

FREEDOM FROM RELIGION *foundation*

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February 6, 2017

SENT VIA U.S. MAIL & EMAIL TO:
Thaddeus.v.day.mil@mail.mil

Lt. Col. Thaddeus Day
157th Air Refueling Wing Judge Advocate Office
302 Newmarket St. Building 100
Pease ANGB, NH 03803-0157

Re: Unconstitutional prayer at Air National Guard ceremonies

Dear Lt. Col. Day:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding constitutional concerns over government-sponsored prayers during official Air National Guard events. FFRF is a national nonprofit organization with more than 26,000 members nationwide; over 6,000 of those members are active duty military or veterans. Our purpose is to protect the constitutional separation between state and church.

A concerned guardsman contacted us to report that official Air National Guard ceremonies at Pease International Tradeport regularly include invocations led by a chaplain. These prayers regularly include readings from the bible and references to the Christian god. We understand that attendance at many of these events is mandatory for guardsmen.

We write to ensure that future Air National Guard ceremonies are free from religious endorsements and mandatory religious observances.

The Supreme Court has long recognized that the First Amendment “mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985)). Christian prayers delivered at an official military event violate the Constitution’s mandate of government neutrality between religious beliefs. Any prayer—including nondenominational prayer—violates the required neutrality between religion and nonreligion. Moreover, “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lee v. Weisman*, 505 U.S. 577, 589 (1992) (O’Connor, J., concurring)). By imposing prayer on its guardsmen at mandatory events, the Air National Guard is violating the constitutional limits on government religious endorsement.

Federal courts have held that scheduling prayers or other religious exercises at mandatory meetings for government employees constitutes illegal government endorsement of religion. See *Milwaukee Deputy Sheriff’s Ass’n v. Clarke*, 588 F.3d 523, 525-26 (7th Cir. 2009) (holding religious speech by a sheriff, bible readings, and distribution of Christian literature

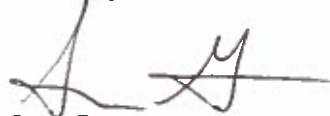
during mandatory employee meetings unconstitutional under the Establishment Clause); *Warnock v. Archer*, 380 F.3d 1076, 1080-81 (8th Cir. 2004) (prohibiting public school district from orchestrating or supervising prayers at mandatory teacher meetings and in-service training). Prayers at military events similarly appear to reasonable observers to endorse religion over nonreligion. This is exactly the type of government endorsement that is prohibited by our Constitution's Establishment Clause, and also creates a hostile work environment for minority religious and nonreligious guardsmen.

Besides the legal issues, there are many good reasons to end this prayer practice. The prayers are unnecessary and divisive. Calling upon soldiers, their families, and other guests to pray is coercive and beyond the scope of a government entity like the Air National Guard. All military members are free to pray privately or to worship on their own time, in their own way. They do not need their employer to dictate prayers for them. The Air National Guard must refrain from lending its power and prestige to religion, amounting to a governmental endorsement that excludes the over 23% of military personnel who either express no religious preference or are atheists.¹ It is also simply insensitive for a government employer to inflict prayer on employees regardless of their personal beliefs.

Please note that prayers during official ceremonies cannot be justified as a religious accommodation for Christian guardsmen. The proposed legal justification for military chaplains, like other government-run chaplain programs, is the relief of a government-imposed burden on religious free exercise. For instance, those in military service may need religious accommodations while on a mission in a foreign country, where access to the church of their choice may be limited. But that justification fails when the military members are no longer opting in to the chaplain's services. Chaplain-imposed prayers at mandatory base events go well beyond accommodation by violating the rights of those guardsmen who would rather opt out of exclusively Christian religious rituals.

We ask that you protect the right of conscience of every guardsman by ending the practice of including prayers at official ceremonies and other base events. Please inform us in writing of the actions you intend to take to address this issue so that we may notify our complainant.

Sincerely,



Sam Grover
Staff Attorney

cc: Superintendent MSgt. Robyn Hansen *via* robyn.m.hansen2.mil@mail.mil

¹ See MAAF Department of Defense Religious Preference and Chaplain Support Study (July 2012), *available at* <http://militaryatheists.org/demographics/>.