

# FREEDOM FROM RELIGION *foundation*

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June 9, 2014

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

Re: Air Force Instruction 1-1

Dear General Welsh:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding proposed changes to paragraphs 2.11 and 2.12 of Air Force Instruction (AFI) 1-1, which regulates religious expression and government establishment of religion in the United States Air Force (USAF). FFRF is a national nonprofit organization with more than 20,000 members nationwide. Over 24% of our members are active duty military or veterans. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that your office is contemplating proposed changes to AFI 1-1, paragraphs 2.11 and 2.12. We are in full support of the Military Religious Freedom Foundation and its Founder and President, Mikey Weinstein, which has already identified its numerous concerns with the proposal in its June 6 letter. We write to express our additional concerns and to ask that you reject the proposed changes.

As currently drafted, AFI 1-1, ¶ 2.11 instructs “leaders at all levels” to avoid “actual or apparent use of their position to promote their personal religious beliefs to their subordinates or to extend preferential treatment for any religion.” The paragraph goes on to explain that “[c]ommanders or supervisors who engage in such behavior may cause members to doubt their impartiality and objectivity.” The proposed changes to AFI 1-1 eliminate all of this language. Avoiding the appearance of government endorsement of a religious message should be an essential element of any instruction on maintaining government neutrality toward religion. It is disconcerting that this language may be removed.

It is a fundamental principle of the Establishment Clause of our Constitution that a government entity cannot in any way promote, advance, or otherwise endorse religion. The Supreme Court has said, “The touchstone for our analysis is the principle that the ‘First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.’” *McCreary County v. ACLU*, 545 U.S. 844, 860 (2005), (quoting three other Supreme Court decisions). While the current version of AFI 1-1 directly addresses this established constitutional principle, the proposed changes would eliminate all references to government neutrality.

Requiring superior officers to remain neutral about religious issues in front of their subordinates does not violate anyone’s freedom of conscience. But when superior officers use their position “to promote their personal religious beliefs to their subordinates” the subordinates’ Free Exercise rights are violated. The Establishment Clause of the First

Amendment is also violated because superior officers do not act as private individuals when addressing their subordinates, but as members of the USAF. The current policy addresses this concern and establishes clear guidelines for commanders and supervisors that are absent in the proposed changes.

The current AFI 1-1 instructions recognize that the "preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." *Lee v. Weisman*, 505 U.S. 577, 589 (1992). If your office shifts the focus of AFI 1-1 away from neutrality and toward a system of religious accommodation, it invites continuous, divisive religious debate into the working lives of USAF service members. The new language will require leaders at all levels of command to constantly evaluate whether a limitation on a requested religious accommodation is "the least restrictive means necessary" to avoid an adverse impact on "military readiness, unit cohesions, good order and discipline, health and safety, and mission accomplishment." The "least restrictive means" is a legal term of art with an extensive case history that most USAF commanders and supervisors are ill-equipped to evaluate accurately. The proposed changes to AFI 1-1 *will* expose the USAF to increased legal liability.

The proposed changes are not only legally risky, but unnecessary. The existing AFI 1-1 language adequately protects service members who wish to practice their personal religious beliefs. The only restrictions on such practice are essential ones: a limit on religious practice when it would interfere with compliance with "directives, instructions, and lawful orders" (§ 2.12.2) and a limit on religious practice by commanders or supervisors if that practice would "degrade morale, good order, and discipline." (§ 2.11). These regulations respect individual religious identity while also protecting the 23.2% of military personnel who identify as atheists, agnostics, or have no religious preference. (2012 MAAF study based on Department of Defense data). Proponents of the proposed changes seek to fix something that is not broken, to the detriment of the USAF.

On behalf of our membership and all nonbelievers in the military, we urge your office to *reject* the ill-advised proposed changes to AFI 1-1 regarding religious expression and government establishment of religion. The current language, which has been in effect successfully for nearly two years, meets the needs of all USAF service members, whether religious or nonreligious.

Sincerely,



Sam Grover  
Staff Attorney

CC: Ms. Deborah Lee James, Secretary of the Air Force  
General Martin E. Dempsey, Chairman, Joint Chiefs of Staff  
Admiral James A. Winnefeld Jr., Vice Chairman, Joint Chiefs of Staff  
General Raymond T. Odierno, Chief of Staff, U.S. Army  
Admiral Jonathan W. Greenert, Chief of Naval Operations  
General James F. Amos, Commandant of the Marine Corps  
Mr. Michael L. "Mikey" Weinstein, Esq., MRFF