients are asked for their religious preference and a chaplain associated with their preference visits them regularly to provide spiritual services. In addition, their families may also bring religious material and WRNMMC does not refuse any religious group entrance.⁵²

Claim 18: Air Force Academy apologizes for its promotion of Christmas charity – November 3, 2011. *Air Force Academy Commandant of Cadets, Brig. Gen. Richard Clark, called Mikey Weinstein to apologize for a Cadet Wing email that promoted Operation Christmas Child (OCC), a charity that sends toys and toiletries to millions of needy children around the world at Christmas. OCC is affiliated with Rev. Franklin Graham's, Samaritan [sic] Purse. Clark released a statement explaining the Academy's retraction of its support stating that "[u]nder orders from Air Force headquarters ... only the Chaplain Corps is responsible for advertising faith-based programs." (This incident followed the Schwartz memo by two months, see above.)*

Facts: Operation Christmas Child is a Christian charity run by Samaritan's Purse, a group run by controversial evangelist Franklin Graham whose stated mission "is to demonstrate God's love in a tangible way to needy children around the world, and together with the local church worldwide, to share the Good News of Jesus Christ."⁵³ Each gift sent to a child is accompanied with a Christian message.⁵⁴

The problem arose when leadership in the Cadet Wing permitted a cadet to email a request to all cadets urging them to support the charity. The message read: "PLEASE, PLEASE CONSIDER SPENDING SOME OF YOUR VALUABLE TIME AND MONEY TO LOVE ON A KID AROUND THE WORLD!"⁵⁵ After initially standing by its decision to support the charity, the Academy issued an apology, calling the email promotion "inappropriate" and turning over the project to the chaplain's office, as the Cadet Chaplain Corps is exclusively responsible for promoting faith-based programs per Air Force guidelines.⁵⁶ Brig. Gen. Richard Clark clarified that cadets were still able to voluntarily support the charity through the chaplain's office.⁵⁷

Claim 19: Anti-Christian group threatens suit over nativity and menorah on Travis Air Force Base – December 18, 2011. *The MRFF threatened to sue Travis*

⁵² *Patient Ministry*, WALTER REED NATIONAL MILITARY MEDICAL CENTER, <http://www.wrnmmc.caped.mil/PatientVisitors/SitePages/PastoralCare.aspx> (last visited Nov. 17, 2014).

⁵³ *Frequently Asked Questions*, SAMARITAN'S PURSE, <http://www.samaritanspurse.org/operation-christmas-child/frequently-asked-questions/> (last visited Nov. 17, 2014).

⁵⁴ Tom Roeder, *UPDATE: AFA Backs Away from Toy Drive that Sparked Flap*, COLORADO SPRINGS GAZETTE (Nov. 3, 2011), <http://gazette.com/update-afa-backs-away-from-toy-drive-that-sparked-flap/article/127840>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Academy Responds to Cadet Community Project -- Community Project Will Continue, Led by Academy Chaplains*, U.S. AIR FORCE ACADEMY (Nov. 4, 2011), <http://www.usafa.af.mil/news/story.asp?id=123278819>.

Air Force Base (Solano County, California) for including a nativity scene and menorah in their holiday display. The MRFF claimed the display violated the Establishment Clause of the First Amendment. The Air Force Base refused to remove the display, finding it did not violate the Constitution.

Facts: Travis Air Force Base placed a holiday display containing a nativity scene and a menorah on a major thoroughfare on the base.⁵⁸ Days after receiving a complaint from MMRF about the display’s setting, the Air Force released a statement that “the Office of the Air Force Judge Advocate General, upon review, concluded the inclusion of a Wing Chaplain sponsored Nativity Scene and Menorah as part of a broader, secular holiday seasonal display does not violate the establishment clause of the United States Constitution.”⁵⁹ The display was not removed from its original location.⁶⁰

Immediately following the Air Force’s decision to keep the holiday display, an atheist service member sought permission to erect his own display. Although originally denied, Travis Air Force base eventually approved the display. The display contained a sign that read: “Have a safe holiday season from the atheists at Travis MASH” with a picture of the satirical Flying Spaghetti Monster.⁶¹

Claim 20: Army censors Catholic chaplains in worship services – January 29, 2012. *The Archbishop of the Archdiocese of Military Services issued a letter to Catholic chaplains to be read to their military parishioners across the armed services. The clergy asked them to resist implementation of the HHS contraceptive and sterilization mandate in Obamacare. A similar request was made across America to civilian parishioners that Sunday. However, this request did not reach the ears of those in the Army. As a statement issued by the Archdiocese explained, the Army letter was distributed but not read publicly, after collaboration between the Archdiocese and the Secretary of the Army led to the deletion of a sentence from its text. Kathryn Jean Lopez of National Review Online observed, “So not only were chaplains told not to read the letter, but an Obama administration official edited a pastoral letter.”*

Facts: Archbishop of Military Services, Timothy Broglio, did request that Catholic chaplains read a letter to their military parishioners. The letter voiced objection to the contraception insurance mandate and included the line: “we cannot – we will not – comply with this unjust law.”⁶² The Army’s Office of the Chief of Chaplains became aware of the letter two days

⁵⁸ Carlene Minyen, *Travis Air Force Base Will Not Remove Nativity Scene*, ABC NEWS 10 (Dec. 17, 2011), <http://davis-vacaville.news10.net/news/news/90128-travis-air-force-base-will-not-move-nativity-scene>.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Atheist Display Permitted Alongside Other Religious Holiday Displays*, EXAMINER (Dec. 21, 2011), <http://www.examiner.com/article/atheist-display-permitted-alongside-other-religious-holiday-displays>.

⁶² Kathryn Jean Lopez, *Army Silenced Chaplains Last Sunday*, NAT’L REV. ONLINE (Feb. 3, 2012), <http://www.nationalreview.com/corner/290147/army-silenced-chaplains-last-sunday-kathryn-jean-lopez>

before it was due to be read and cited fears that the “will not comply” line could be seen as a military call for civil disobedience to the Commander in Chief within army ranks if issued from chaplains.⁶³ The office asked that the letter not be read from the pulpit, but rather that attendees be notified of the letter during mass and have printed copies made available for them.⁶⁴

Priests on Marine, Air Force, Navy, and Coast Guard bases read the letter anyway.⁶⁵ Army Secretary John McHugh later acknowledged that it was a mistake to tell priests not to read from the letter, and that the proper response should have been to require removal of the compliance line only, while leaving the rest of the letter intact.⁶⁶

Claim 21: Air Force removes “God” from unit’s logo – February 7, 2012. *The Military Association of Atheists and Freethinkers complained to the Air Force about a logo from the Rapid Capabilities Office. It used to read in Latin “Doing God’s Work with Other People’s Money” and was changed to “Doing Miracles with Other People’s Money.” Rep. Randy Forbes (R-VA) and 35 other lawmakers sent a letter to Air Force Secretary Michael Donley and Air Force Chief of Staff Norton Schwartz demanding an explanation for the removal of a non-religious reference to God. The Air Force said they would investigate. “It is most egregious,” as Rep. Forbes told Fox News, “The Air Force is taking the tone that you can’t even use the word ‘God.’”*

Facts: It is true that the Latin phrase on the Rapid Capabilities Office (RCO) logo was changed after a complaint.⁶⁷ As of the writing of this response, the RCO does not have the logo with either motto anywhere on their USAF website.⁶⁸ The change does not reflect hostility to religion but rather an attempt to make the logo inclusive of all service members, whether they are adherents to a particular religion or non-theist.

Claim 22: Army General withdraws from speaking at West Point after protest for anti-Christian groups – February 8, 2012. *The Council on American-Islamic Relations (CAIR) and the Military Religious Freedom Foundation (MRFF) launched a campaign to bar Lt. Gen. Jerry Boykin (USA-ret.), a founding member of the Army’s Delta Force and former Deputy Under Secretary of*

⁶³ *Army Admits Ordered the Silencing of Catholic Chaplains who Condemned ObamaCare*, EXAMINER (Feb. 7, 2012), <http://www.examiner.com/article/army-admits-ordered-the-silencing-of-catholic-chaplains-who-condemned-obamacare>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Lopez, *supra* note 65.

⁶⁷ Mark Duell, *It Sets a Dangerous Precedent: Fury as Air Force Removes GOD from Logo After Atheists Complain*, DAILY MAIL (Feb. 8, 2012), <http://www.dailymail.co.uk/news/article-2098236/Rep-Randy-Forbes-shocked-U-S-Air-Force-removes-GOD-logo-atheists-complain.html>.

⁶⁸ *About Us*, RAPID CAPABILITIES OFFICE (Aug. 28, 2009),

<http://www.af.mil/AboutUs/FactSheets/Display/tabid/224/Article/104513/rapid-capabilities-office.aspx>.

Defense for Intelligence, from speaking at the U.S. Military Academy at West Point. CAIR and MRFF said their opposition was based upon Gen. Boykin's "Islamophobic" comments. Gen. Boykin voluntarily withdrew from speaking at the event, stating in an interview with OneNewsNow that the pressure on the Academy, which the Obama Administration did not resist, was overpowering.

Facts: This claim is true and evidence of the military protecting religious freedom rather than threatening it. Several groups including Vote Vets, who first raised the issue, complained about the choice of Boykin as a speaker at West Point, citing numerous derogatory and inflammatory comments he had made while in uniform against Islam as a whole.⁶⁹ Such statements include: "Seal the borders and eliminate sanctuary cities and they'll go home;" "No mosques in America. Islam is a totalitarian way of life;" and "[w]e need to realize that Islam itself is not just a religion... It should not be protected under the First Amendment, particularly given that those following the dictates of the Quran are under an obligation to destroy our Constitution and replace it with sharia law."⁷⁰ As the controversy grew, Boykin withdrew, stating he did not want to put undue pressure on West Point.⁷¹

Claim 23: Pennsylvania Army Reserve training document labels Evangelical Christians and Catholics "extremists" – March 2012. *During a briefing on extremism at a Pennsylvania Army Reserve Equal Opportunity training, the instructor listed "Evangelical Christianity" and "Catholicism" on a slide as examples of religious extremism along with Al Qaeda, Hamas, Islamophobia, and the KKK. When later asked where she obtained her information for the entire presentation, the instructor referred to two government sources but also included the Southern Poverty Law Center (SPLC). More specifically, a video that introduced the briefing for 10-15 minutes was produced by the SPLC. Upon learning of this incident, the Catholic Archdiocese for the Military Services stated it was "astounded that Catholics were listed alongside groups that are, by their very mission and nature, violent and extremist."*

Facts: The slideshow presentation at issue in this story was unauthorized, and was an isolated event that was quickly resolved. There is no evidence that a video was part of this presentation aside from the claim by FRC.

⁶⁹ *Controversial General Withdraws from West Point Speech*, REUTERS (Jan. 30, 2012), <http://www.reuters.com/article/2012/01/31/us-westpoint-boykin-idUSTRE80U01120120131>.

⁷⁰ Kyle Mantyla, *Boykin: Islam Should Not Be Protected Under the First Amendment*, RIGHT WING WATCH (Dec. 6, 2010), <http://www.rightwingwatch.org/content/boykin-islam-should-not-be-protected-under-first-amendment>; Brian Tashman, *Boykin: No Mosques In America*, RIGHT WING WATCH (Sept. 7, 2011), <http://www.rightwingwatch.org/content/boykin-no-mosques-america>.

⁷¹ Max J. Rosenthal, *William Boykin, Anti-Muslim General, Withdraws from West Point Speech After Outcry*, HUFFINGTON POST (Jan. 31, 2012), http://www.huffingtonpost.com/2012/01/31/william-boykin-west-point-speech-muslims_n_1244968.html.

Army spokesman George Wright publicly expressed the Army's disapproval of the officer's presentation by saying: "This slide was not produced by the Army and certainly does not reflect our policy or doctrine. It was produced by an individual without anyone in the chain of command's knowledge or permission."⁷² Following the complaint, the officer apologized, "deleted the slide, and it was never seen again."⁷³ Moreover, Southern Poverty Law Center denies that they provided any lists for the presentation, and criticized the presentation as a whole, saying that "[i]t was sloppy . . . and just inaccurate. We'd like them to use our materials accurately . . . We don't want people to think we would put the Catholic Church on a hate list, because this is false and of course absurd."⁷⁴

Claim 24: Weinstein claims credit for cessation of Bible sales – June 12, 2012.

Weinstein took credit for the Pentagon putting an end to the sale of military-themed Bibles. For example, The Marine's Bible used the Holman Christian Standard Bible as its translation and contained a "Special Prayer and Devotional Section for Marine Personnel." The cover contained a picture of the Marine Corps Seal, part of a flag blowing in the wind, and scenes of combat with a red transparent overlay. The Pentagon claimed trademark problems were to blame, but Weinstein took credit for the revocation and called the Bibles a "national security threat." Sales of such Bibles had begun during the presidential administration of George W. Bush.

Facts: B&H Publishing, a division of LifeWay Christian Resources, produced the Holman Bible with "an extended section of essays, prayers, patriotic hymns, and spiritual guidance" for each branch of the military.⁷⁵ Each used the official insignia of the respective branch on the cover, which B&H had previously obtained permission to use in 2003.⁷⁶ The Bibles were indeed pulled from shelves but because of a trademark issue, rather than because of religious freedom objections. Joel Harper, a USAF spokesperson, stated that permission was rescinded after B&H Publishing went beyond the scope of the original trademark agreement. The other

⁷² Karen Jowers, *Training Material Listing Catholics as 'Extremists' Angers Archdiocese*, ARMY TIMES (Apr. 5, 2013), <http://www.armytimes.com/article/20130405/NEWS/304050016/Training-material-listing-Catholics-8216-extremists-8217-angers-archdiocese>.

⁷³ *Id.*

⁷⁴ Joseph Austin, *Army Begins Investigation of Training Briefing that Had Labeled "Catholicism" an Extremist Group*, CATHOLIC NEWS SERV. (Apr. 22, 2013), available at <http://catholicphilly.com/2013/04/us-world-news/national-catholic-news/army-begins-investigation-of-training-briefing-that-had-labeled-catholicism-an-extremist-group/>.

⁷⁵ *HCSB Soldier's Bible*, LIFEWAY, <http://www.lifeway.com/Product/hcsb-soldiers-bible-p005468681> (last visited Dec. 1, 2014).

⁷⁶ Markeshia Ricks, *Airman's Bible Exiting, Some See Controversy*, AIR FORCE TIMES, <http://www.airforcetimes.com/article/20121008/NEWS/210080301/Airman-s-Bible-exiting-some-see-controversy> (last visited Nov. 14, 2014).

branches followed suit.⁷⁷ B&H was allowed to sell their remaining stock with the insignias, but then could only produce versions with generic symbols.⁷⁸

Whether or not Mr. Weinstein takes credit for the change seems irrelevant to FRC's claims of religious intolerance in the military. Nonetheless, "letters from senior military officials in the Air Force, Army and Navy indicate the decision was made last fall, before the MRFF wrote to Panetta objecting to the use of the insignia but after it made Freedom of Information Act records requests."⁷⁹

Claim 25: West Point study links pro-life groups to terrorism – November 2012. *Dr. Arie Perliger of the United States Military Academy, while analyzing "right-wing extremism," compared pro-life groups to the KKK and Neo-Nazi groups. The study, titled "Challengers from the Sidelines: Understanding America's Violent Far-Right," claimed that radical right-wing ideology is grounded, in part, on the principle that "since every human being is created in the image of God, it is by definition a sin to end their lives before they have been able to 'enjoy love and life of this planet.'" With respect to anti-abortion attacks, Perliger observes that "pro-life violence is driven by several ideological building blocks that are enhanced by religious-based convictions, i.e., fetuses are human beings created in God's image, and as such should be accorded the rights of humans from the moment of conception; any violent acts to end their lives are immoral and should be prevented."*

Facts: The Combating Terrorism Center of the United States Military Academy published "Challengers from the Sidelines," a study by Arie Perliger, which examined the rise and causes of violence by three ideological groups the author identified as "far right extremists."⁸⁰ These three groups included white supremacists, anti-federalists, and fundamentalists, in which believers of "Christian Identity" and anti-abortionists were included.⁸¹ The statements mentioned in Claim 25 did appear in the study. The study, however, clearly stated that the "views expressed in this report are the author's and do not necessarily reflect those of the

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Letter from April Rowden, Chief of Air Force Trademark Licensing Program to Katherine Ritchey (Feb. 12, 2012), Letter from John W. Miller II, Brigadier General U.S. Army to Katherine Ritchey (Feb. 21, 2012), Letter from Catherine Donovan, Counsel Dept. of Navy to Katherine Ritchey (Feb. 21, 2012), *available at* <https://app.box.com/s/e3fde8e661ff6751bbde>; Assoc. Press, *Lawmakers Question Pentagon's Removal of Military Insignia from Bibles*, FIRST AMEND. CTR. (July 12, 2012), <http://www.firstamendmentcenter.org/lawmakers-question-pentagon%E2%80%99s-removal-of-military-insignia-from-bibles>.

⁸⁰ Arie Perliger, *Challengers from the Sidelines*, COMBATING TERRORISM CTR (Nov. 2012), *available at* <https://www.ctc.usma.edu/wp-content/uploads/2013/01/ChallengersFromtheSidelines.pdf>.

⁸¹ *Id.* at 3-4.

Combating Terrorism Center, U.S. Military Academy, Department of Defense or U.S. government.”⁸²

Claim 26: President Obama issues negative signing statement on religious freedom amendment to defense bill – January 3, 2013. *President Obama signed H.R. 4310 (“National Defense Authorization Act for Fiscal Year 2013” (NDAA)) into law and issued a signing statement. He commented on an amendment to the NDAA, Section 533, which was passed to increase religious liberty protections for service members and chaplains. The President offered up these remarks indicating his intention to elevate special protection for homosexuals above religious liberty:*

“Section 533 is an unnecessary and ill-advised provision, as the military already appropriately protects the freedom of conscience of chaplains and service members. The Secretary of Defense will ensure that the implementing regulations do not permit or condone discriminatory actions that compromise good order and discipline or otherwise violate military codes of conduct. My Administration remains fully committed to continuing the successful implementation of the repeal of Don’t Ask, Don’t Tell, and to protecting the rights of gay and lesbian service members; Section 533 will not alter that.”

Facts: The President did issue a signing statement,⁸³ but that statement was an accurate assessment of the law and did not express an “intention to elevate special protection for homosexuals above religious liberty.”

Claim 27: Army removes cross and steeple from chapel – January 24, 2013 (date of news story). *The U.S. military ordered soldiers to take down a steeple and board-up the cross-shaped windows of a chapel at remote Forward Operating Base Orgun-E in Afghanistan. The soldiers were required to keep the chapel religiously neutral. In 2011, a similar situation occurred where soldiers were forced to remove a cross at a chapel at Camp Marmal, Afghanistan.*

Facts: Army Regulation 165-1 Chapter 12-3(K) on religious facilities, which has been in place since 2009, states:

Symbols. The chapel environment will be religiously neutral when the facility is not being used for scheduled worship. Portable religious symbols, icons, or statues may be used within a chapel during times of religious worship. Symbols are to be moved or covered when not in use during services. Distinctive religious symbols, such as crosses, crucifixes, the Star of David, Menorah, and

⁸² *Id.* at 1.

⁸³ Statement by the President on H.R. 4310, <http://www.whitehouse.gov/the-press-office/2013/01/03/statement-president-hr-4310>.

other religious symbols will not be affixed or displayed permanently on the chapel interior, exterior, or grounds. Permanent or fixed chapel furnishings, such as the altar, pulpit, lectern, or communion rail will be devoid of distinctive religious symbols.”⁸⁴

Elizabeth Hillman, professor of law at University of California Hastings College of Law and President of the National Institute of Military Justice explained the reason for the policy: "In general the chapels have to be ecumenical so they can be converted from one religion to another. To create permanent structures that evoke one particular religion — that is problematic.”⁸⁵

Sergeant Joel Muhlnickel of Forward Operating Base Orgun-E, raised concerns through his chain of command about the cross on the military chapel at this base.⁸⁶ Recognizing that the cross violated Army regulations, “Orgun command sent out a memo throughout the base explaining that the chapel was to be brought into compliance by eliminating the crosses, and assuring soldiers that it would be handled in a respectful manner.”⁸⁷ The cross was then removed, and boards put up on the chapel windows, which were also shaped like crosses, until replacement windows arrived. Religious symbols were displayed during the appropriate service. A similar event took place at Camp Marmal, where a large cross was removed from the camp chapel, also to bring it in accordance with the regulations.⁸⁸

Claim 28: Utah airman is reprimanded and his reenlistment contract terminated for objecting to a gay marriage in the West Point Chapel – February 10, 2013. *A 27-year veteran of the Utah Air National Guard, TSgt. Layne Wilson, was reprimanded after sending an e-mail on December 2, 2012, to what he believed was the chaplain’s office at the U.S. Military Academy at West Point. Wilson expressed disagreement with the performance of a same-sex marriage in the Cadet Chapel. At the time, the Defense of Marriage Act was still federal law. Instead of responding privately to Wilson, the Commandant of Cadets notified the Utah Air National Guard. Wilson was told via email from Lt. Col. Kevin Tobias, “You are hereby [sic] reprimanded. As a noncommissioned officer you are expected to maintain a standard of professional and personal behavior that is above reproach. You have failed!” The Air National Guard also terminated his signed, six-year reenlistment contract; instead, Layne received*

⁸⁴ Army Chaplain Corps Activities, AR 165-1 (Jan. 3, 2010), available at http://www.apd.army.mil/jw2/xmldemo/r165_1/main.asp#s112-3k.

⁸⁵ *Steeple, Cross at U.S. Army Base on Afghan Frontier Raise Hackles*, NBC World News (Jan. 24, 2013) http://worldnews.nbcnews.com/_news/2013/01/24/16647516-steeple-cross-at-us-army-base-on-afghan-frontier-raise-hackles.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

only a one-year extension. However, after his attorney objected, his six-year contract was reinstated, but a June 19 memo left the reprimand in place.

Facts: According to Todd Starnes, a controversial Fox News host, Technical Sergeant Layne Wilson was reprimanded after expressing opposition to the performance of same-sex marriages on military bases. Specifically, his email, written in response to a wedding ceremony at the West Point chapel said: “This is wrong on so many levels. If they wanted to get married in a hotel that is one thing. Our base chapels are a place of worship and this is a mockery to God and our military core values. I have proudly served 27 years and this is a slap in the face to us who have put our lives on the line for this country. I hope sir that you will take appropriate action so this does not happen again.”⁸⁹ Although Todd Starnes claims the reprimand was given because of Wilson’s religious beliefs, the Air National Guard determined it was issued not because of religion, but because TSgt. Wilson had “failed to render the proper respect to a commissioned officer.”⁹⁰

Claim 29: Anti-Christian indoctrination via email at Fort Campbell, KY – April 10, 2013. *Todd Starnes of Fox News revealed an internal e-mail from an Army Lt. Colonel at Fort Campbell, KY (home of 101st Airborne Div.), advising three dozen subordinates to be on the lookout for soldiers who might be members of “domestic hate groups.” Family Research Council was listed as an “Anti-Gay” group along with American Family Association. While commenting about the groups that were singled out, the e-mail warned that they, “do not share our Army Values.”*

Facts: Lt. Col. Jack Rich did send this email, but he acted on his own and the email was not a part of any Army-approved training program or command-generated memorandum.⁹¹ In response to allegations of army sanctioned anti-Christian sentiments, Army spokesman George Wright said: “The notion that the Army is taking an anti-religion or anti-Christian stance is contrary to any of our policies, doctrines and regulations. Any belief that the Army is out to label religious groups in a negative manner is without warrant.”⁹²

⁸⁹ Todd Starnes, *Military Will Not Rescind Reprimand for Airman Opposed to Gay Marriage*, FOX NEWS, <http://radio.foxnews.com/toddstarnes/top-stories/military-will-not-rescind-reprimand-for-airman-opposed-to-gay-marriage.html> (last visited Sept. 19, 2014).

⁹⁰ *Id.*

⁹¹ Philip Grey, *Fort Campbell Officer’s Email Inflames Evangelicals*, LEAF-CHRONICLE (Apr. 17, 2013), <http://archive.theleafchronicle.com/article/20130417/NEWS01/304170031/Fort-Campbell-officer-s-email-inflames-evangelicals>.

⁹² Billy Hollowell, *Army Email Allegedly Labels Christian Organizations That Oppose Gay Marriage as ‘Domestic Hate Groups’*, BLAZE (Apr. 10, 2013), available at <http://news.yahoo.com/army-email-allegedly-labels-christian-organizations-oppose-gay-214417183.html>.

Claim 30: Weinstein meets with top Air Force officials at the Pentagon – April 23, 2013. *Three representatives of MRFF (Mikey Weinstein, Larry Wilkerson [former chief of staff to Colin Powell], and Ambassador Joe Wilson [husband of Valerie Plame]) met with several high-ranking Air Force officials along with USAF staff members to hear various complaints about military life and religious observance. Weinstein told Sally Quinn (Washington Post) in an interview after the Pentagon meeting that Christian “proselytizing” is a “national security threat.” He added, “What is happening [aside from sexual assault] is a spiritual rape.... it is sedition and treason. It should be punished.” Quinn noted that the three men were speaking of proselytizing by “‘dominionist’ or fundamentalist evangelical Christians.”*

Claim 31: Sally Quinn’s column in the Washington Post discusses the Weinstein-USAF meeting – April 26, 2013. *Sally Quinn, long-time columnist, reported that the “Air Force published, but has yet to distribute, a 27-page document, which includes a cover sheet that states: ‘COMPLIANCE WITH THIS PUBLICATION IS MANDATORY.’” Quinn was referring to manual AFI 1-1 (see below, May 2013) that made a number of potentially troubling statements regarding the free exercise of religion. For example, it condemned not just the “actual” but also the “apparent” use of one’s position to promote one’s religious beliefs. It also indicated noncompliance could result in court martial.” Weinstein observed to Quinn: “You need a half a dozen court-martials real quick.”*

Claim 32: After Weinstein meeting, Pentagon confirms policy – April 30, 2013. *The Pentagon confirmed to Fox News that Christian evangelism is against regulations. In a written statement to Fox News, Lt. Commander Nate Christensen said, “Religious proselytization is not permitted within the Department of Defense.” He declined to say if anyone had been prosecuted due to this policy.*

Facts (Claims 30, 31, & 32): Weinstein and others did have a meeting at the Pentagon to discuss the issue of proselytization in the military, but he was not there as part of a Department of Defense Advisory Group or Committee, nor as a consultant to the Defense Department.⁹³ Any discussion at the meeting could not have influenced the content of the Instruction about to be distributed, as the booklet contained the language of the rule adopted in 2012.⁹⁴ Furthermore, the rule language had always stated it was “mandatory.” Even if the rule did not contain those words, however, it would have been mandatory on service

⁹³ Sally Quinn, *U.S. Military Should Put Religious Freedom at the Front* (republished on Faith Street) (Apr. 26, 2013), available at <http://www.faithstreet.com/onfaith/2013/04/26/us-military-should-put-religious-freedom-at-the-front>.

⁹⁴ Air Force Instruction 1-1 (Aug. 7, 2012) available at [http://msnbcmedia.msn.com/i/MSNBC/Sections/NEWS/z_Personal/Huus/AFI1-1%20\(4\).pdf](http://msnbcmedia.msn.com/i/MSNBC/Sections/NEWS/z_Personal/Huus/AFI1-1%20(4).pdf).

members nonetheless. As explained by senior air staff counsel, Scott Martin: “There is nothing different about this instruction from any other instruction out there. When we publish an instruction at the direction of the Air Force, it is mandatory for us to abide by it.”⁹⁵

The Air Force did not amend AFI 1-1 until November 2014. At that time, the Liberty Institute praised the language while Weinstein criticized it,⁹⁶ further proving FRC’s claims of Weinstein’s undue influence on this policy is inaccurate.

Claim 33: Air Force officer told to remove Bible from desk – May 2, 2013. *Air Force personnel had been told that they might express their beliefs as long as they do not “make others uncomfortable.” This rule led to an officer being asked to remove a copy of the Bible from his desk. According to the Fox News report the “officer was told he could no longer keep a Bible on his desk because it [might] appear that he was condoning a particular religion.”*

Claim 34: Air Force statement – May 2, 2013. *“When on duty or in an official capacity, Air Force members are free to express their personal religious beliefs as long as it does not make others uncomfortable.... Proselytizing (inducing someone to convert to one’s faith) goes over that line.” - Lt. Col. Laurel Tingley, in a statement to Fox News[.]*

Facts (33 & 34): Ron Crews, of the Chaplain Alliance for Religious Liberty, told this anecdote about a Bible being removed from a desk to Fox News Radio Host, Todd Starnes. The authenticity of the story has not been verified by an independent source or the Air Force.⁹⁷ Crews appeared to be sharing the story to demonstrate that Lt. Col. Laurel Tingley’s statement of Air Force policy—particularly the use of “uncomfortable”—was too vague. In response, Tingley clarified that officers can have religious items on their desk or in their office but only for personal use, not as a representation of their command towards subordinates.⁹⁸

Claim 35: Department of Defense statement – May 2, 2013. *“The U.S. Department of Defense has never and will never single out a particular religious group for persecution or prosecution.... Service members can share their faith*

⁹⁵ Markeshia Ricks, *New Booklet Outlines Air Force Standards*, AIR FORCE TIMES (May 5, 2013), <http://www.airforcetimes.com/article/20130505/NEWS/305050007/New-booklet-outlines-Air-Force-standards>.

⁹⁶ Stephan Losey, *Air Force Updates Religious Expression Rules*, AIR FORCE TIMES (Nov. 11, 2014), <http://www.airforcetimes.com/story/military/careers/air-force/2014/11/11/air-force-updates-religious-expression-rules/18845935/>.

⁹⁷ Todd Starnes, *Air Force Officer Told to Remove Bible from Desk*, FOX NEWS, <http://radio.foxnews.com/toddstarnes/top-stories/air-force-proselytizing-crosses-the-line.html?gg> (last visited Nov. 17, 2014).

⁹⁸ Warren Throckmorton, *Air Force Statement on Religious Proselytizing and Religious Materials on Desks*, PATHEOS (May 3, 2012), <http://www.patheos.com/blogs/warrenthrockmorton/2013/05/03/air-force-statement-on-religious-proselytizing/>.

(evangelize), but must not force unwanted, intrusive attempts to convert others of any faith or no faith to one's beliefs (proselytization)."

Facts: Department of Defense spokesperson Lieutenant Commander Nate Christensen released this statement in May 2013.⁹⁹ It was intended to make it clear that undue forms of religious pressure and coercion are unacceptable.

Claim 36: Coast Guard Rear Admiral speaks at National Day of Prayer event – May 2, 2013. *Coast Guard Rear Admiral William Lee spoke at a National Day of Prayer event as "a man of deep abiding faith who happens to wear a uniform." Lee addressed the issue of religious freedom in the military describing an occasion on which he gave a Bible to a Coast Guardsman who tried to commit suicide. "The lawyers tell me that if I do that, I'm crossing the line," Lee said. "I'm so glad I've crossed that line so many times."*

Facts: Rear Admiral William Lee did make these comments in his speech at the National Day of Prayer,¹⁰⁰ but his claim that he could not share a Bible with a fellow service member is not an accurate depiction of military policy.

Claim 37: Air Force releases AFI 1-1 – May 2013. *The Air Force manual "Air Force Instruction 1-1" (AFI 1-1) was internally released in August 2012 but distribution to all airmen as a paper pocket copy started in May 2013. Section 2.11, "Government Neutrality Regarding Religion," contains language consonant with Mikey Weinstein's comments after his April 23rd meeting at the Pentagon with high-ranking USAF officials.*

Facts: The Air Force adopted AFI 1-1 in 2012 and did not amend it again until November 2014.¹⁰¹ Accordingly, nothing Mr. Weinstein said in a meeting with Pentagon officials could have altered the content of the rule distributed in May 2013. Indeed, Scott Martin, a representative for the Air Force's administrative law agency stated the booklet "literally is the AFI. There's nothing new in the Air Force Instruction 1-1 booklet."¹⁰²

Claim 38: A painting including a Bible verse is removed – May 31, 2013. *Weinstein complained to the Pentagon about an inspirational painting in the*

⁹⁹Press Release, Nathan Christensen, Department of Defense Spokesperson, Statement on Religious Proselytizing (May 2, 2013), available at <http://www.adfmedia.org/files/20130502PentagonEmail.pdf>.

¹⁰⁰Video, *Rear Admiral Lee Addresses Restrictive Regulations on Religious Liberty*, YouTube, <https://www.youtube.com/watch?v=qXPtXPJLnJY>.

¹⁰¹Stephen Losey, *Air Force Updates Religious Expression Rules*, AIR FORCE TIMES (Nov. 11, 2014), <http://www.airforcetimes.com/story/military/careers/air-force/2014/11/11/air-force-updates-religious-expression-rules/18845935/>.

¹⁰²*Court-Martialed for Sharing Religious Faith?*, FACT CHECK (May 10, 2013), <http://www.factcheck.org/2013/05/court-martialed-for-sharing-religious-faith/>.

dining hall of Mountain Home Air Force Base, Idaho. It focused on a depiction of a policeman and included a Scripture citation and the image of a cross. The painting was reportedly removed 56 minutes later.

Facts: The painting “featured a medieval crusader and referenced Matthew 5:9, ‘Blessed are the peacemakers, for they will be called children of God.’”¹⁰³ After receiving complaints about the painting, a commander removed it from the dining hall. A spokesperson for Mountain Home Air Force Base did not confirm whether Weinstein had initiated the painting’s removal, but stated that “the commander was made aware of complaints about the picture in the morning, and it was taken down in religious neutrality accordance.”¹⁰⁴

Claim 39: A soldier is punished for serving Chick-fil-A – June 5, 2013. *Army Master Sergeant, Nathan Sommers, was punished for serving Chick-fil-A sandwiches at his own promotion party in honor of the Defense of Marriage Act (DOMA). Sommers was investigated, reprimanded, threatened with judicial action, and given a bad efficiency report. The invitation said, “In honor of my promotion and in honor of the Defense of Marriage Act, I’m serving Chick-fil-A sandwiches at my promotion party.” Sommers was told that “he [was] no longer a team player and was not performing up to standards.” Chick-fil-A and DOMA were frowned upon.*

Facts: The real issue in this story is not that the Army Master Sargent served Chick-fil-A, but that he used his promotion as a platform to endorse the Defense of Marriage Act (DOMA), insult fellow soldiers, and disparage those above him in the chain of command. In addition to the invitation to his promotion party in which he sought to “honor of the Defense of Marriage Act” and serve Chick-fil-A sandwiches,¹⁰⁵ he also tweeted: “In honor of DADT repeal, and Obama/Holder’s refusal to enforce DOMA act, I’m serving Chick-fil-A at my MSG promo reception for Army today.”¹⁰⁶ This, of course, could be interpreted as disparagement of someone above him in the chain of command. In the past, he had also tweeted: “Lordy,

¹⁰³ Todd Starnes, *Air Force Removes “Inspirational” Painting*, FOX NEWS, <http://radio.foxnews.com/toddstarnes/top-stories/air-force-removes-inspirational-painting.html> (last visited Nov. 20, 2014).

¹⁰⁴ Fred Lucas, *Church-State Separation Group Takes Credit for Air Force’s Removal of Picture*, CNS NEWS (June 5, 2013), <http://cnsnews.com/news/article/church-state-separation-group-takes-credit-air-forces-removal-picture>.

¹⁰⁵ Joe Newby, *Army Punishes Senior NCO for Serving Chick-fil-A Sandwiches, Celebrating DOMA*, EXAMINER (June 6, 2013), <http://www.examiner.com/article/army-punishes-senior-nco-for-serving-chick-fil-a-sandwiches-celebrating-doma>.

¹⁰⁶ Terry Firma, *Conservative Media Claim ‘Persecution’ of Christians in the Military, but Actual Soldiers Call Bullshit*, FRIENDLY ATHEIST (June 12, 2013), <http://www.patheos.com/blogs/friendlyatheist/2013/06/12/conservative-media-claim-persecution-of-christians-in-the-military-but-actual-soldiers-call-bullshit/#ixzz3DhHdkpNL>.

Lordy, it's faggot Tuesday. The lefty loons and Obamabots are out in full force."¹⁰⁷ The soldier was reprimanded but no judicial action was pursued.¹⁰⁸

The Military District of Washington also debunked this and other claims made by this same officer: "The Soldier is not, and never has been, facing retribution and punishment from the military for having anti-Obama bumper stickers on his car, reading books written by conservative authors like Mark Levin and David Limbaugh, and serving Chick-fil-A sandwiches at his promotion party."¹⁰⁹

Claim 40: Fleming Amendment is adopted – June 5, 2013. *The House Armed Services Committee adopted an amendment by Rep. John Fleming (R-LA) to the National Defense Authorization Act (NDAA). The Fleming Amendment protects the rights of armed services members to hold, act upon, and practice freely their religious beliefs as long as they do not interfere with any Constitutional liberties of others.*

Claim 42: President Obama "strongly objects" to Fleming Amendment – June 11, 2013. *On June 11th, after the House Armed Services Committee approved its version of the NDAA (H.R.1960) with Rep. Fleming's language, a White House Statement of Administration Policy was issued indicating that the President's senior advisers would recommend a veto because they strongly object "to section 530, which would require the Armed Forces to accommodate, except in cases of military necessity, 'actions and speech' reflecting the 'conscience, moral principles, or religious beliefs of the member,'...[and which] would have a significant adverse effect on good order, discipline, morale, and mission accomplishment."*

Facts (Claims 40 & 42): The President did voice a strong objection to section 530, as well as several other provisions in the House version of the NDAA.¹¹⁰ His objection was justified, as the Fleming language failed to properly balance service members' right to observe the tenets of their religion or of no religion at all with both the requirements of military readiness, military cohesion, and good order and discipline and the right of service members to be free from the government endorsement of religion.

Claim 41: Air Force removes video that mentions God – June 7, 2013. *The Pentagon directed the Joint Base McGuire-Dix-Lakehurst, in Trenton, New*

¹⁰⁷ Todd Starnes, *Solder Told Not to Read Levin, Limbaugh or Hannity in Uniform*, FOX NEWS, <http://radio.foxnews.com/toddstarnes/top-stories/soldier-told-not-to-read-levin-limbaugh-or-hannity-in-uniform.html> (last visited Sept. 19, 2014).

¹⁰⁸ Newby, *supra* note 91.

¹⁰⁹ Starnes, *supra* note 93.

¹¹⁰ Executive Office of the President. *Statement of Administration Policy: H.R. 1960 - National Defense Authorization Act for FY 2014*, OFFICE OF MGMT & BUDGET (Jun. 11, 2013), http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr1960r_20130611.pdf.

Jersey, to take down a video that mentioned “God” because it might be offensive. It read: “On the eighth day, God looked down on His creation and said, ‘I need someone who will take care of the Airmen.’ So God created a First Sergeant.” The video was modeled after a Super Bowl commercial and clearly was made to honor First Sergeants. “Proliferation of religion is not allowed in the Air Force or military.” The chief of the Air Force News Service Division questioned how “an Agnostic, Atheist or Muslim serving in the military [would] take this video,” and recommended not using it at all.

Facts: The two-minute video does not just begin with a phrase stating that God created the First Sergeant. The entire video focuses upon the qualities God wanted the First Sergeant to embody.¹¹¹ Upon release of the video, the chief of the Air Force News Service Division did tell the base that he recommended it not use the video at all, due to its religious overtones.¹¹² The video was removed and has not been put back up on the base’s website. Ann Stefanek, an Air Force spokesperson, released this statement: “The Air Force removed the ‘God Created a First Sergeant’ video from the official Joint Base McGuire Dix YouTube site to evaluate whether it is consistent with official Air Force guidance, to include whether it meets official guidance governing religious neutrality in the Air Force as prescribed in Air Force Instruction 1-1, Air Force Culture.”¹¹³

Claim 43: Senate Armed Services approves similar rights of conscience language – June 13, 2013. *FRC was told by Senate Republicans that the Senate Armed Services Committee included language similar to the H.R. 1960 protections in its version of the National Defense Authorization Act. The bill was passed out of Committee on June 13, 2013.*

Facts: This is true, and the Religious Right considered this language a victory; however, it is difficult to understand how this amounts to a violation of religious freedom.

Claim 44: Chaplain’s [sic] is ordered to remove a religion-themed essay from USAF base website – July 24, 2013. *Lt. Col. Kenneth Reyes, a chaplain at Joint Base Elmendorf-Richardson (JBER) in Alaska, was told to remove a religious essay that he posted on the base website. The essay was entitled, “No Atheists in Foxholes: Chaplains Gave all in World War II” referring to a comment made by Father William Cummings, a Catholic priest, who observed that there “[t]here is no such thing as an atheist in a foxhole.” President Eisenhower repeated the phrase during a speech to the American Legion in 1954. Mikey*

¹¹¹ 1st sgt project mp4, YouTube (June 7, 2013), <https://www.youtube.com/watch?v=A1thcpV1YzA&feature=youtu.be>.

¹¹² Todd Starnes, *Air Force Removes Video that Mentions God*, FOX NEWS, <http://radio.foxnews.com/toddstarnes/top-stories/air-force-removes-video-that-mentions-god.html> (last visited Nov. 20, 2014).

¹¹³ *Id.*

Weinstein's MRFF sent a demand letter to JBER's commander, Col. Brian P. Duffy, claiming to represent 42 anonymous service members assigned there who were offended by the post. MRFF claimed, "through redundant use of the bigoted, religious supremacist phrase, 'no atheists in foxholes,' he defiles the dignity of service members." The essay was taken down within five hours of receipt of the complaint. MRFF wanted the chaplain to be reprimanded. However, Col. Reyes' article was restored to the base website in mid-August with a disclaimer placed on the site.

Facts: This claim is true. Although the Air Force initially removed the article, it later republished it.¹¹⁴ A strong argument can be made that the article is offensive to non-believers and denigrates their service and should never have been issued.

Claim 45: An Army assistant chaplain is threatened for sharing her Biblical beliefs on homosexuality via Facebook – August 6, 2013. An Army chaplain's assistant, stationed near Colorado Springs, Colorado was ordered to remove a Facebook post or face disciplinary action including, possibly, a reduction in rank and pay. One Sunday evening, the airman was listening to a pastor endorse homosexuality. Afterward, she posted on her Facebook page her frustrations with pastors endorsing homosexuality and denying it to be a sin. Her commander called her into his office on Monday and ask [sic] that she remove the post because it created a "hostile and antagonistic" environment. Intense pressure was placed upon her after her pastor, Todd Hudnall (Radiant Church), made the Army's actions known to the public. She removed this posting to her personal Facebook page

Facts: The only source for this story is Fox News Host, Todd Starnes. There is no independent verification. Starnes says that an assistant chaplain, whose identity is unknown, was punished for Facebook postings she made about same-sex marriage. Starnes says that after the chaplain watched a documentary about a pastor who endorsed same-sex marriages, she wrote on her Facebook profile: "A lot ticked off, now to all my gay friends you know I care about you so don't think otherwise. I'm watching this documentary and this gay guy went to a church and the Pastor was telling him that he needs to embrace his way and know that it is not a sin. Ok umm wow, dude it is. I'm sick of people making Gods word what it's not. Yes God loves you as a person but He hates the sin. Tired of hearing about Pastors being ok with homosexuality." According to the chaplain assistant, she believes she was "targeted" by her unit, and told by her commander to take the posting down or face a reduction in pay and

¹¹⁴ Alex Murashko, *Air Force Republishes Chaplain's 'No Atheists in Foxholes' Article to Base Website*, CHRISTIAN POST (Aug. 14, 2013), <http://www.christianpost.com/news/air-force-republishes-chaplains-no-atheists-in-foxholes-article-to-base-website-102226/#Fjydl8QB8IKteugL.99>.

rank, which she reportedly refused to do.¹¹⁵ No updates could be found regarding the status of the chaplain assistant or the veracity of the story.

Claim 46: Drag queen group performs at Air Force Base LGBT Diversity Day – August 8, 2013. A “Diversity Day” celebration at the Los Angeles Air Force Base featured eight cultural presentations including a well-known drag queen group (“Jules and the Brunchettes”). USAF spokesperson, Peggy Hodge, stated, “Drag acts to this day represent the struggle for freedom and equality of the LGBT community, while at the same time providing a deep-rooted historical form of entertainment for the LGBT culture.” She added that such performers hearken back to the Stonewall Riots, the beginning of the gay rights movement. They are a “symbol of gay pride and unity.” Starnes wrote, “In addition to the drag queens, there were performances by an Irish dance troupe, a Polynesian entertainment group, Japanese drummers, Native American dancers, Hispanic folk music, and cloggers.”

Facts: It is true that three individuals dressed in drag did perform at the “Diversity Day” event.¹¹⁶ It is unclear how this performance constitutes an attack on religious freedom in the military.

Claim 47: Department of Defense training materials suggest conservative viewpoints are “extremist” – August 22, 2013. A Judicial Watch Freedom of Information Act request produced Department of Defense (DOD) anti-discrimination training materials implying that some conservative organizations are “hate groups.” Students were told to be aware that “many extremists will talk of individual liberties, states’ rights, and how to make the world a better place.” The documents repeatedly cited the leftwing Southern Poverty Law Center (SPLC) as a resource for identifying “hate groups.” One document suggested that the American colonists who rebelled against British rule were members of an “extremist movement.”

Facts: Anti-extremist training has been standard in the military for decades.¹¹⁷ In October 2013, the Air Force acknowledged, however, that “on several occasions over the past few

¹¹⁵ Billy Hallowell, *Army Chaplain Assistant Reportedly Threatened With Reduction in Pay and Rank Over Facebook Post Calling Homosexuality a Sin*, BLAZE (Aug. 6, 2013), available at <http://news.yahoo.com/army-chaplain-assistant-reportedly-threatened-reduction-pay-rank-181038665.html>. This article simply repeats the information originally posted on Starnes’ website; however, the link to the original story no longer exists.

¹¹⁶ Oliver Darcy, *Totally Offensive and Inappropriate: Military Base Reportedly Hosts Drag Queens During Diversity Day Celebration*, BLAZE (Aug. 10, 2013), available at <http://news.yahoo.com/totally-offensive-inappropriate-military-reportedly-hosts-drag-queens-135224790.html>.

¹¹⁷ See, U.S. DEP’T OF DEF., INSTRUCTION NO. 1325.06, HANDLING DISSENT AND PROTEST ACTIVITIES AMONG MEMBERS OF THE ARMED FORCES; Master Sgt. Stephen Barrett, *DoD Officials Move to Halt Extremist Activities*, U.S. DEP’T OF DEF., (July 24, 1996), <http://www.defense.gov/news/newsarticle.aspx?id=40766>.

months, media accounts have highlighted instances of Army instructors supplementing programs of instruction and including information that is inaccurate, objectionable and otherwise inconsistent with current Army policy.”¹¹⁸ Accordingly, the Army announced that it will standardize the training to “ensure consistency with Army policy.”¹¹⁹

Claim 48: Air Force Senior Master Sergeant Phillip Monk is relieved of duties over gay marriage – July 25, 2013; files complaint – August 20, 2013; is given a Miranda warning by Air Force investigator – August 27, 2013. A 19-year veteran of the Air Force, Senior Master Sergeant Phillip Monk, was relieved of his duties after he disagreed with his openly gay commander, Maj. Elisa Valenzuela, when she wanted to severely punish an instructor who had expressed religious objections to homosexuality. Valenzuela incorrectly told Monk that opposition to same-sex marriage constituted discrimination. Monk disagreed. Valenzuela relieved Monk of his duties as First Sergeant for the unit. Monk was also placed on restricted liberty and was no longer permitted to be physically present in the unit’s buildings or facilities located at Lackland Air Force Base, San Antonio, TX. News of these events broke around mid-August 2013, and Monk filed a formal complaint against Valenzuela on August 20, 2013. In an August 27, 2013 meeting with an Air Force investigator, Sgt. Monk and his attorney, Michael Berry (Liberty Institute), were told that Monk is under investigation criminally for violating Article 107 of the Uniform Code of Military Justice (UCMJ)—making a false official statement. Monk was read his Miranda rights at that time. This step was puzzling because Monk had made no official comments on this matter—an essential element of an Article 107 violation. The Air Force action appeared to be retaliation for Monk’s discrimination filing against Major Valenzuela.

Claim 50: Air Force “closes” case while attacking SMSgt. Monk – October 8, 2013. On October 8, 2013, the Air Education and Training Command of the Joint Base San Antonio-Randolph issued a press release purporting to close SMSgt. Monk’s case. The command stated that it had conducted a thorough investigation and would not take any disciplinary actions against either SMSgt. Monk or Major Valenzuela, but it said that he had made non-prosecutable false statements. The command also stated that Monk’s claim of religious discrimination was unsubstantiated. Put another way, the Air Force put all its chips on the table for Major Valenzuela. On October 9, Liberty Institute issued a confident response asserting, “Liberty Institute disagrees with the Air Force’s findings and conclusion. The Air Force’s version of this story is not true.”

¹¹⁸ Standardization of Equal Opportunity Training within the Army, Memorandum from Secretary of the Army John M. McHugh (Oct. 18, 20113), available at <http://downloads.frc.org/EF/EF13J55.pdf> [hereinafter McHugh Memorandum].

¹¹⁹ *Id.*

Facts (Claims 48 & 50): An investigation by Air Force Colonel Mark Camerer concluded that Monk's claims were "unsubstantiated."¹²⁰ According to a media release from the Air Education and Training Command, "the weight of the evidence shows that religion was never discussed between the two In the end, this is a case about command authority, good order and discipline, and civil rights – not religious freedoms."¹²¹ Indeed, "the report stated Monk never voiced a religious or moral objection about same sex marriage to his commander."¹²² In addition, "the investigation concluded Monk was not removed from his position, but rather moved, as scheduled, to another Lackland unit, an assignment he was notified of in April 2013."¹²³

The investigation also determined that Monk made false official statements to the Air Force.¹²⁴ The Air Force considers the matter closed.

Claim 49: Catholic chaplain sues to end discriminatory exclusion from performing his duties – October 4, 2013. *On October 4, 2013, during a federal government shutdown, the Department of Defense told a Catholic priest and civilian contractor, Father Ray Leonard, that he was non-essential and would be furloughed at the Naval Submarine Base Kings Bay in Georgia. Fr. Leonard, who was the Catholic priest for the base, was threatened with arrest for voluntarily celebrating Holy Mass there. He was also barred from entering the base chapel. Only Catholic service members were left without services; Protestant services continued during the shutdown. On October 14, the Thomas More Law Center, based in Ann Arbor, Michigan, filed suit on Fr. Leonard's behalf in the United States District Court for the District of Columbia. The next day the government relented and agreed to allow Fr. Leonard to resume all his religious duties and to have unrestricted use of the base chapel.*

Facts: Active-duty chaplains—regardless of faith—were not furloughed during this time.¹²⁵ Because Catholics make up only about 8 percent of the military chaplaincy,¹²⁶ the military

¹²⁰ Press Release, Investigation into Lackland Sergeant's Claim of Improper Removal Concludes, U.S. Air Force, (Oct. 8, 2013), http://militaryreligiousfreedom.org/docs/AF_Monk_News_Release_10-01.pdf; Oriana Pawlyk, *AF: Religious Intolerance Claim Unsubstantiated*, MILITARY TIMES (Oct. 11, 2013), <http://www.militarytimes.com/article/20131011/NEWS/310110013/AF-Religious-intolerance-claim-unsubstantiated>.

¹²¹ Investigation into Lackland Sergeant's Claim of Improper Removal Concludes, *supra* note 127.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Pawlyk, *supra* note 105.

¹²⁵ Karen Jowers, *Shutdown May Affect Some Chapel Services*, MILITARY TIMES (Oct. 4, 2013), <http://www.militarytimes.com/article/20131004/BENEFITS07/310040017/Shutdown-may-affect-some-chapel-services>.

¹²⁶ Paul D. Shinkman, *Defense Overturns Ban on Civilian Catholic Priests During Shutdown*, U.S. NEWS & WORLD REPORT (Oct. 17, 2013), <http://www.usnews.com/news/articles/2013/10/17/defense-overturns-bans-on-civilian-catholic-priests-during-shutdown>.

often contracts with civilian Catholic priests to serve military bases. Under the rules of the furlough during the government shut-down, these civilian contractors—along with 400,000 other civilian military employees¹²⁷—were considered non-essential personnel. In accordance with the Anti-Deficiency Act of 1884, furloughed workers are barred by law from volunteering during a furlough.¹²⁸ Thus, some Catholic chaplains could not serve during a period of the government shut-down.

Father Ray Leonard was one of these civilian chaplains, and therefore, he was furloughed. Contrary to the claim, however, he was not threatened with arrest. Public Affairs Officer Scott Basset said: “We’re not threatening to arrest anybody.”¹²⁹

On October 16, the Department of Defense changed its policy and exempted civilian contracted clergy from the furlough.¹³⁰

Claim 51: Army training at Camp Shelby labels AFA a hate group – October 14, 2013. *Approximately 50 U.S. Army active duty soldiers and reservists at Camp Shelby, Mississippi, were told during an anti-discrimination briefing that the American Family Association (AFA) should be considered a hate group. A PowerPoint slide entitled “American Family Association” carried a photo of the reprehensible Westboro Baptist Church preacher Fred Phelps holding a sign with “No special law for f**s.” (The photo appeared, for example, on the SPLC website.) AFA was listed along with the KKK, Neo-Nazis, etc. as a “domestic hate group” in the Camp Shelby briefing. On October 15, 2013, a Pentagon-based Army spokesman, Troy A. Rolan, Sr., wrote an e-mail to the Jackson Clarion-Ledger backing away from the presentation saying the offending slide “does not reflect our policy and doctrine.” The briefer, Rolan said, took information from the Internet not from official Army sources, and it had not been approved by senior level leaders or counselors. He said the soldier realized, after being challenged, that the information on the slide was not correct. Rolan added, “The briefing has been updated, and any reference to American Family Association has been removed.” Finally, Rolan said the case was closed.*

Facts: Army spokesman Troy A. Rolan Sr. responded to complaints about the slide, saying, “the slide was not produced by the Army and it does not reflect our policy or doctrine. It was produced by a soldier conducting a briefing which included info acquired from an internet

¹²⁷ Robert Burns, *Pentagon: Most Furloughed Civilians Ordered Back*, MINNEAPOLIS PUB. RADIO (Oct. 5, 2013), <http://www.mprnews.org/story/2013/10/05/pentagon-most-furloughed-civilians-ordered-back>.

¹²⁸ 31 U.S.C. § 1342 (1957).

¹²⁹ Shinkman, *supra* note 133.

¹³⁰ *Id.*

search.”¹³¹ As explained above, in an October 18, 2013, memo, the Air Force acknowledged that “on several occasions over the past few months, media accounts have highlighted instances of Army instructors supplementing programs of instruction and including information that is inaccurate, objectionable and otherwise inconsistent with current Army policy.”¹³² Accordingly, the Army announced that it would standardize the training to “ensure consistency with Army policy.”¹³³

Claim 52: Fort Hood, TX briefing describes evangelical Christians as a threat—October 17, 2013. *On October 17, 2013 soldiers attended a counter-intelligence pre-deployment briefing at Fort Hood, Texas during which they were told that evangelical Christians and members of the Tea Party threatened the country. Additionally, they were informed that soldiers who donated to such organizations could be subject to discipline under the Uniform Code of Military Justice. According to sources, the counter-intelligence officer leading the briefing spent approximately thirty minutes discussing the ways evangelical Christians, generally, and groups like the American Family Association, specifically, were “tearing the country apart.”*

Facts: A Fort Hood investigation “concluded that allegations about a briefing citing Christian and tea party organizations as hate groups were false.”¹³⁴

Claim 53: U.S. Air Force Academy is held accountable for removing “So help me God” in four oaths - October 21, 2013. *Another campaign of agitation by Mikey Weinstein toward the U.S. Air Force Academy (USAFA) prompted its Superintendent, Lt. Gen. Michelle Johnson, to remove a poster containing the Academy “Honor Oath” because the phrase “so help me God” could be seen on it. That appears to have been a pyrrhic victory for Weinstein because over twenty members of the House of Representatives started to look closely at the USAFA’s handling of the four oaths related to Academy life. Their November 18, 2013 letter to Johnson pointed out that the 2012 edition of the cadet handbook misstated the content of three oaths thereby excluding “so help me God” even though this language was mandated either by statute or regulation (i.e., Oath of Office for Officers, Oath of Enlistment, and the Cadet’s Oath of Allegiance). This prompted an Academy spokesman to respond that the deletions were merely “editorial oversight[s]” and that corrections were forthcoming. House*

¹³¹ David McCaine, *Army Officially Rejects SPLC’s Labeling the AFA as a Hate Group*, EXAMINER (Oct. 18, 2013), <http://www.examiner.com/article/army-officially-rejects-splc-s-labeling-the-afa-as-a-hate-group>.

¹³² McHugh Memorandum, *supra* note 103.

¹³³ *Id.*

¹³⁴ Rose L. Thayer, *Fort Hood: Tea Party ‘Hate’ Claims Are Not True*, KILEEN DAILY HERALD (Oct. 29, 2013), http://kdhnews.com/military/fort-hood-tea-party-hate-claims-are-not-true/article_47174adc-404b-11e3-98c1-001a4bcf6878.html?mode=jqm.

Members also wanted the poster restored to its original place of display and the Honor Oath to be left as it was – including the phrase.

Facts: The Air Force Academy did remove the poster reflecting a religious oath.¹³⁵ Then, on October 24, 2013, it also announced that it would not require cadets to state the phrase, “so help me God,” at the end of the oath, but rather the phrase would be optional for all cadets.¹³⁶

The Academy’s policy of making the phrase optional is consistent with that of the Navy, Army, and Marine Corps. At that time the Air Force also had the same policy, but reinstated the oath requirement in October 2013.¹³⁷ The Air Force changed this policy again in September of this year, making the oath optional, after an Airman threatened to file a lawsuit.¹³⁸

Claim 54: *Group sues after two of its chaplains were harassed in Veterans Administration program – November 8, 2013.* *On November 8, 2013, a lawsuit was filed against the Veterans Administration (VA) on behalf of two chaplains subjected to months of abuse and ridicule by the director of a pastoral training program. Chaplains Maj. Steven Firtko, U.S. Army (Ret.), and Lt. Cmdr Dan Klender were endorsed by the Conservative Baptist Association of America (CBAmerica). The men entered the San Diego VA-DOD Clinical Pastoral Education Center program in August 2012. Soon afterwards, the program’s director, Nancy Dietsch, allegedly began attacking their Biblical beliefs. She warned them not to pray in Jesus’ name or to cite Scripture and openly ridiculed them and their beliefs in class. Klender withdrew in February 2013, and Firtko was told that he would be dismissed. Both men filed formal complaints in July 2013.*

Facts: Two chaplains claimed that they faced religious persecution during their training program to become chaplains as part of the VA hospital system. Retired U.S. Army Major Steven Firtko and Lieutenant Commander Dan Klender claimed that during their training at the San Diego Clinical Pastoral Education Center, they were repeatedly told by their supervisor that they were not allowed to express their faith in the classroom, and that their supervisor did this because she was biased against their evangelical faith.¹³⁹ The alleged persecution included being told they could not pray “in Jesus’ name,” that they could not

¹³⁵ Stephen Losey, *Academy Makes ‘God’ Optional in Cadets’ Oath*, AIRFORCE TIMES (Oct. 25, 2013), <http://www.airforcetimes.com/article/20131025/NEWS/310230013/Academy-makes-God-optional-cadets-oath>.

¹³⁶ *Id.*

¹³⁷ *Air Force Nixes ‘So Help Me God’ Requirement in Oaths*, AIRFORCE TIMES (Sept. 17, 2014), <http://www.airforcetimes.com/article/20140917/NEWS/309170066/Air-Force-nixes-help-me-God-requirement-oaths>.

¹³⁸ *AF to Change Instructions for Oaths*, U.S. AIR FORCE (Sept. 17, 2014), <http://www.af.mil/News/ArticleDisplay/tabid/223/Article/497535/af-to-change-instructions-for-oaths.aspx>.

¹³⁹ Todd Starnes, *Lawsuit: Chaplains Banned from Saying “Jesus”*, Fox News (Nov. 11, 2013), <http://radio.foxnews.com/toddstarnes/top-stories/lawsuit-chaplains-banned-from-saying-jesus.html>.

quote from the Bible, and that they could not share their personal beliefs.¹⁴⁰ The VA, in contrast, stated that the plaintiff chaplains had been “bullying other classmates and refusing to honor other faith groups.”¹⁴¹

Claim 55: Back at Camp Shelby, an Equal Opportunity officer says “Christmas” is forbidden –December 10, 2013. *Around December 10, 2013 an officer from Defense Equal Opportunity Management Institute (DEOMI) was present during a routine meeting of leaders of the 158th Infantry Brigade at Camp Shelby, MS. At that time, a discussion involving the upcoming Christmas football tournament occurred. The use of “Christmas” prompted the EO officer to lodge an objection informing the others that, corporately, the Army is not permitted to say “Christmas” – for example, in announcing or promoting the name of the seasonal football competition. A soldier who was present described the reaction to this as follows: “Almost the entire room blew up. Everybody was frustrated. The equal opportunity rep told our commander that not everyone celebrates Christmas and we couldn’t say Christmas celebration. It had to be holiday celebration.” The Public Affairs Chief for the First Army Division East, Amanda Glenn, said that the Army units involved had no such policy, and she downplayed the nature of the EO officer’s command to not use “Christmas.” However, Mike Berry, a civil liberties attorney with the Liberty Institute, indicated to Todd Starnes of Fox News that the soldiers who were present clearly perceived that a “name change was not merely a suggestion.”*

Facts: Contrary to reports by the Religious Right, the Equal Opportunity officer from the Defense Equal Opportunity Management Institute never forbade the use of the word “Christmas.” Instead, the officer expressed the opinion that rather than hosting a “Christmas football tournament” it would be more appropriate to hold a “holiday tournament.”¹⁴² Public Affairs Chief Amanda Glenn stated: “There is no policy at the 158th Infantry Brigade, First Army Division East or First Army that forbids using the word ‘Christmas.’ The Equal Opportunity advisor simply stated that it would be more appropriate to call it a holiday football event.”¹⁴³

Claim 56: Nativity Scene Moved at Shaw Air Base – December 12, 2013. *Shaw Air Force Base is located near Sumter, South Carolina, in the central part of the state. After a call from Mikey Weinstein on December 6th complaining about the presence of a nativity scene on the base, the Pentagon and the based*

¹⁴⁰ *Id.*

¹⁴¹ Andie Adams and Steven Luke, *Men Not Allowed to Say Jesus in Chaplain Class: Lawsuit*, NBC SAN DIEGO (Nov. 8, 2013), <http://www.nbcsandiego.com/news/local/Men-Accuse-VA-of-Religious-Persecution-231216811.html>

¹⁴² Nadine DeNinno, *Merry Christmas Or Happy Holidays? Army Told Not To Say 'Christmas': Report*, INT’L BUS. TIMES (Dec. 24, 2013), <http://www.ibtimes.com/merry-christmas-or-happy-holidays-army-told-not-say-christmas-report-1519576>.

¹⁴³ *Id.*

[sic] command promptly removed the nativity scene. Weinstein's MRFF claimed that it took little over two hours for the Air Force to remove the Christmas scene. However, that was not the end of the story. On December 10, 2013 a Military Times story indicated that base officials were attempting to determine where the nativity scene could be located. Two days later, they told the press that volunteers had placed the Christmas decoration next to the base chapel where it had been located in previous years. Once relocated within chapel's aura of constitutionality, a military chaplain blessed it and the controversy ended.

Facts: In 2013, a nativity scene was displayed beside a lake on Shaw Air Force base. This was a departure from previous years, when that display was set up immediately outside the chapel.¹⁴⁴ After receiving complaints from over 40 air force members regarding the nativity scene, the Air Force decided to remove the display and move it to the chapel. The Air Force released a statement explaining the situation:

Last week a group of volunteers set up a nativity scene near Memorial Lake. All faith-based and secular groups were offered an opportunity to put up holiday displays; however, only one group elected to do so resulting in the nativity scene being the sole display.

Based on only one faith group being represented, 20th Fighter Wing officials determined the appropriate course of action was to celebrate the holiday season consistently and elected to remove the nativity scene from Memorial Lake. In previous years, the nativity scene had been displayed on the grounds of the base chapel. All faith-based and secular groups wishing to place a holiday display on the grounds of the chapel this year are encouraged to coordinate with the Shaw chaplain staff.¹⁴⁵

The nativity display was relocated to the front of the base chapel the next day.¹⁴⁶

Claim 57: Veterans hospital in Augusta, GA bans singing of Christmas carols – December 20, 2013. *On December 20, 2013 a choral group of students from the Alleluia Community School were told by administrators at the Charlie Norwood VA Medical Center in Augusta that they could not sing religious Christmas songs when visiting the hospital. The students from the Alleluia Community School were given a list of twelve secular Christmas songs that “the*

¹⁴⁴ Jack Kuenzie, *Nativity Scene Removed from Shaw Air Force Base Installed at New Location*, WIS-TV (Dec. 20, 2013), <http://www.wistv.com/story/24184899/nativity-scene-removed-from-shaw-air-force-base-stirring-controversy>.

¹⁴⁵ *Id.*

¹⁴⁶ Rebecca Shabad, *SC Republicans Applaud Restoration of Nativity Scene at Air Force Base*, THE HILL (Dec. 12, 2013), <http://thehill.com/policy/defense/192993-three-republicans-applaud-restoration-of-nativity-scene-at-air>.

hospital's pastoral service 'deemed appropriate for celebration within the hearing range of all veterans.'" A hospital spokesman stated that the policy was "welcoming but respectful of all faiths and the protection of each veteran's right to religious freedom and protection from unwelcomed [sic] religious material, to their religious beliefs."

Facts: VA director Bob Hamilton apologized for the incident, explaining that the carolers should not have been prohibited from signing carols with religious messaging. The situation ended amicably, with Hamilton saying: "We welcome the holiday carolers from the Alleluia School Choir. Veterans and staff alike enjoy their songs, camaraderie and cheerful presence. We look forward to their visit this coming holiday season."¹⁴⁷

Claim 58: Dallas veterans facility refuses Christmas cards from children because they contained messages like "Merry Christmas" and "God Bless You" – December 23, 2013. *Susan Chapman, a teacher at Grace Academy of North Texas (Prosper, TX) and the wife of [a] military veteran, worked with her students to create Christmas cards to give to hospitalized veterans at the VA Medical Center in Dallas, TX. As one would expect, most or all of the cards contained the phrase, "Merry Christmas." The cards were delivered in a timely manner for Christmas delivery, but the VA facility told Ms. Chapman that the cards were rejected because these holiday cards contained unacceptable language such as "Merry Christmas," "God Bless You," and other religious phrases. Ms. Chapman has retained counsel and is attempting to have the VA reverse a policy that appears to include content-based speech restrictions.*

Claim 59: VA hospital in Montgomery, AL refuses to allow young woman with over 100 gift bags and cards to distribute them to veterans, due to religious messaging – December 24, 2013. *A young woman, Jordan McLendon, wished to honor the memory of her grandfather, a Vietnam Veteran, by making more than 100 gift bags with handmade Christmas cards for the veterans staying at the Central Alabama Veterans Health Care System Medical Center (VAMC). When she arrived at the facility on Christmas Eve morning, she was not allowed to distribute her gifts because most of the cards and bags had "Merry Christmas" written or printed on them. She was permitted to deliver 18 bags and two cards because they did not contain religious language and were able to get by the VA censors. It is reported that the acting-Director of the hospital took these actions based on his understanding of existing VA guidelines promulgated by the Department's headquarters in Washington, D.C.*

¹⁴⁷ Wesley Brown, *Student Carolers Welcomed to Sing Freely at Augusta VA Again*, AUGUSTA CHRON. (May 6, 2014), <http://chronicle.augusta.com/latest-news/2014-05-06/student-carolers-welcomed-sing-freely-augusta-va-again?v=1399435242>.

Claim 60: VA facility in Iowa City, IA restricts Christmas gift-giving by members of the American Legion – December 2013. *In Iowa City, Iowa, American Legion members were told they could not hand out presents to veterans if the wrapping paper said “Merry Christmas.” The Legionnaires were able to get the presents to the veterans with the help of a VA chaplain. The American Legion has asked VA Central Office to offer an explanation for these and other restrictions that are taking place at VA facilities. The National Commander of the American Legion, Daniel Dellinger, noted the increasing censorship and restrictions on speech that occur each year at Christmas at VA installations. Mr. Dellinger also pointed out that “[v]eterans in these hospitals fought to protect such freedoms.”*

Facts (58, 59, & 60): According to the Director of the Veterans Affairs of North Texas, Jeffrey Milligan, the Dallas hospital did not reject any holiday cards and the VA does not have a policy barring religious holiday cards.

In the Dallas incident, a teacher called the hospital to ask if it would accept holiday cards created by her students. An employee wrongly told the teacher that the hospital would not accept the cards if they contained religious words and themes. Once the Director’s office learned of this mistake, a Public Affairs Officer immediately called the teacher to apologize, telling her that the hospital would gladly accept the cards, and explained the official policy of the hospital.¹⁴⁸

The Dallas hospital—like the Montgomery and Iowa City hospitals—does accept holiday cards, but it does so in a way to ensure that patients are not subject to unwanted proselytizing and evangelism. The policy, as explained by Mulligan is as follows:

The VA greatly appreciates donations made by students and organizations on behalf of our Veterans and we will always accept cards for our patients who celebrate Christmas. We would like to clarify the process though in which VA North Texas Health Care System (VANTHCS) handles religious/spiritual donations. All forms of holiday donations are received every year and recorded through Voluntary Services. A multi-disciplinary team led by Chaplaincy services reviews holiday cards and determines if the cards contain religious/secular material within them and in the event they do - our Chaplains distribute them by asking patients on a one-on-one basis if they will accept a holiday card with religious references.

Our Veterans enlisted in the military with the understanding they may be called to fight for our freedoms. One of those freedoms is our freedom to practice a

¹⁴⁸ Calvert Collins, *Students, Parents Upset that Christmas Cards Won't Go to Local Veterans Due to Policy*, Fox 4 Dallas-Ft. Worth (Dec. 24, 2013), <http://www.myfoxdfw.com/story/24293539/students-parents-upset-that-religious-christmas-cards-wont-go-to-north-texas-veterans>.

religion of our choice free of persecution. As a federal agency that provides health care to our Nation's Veterans, it is our duty to uphold and respect the fact that our Veterans are from all faiths and backgrounds and we must honor their sacrifices by making sure we approach religious donations through highly trained VA Chaplains and seek patient approval before distribution.¹⁴⁹

Claim 61: Air Force Academy officials ensure the removal of a cadet's bible verse from the white board outside his room; cadets protest – March 11, 2014. *On March 11, 2014, a U.S. Air Force cadet “voluntarily” removed a Bible verse, Gal. 2:20, from a whiteboard outside his room in a U.S. Air Force Academy dorm. It appears that the Academy administration’s coercive actions were prompted by a complaint from Mikey Weinstein, director of the Military Religious Freedom Foundation, who claimed to represent twenty-nine cadets and four faculty members. Weinstein also asserted that the scripture was erased two hours and nine minutes after he complained to the Academy. Apparently, the verse had been posted on the white board several months prior, but was suddenly removed, according to Lt. Gen. Michelle Johnson (USFA Superintendent), because this cadet “held a leadership position in the squadron.” The erasure of the verse prompted a protest by approximately one dozen cadets who then posted Bible verses on their own white boards while others posted texts from the Koran. These scripture verses were not erased, presumably because these cadets did not hold leadership positions. Related to these events at the Academy, the Air Force Academy Staff Judge Advocate informed attorney Michael Berry (of the Liberty Institute) “that Air Force policy from the Pentagon, is that the term ‘religious exercise’ does not include written or verbal speech.”*

Facts: The incident of an Air Force Academy cadet writing a Bible verse on his whiteboard was less controversial for those involved in the situation than some media outlets claimed. A cadet, who was in a leadership position in his squadron, wrote a Bible verse on the white board outside his dorm room, which is used for both official and personal use. The quote from Galatians read: “I have been crucified with Christ therefore I no longer live, but Christ lives in me.”¹⁵⁰ After another cadet in his squadron complained to the sergeant, that sergeant and other leaders met with the cadet to discuss the issue.¹⁵¹ Taking into consideration the

¹⁴⁹ *Id.*

¹⁵⁰ Todd Starnes, *Air Force Academy Removes Bible Verse From Cadet’s Whiteboard*, FOX NEWS (Mar. 11, 2014), <http://www.foxnews.com/opinion/2014/03/11/air-force-academy-removes-bible-verse-from-cadet-whiteboard/>.

¹⁵¹ Tom Roeder, *Whiteboard at Air Force Academy Has Controversy Written All over It*, DENVER POST (Mar. 16, 2014), http://www.denverpost.com/news/ci_25352402/whiteboard-at-air-force-academy-has-controversy-written.

impact such a statement would have on subordinates, the cadet elected to remove the verse voluntarily.¹⁵²

Indeed, according to Academy Superintendent Lt. Gen. Michelle D. Johnson, “in the specific case at the Air Force Academy, the cadet did not feel that his right to free exercise of religion was infringed upon. His cadet and officer leadership discussed the situation and how it might be perceived by others under his supervision and he removed it.”¹⁵³ Johnson further described the situation as “a learning opportunity for cadets at the Air Force Academy” to help them assess complex issues like religion and “explor[e] how to balance religious freedom with ‘caring leadership that inspires all subordinates.’”¹⁵⁴

The whiteboard incident is a prime example of how situations regarding religion can and should be handled: internally by the command leadership, according to consideration for others’ religious backgrounds.

¹⁵² U.S. Air Force Academy (Official), Facebook post on Mar. 14, 2014, https://www.facebook.com/USAFA.Official/posts/10152096722373853?stream_ref=10.

¹⁵³ *Id.*

¹⁵⁴ Billy Hallowell, ‘Revolt’ over Bible Verse Removal Leads to Air Force Academy Explanation, BLAZE (Mar. 13, 2014), <http://www.theblaze.com/stories/2014/03/13/u-s-air-force-academy-responds-to-furor-over-bible-verse-removal/>.