

Congress of the United States
House of Representatives
Washington, DC 20515

May 6, 2014

General Mark A. Welsh III
Chief of Staff, United States Air Force
1670 Air Force Pentagon
Washington, DC 20330-1670

Dear General Welsh:

Thank you again for the opportunity to address Air Force leadership at the CSAF Religious Freedoms Focus Day on April 28. I appreciate your hospitality, and your demonstrated commitment to defending religious freedom for our Nation's Airmen. Following my presentation, you shared a copy of the enclosed Communication Card (CC) with my staff, and requested feedback on the language on AFI 1-1. This letter is intended to serve as a response to that request.

Overall, the CC represents a balanced approach to religious expression, but it is the policy language of AFI 1-1 that is binding on commanders. The section of the CC entitled "Excerpts from AFI 1-1: Air Force Standards" makes no mention of the neutrality language of § 2.11 of the Instruction.

There are two main concerns regarding AFI 1-1 §§ 2.11-2.12. First, the language places a disproportionate emphasis on religious neutrality over the protection of religious expression by addressing neutrality first and by primarily addressing neutrality and accommodation rather than reinforcing the importance of free exercise. Second, because of this disproportionate emphasis, the policy creates an artificial grey area for religious expression that results in a chilling effect and provides a foothold for a heckler's veto.

To address this imbalance, I recommend two things:

- 1) Amending AFI 1-1, §§ 2.11-2.12; and
- 2) Revoking or revising and reissuing General Schwartz's memo of September 1, 2011, "Maintaining Government Neutrality Regarding Religion."

My suggested amendments to AFI 1-1 are as follows:

2.11. Free Exercise of Religion and Religious Accommodation. Supporting the right of free exercise of religion relates directly to the Air Force core values and the ability to maintain an effective team. Leaders at all levels must support the Constitutional right of all Airmen to freely exercise and express their religion or other personal beliefs. Airmen are expected to exercise their beliefs in a manner that is respectful of other individuals' rights to follow their own belief systems; and in ways that are conducive to good order and discipline.

2.11.1. All Airmen are able to choose to practice their particular religion, or subscribe to no religious belief at all. You should confidently practice and express your own beliefs while respecting others whose viewpoints differ from your own.

2.11.2. Your right to practice your religious beliefs does not excuse you from complying with directives, instructions, and lawful orders; however, you may request religious accommodation. Requests can be denied based on military necessity. Commanders and supervisors at all levels are expected to ensure that requests for religious accommodation are dealt with fairly.

2.12. Maintaining Good Order and Discipline. Leaders at all levels must balance constitutional protections for an individual's free exercise of religion or other personal beliefs and the constitutional prohibition against governmental establishment of religion. For example, they must avoid the actual use of their position to promote their personal religious beliefs to their subordinates or to extend preferential treatment for any religion. Commanders or supervisors who engage in such behavior may cause members to doubt their impartiality and objectivity. No expression of faith should be directly prejudicial to good order and discipline.

These edits incorporate several important changes. First, the policy now leads with a reinforcement of free exercise first, and the balance of impartiality second. This properly reflects both the fact the religious freedom is a right that receives special protection under the Constitution and the reality that most expressions of faith will strengthen the military rather than divide it.

Second, the additional language in the opening clause of § 2.11 makes clear the expectation that all Airmen will practice their faith in a way that is respectful of the beliefs of others. This language comes directly from the Free Exercise of Religion and Religious Accommodation Communications Card which you shared with my office.

Third, § 2.12 now clearly imports the standard of good order and discipline as the guideline for determining when a religious expression has gone too far. The determination of what disrupts good order and discipline has historically been left to the commanders, with the guidance that conduct must be directly and palpably prejudicial to good order and discipline. (United States v. Sadinsky, 34 C.M.R. 343 (C.M.A. 1964)).

Finally, the amendments retain the requirement that leaders at all levels must be impartial and objective without implying that the mere expression of their own faith in an appropriate manner could jeopardize their impartiality.

The third and fourth changes are critical, because they remove the foothold for a heckler's veto to an expression of faith by clarifying that commanders need not hide their faith to remain impartial, and by reinforcing that ultimate discretion lies with the commanders, and their responsibility to care for the needs of their men and women and to maintain good order and discipline.

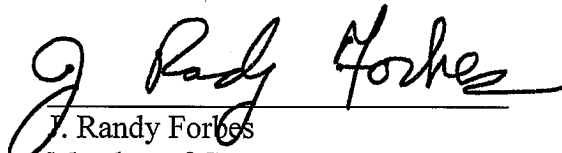
There is no question that there must be a balance of religious expression and good order and discipline in the military. This fact was demonstrated during the Q&A following my presentation. As I emphasized in my speech, this balance is best achieved by leaving the determination of good order and discipline in the hands of Air Force commanders. The neutrality language in the current § 2.11 is at best unnecessary, and at worst creates a chilling effect on otherwise protected and appropriate

expressions of belief. The section attempts to reinforce neutrality, but the focus of § 2.11 is negative, repeatedly using the word "degrade." The section also opens up too many interpretive questions, like how to define "promote" or "preferential treatment." Furthermore, there are already avenues in place to address threats to good order and discipline, harassment, or inappropriate pressure from a commanding officer.

Finally, for complete clarity, it would be helpful to revoke or reissue General Schwartz's memo from September 1, 2011, "Maintaining Government Neutrality Regarding Religion." This memo includes language that would be made obsolete if the above changes are adopted. Furthermore, the memo states that only chaplains, not commanders, may notify Airmen of Chaplain Corps programs. The purpose of this restriction was to ensure impartiality, however is unnecessary under the above suggested edits to AFI 1-1 §§ 2.11-2.12. A commander should not be restricted from informing Airmen of any military-approved program, religious or otherwise. This memo can be addressed either by revocation or by issuing new guidance clarifying that commanders are free to notify Airmen of formally announced Chaplain Corps programs and that notification of an official Chaplain Corps program does not amount to the actual or apparent use of a leadership position to promote one religious belief over others.

Thank you for your service and for your commitment to our Airmen. Please do not hesitate to contact me if there is any way I can be of assistance.

Sincerely,



J. Randy Forbes
Member of Congress