



**AMERICAN  
ATHEISTS**  
atheists.org

FREEDOM  
FROM RELIGION  
*foundation*

*Via Regular Mail*

General James N. Mattis  
Secretary of Defense  
1000 Defense Pentagon  
Washington, D.C. 20301-1000

Dear Secretary Mattis:

American Atheists and the Freedom From Religion Foundation have recently seen an increase in complaints from military members and their families who have been subjected to coerced religious observances while attending military training facilities.<sup>1</sup> The complainants allege, among other things, that facility organizers regularly include scheduled prayer in graduation ceremonies, cadets<sup>2</sup> who opt not to attend worship services on Sundays are instead given menial tasks to perform, and instructors regularly lead recruits in prayers prior to administering tests. Further research into these issues suggests that these and similar practices are pervasive at our nation's military training facilities. As national organizations dedicated to protecting the religious liberties enshrined in the First Amendment to the US Constitution, we find rampant religious promotion within the armed services troubling. We represent the atheist, agnostic, humanist, and other non-religious citizens who make up over 23% of military personnel.<sup>3</sup> And we stand for the need to preserve the wall of separation between religion and government erected by the First Amendment, especially on behalf of those who have chosen to pledge their lives to defending that document and our nation. The "mandate to prepare for the waging of war" must be subservient to the fundamental freedoms enshrined in the Bill of Rights.<sup>4</sup> Coercing cadets into religious observances strikes at the core of the religious freedom secured by the Establishment Clause.<sup>5</sup>

By scheduling prayer in graduation ceremonies, and by leading cadets in prayer prior to examinations, our military training facilities are violating the Establishment Clause of the First

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<sup>1</sup> "Military training facilities," as used in this letter, includes, but is by no means limited to, the United States Military Academy, Marine Corps Recruit Depots, and the Navy's Recruit Training Command.

<sup>2</sup> "Cadet," as used in this letter, refers to a student of any of the United States Armed Forces military training facilities.

<sup>3</sup> See MAAF Department of Defense Religious Preference and Chaplain Support Study (July 2012), available at <http://militaryatheists.org/demographics/>.

<sup>4</sup> *Anderson v. Laird*, 466 F.2d 283, 288 (D.C. Cir. 1972), Bazelon, C.J., concurring.

<sup>5</sup> *Id.*

Amendment. By assigning menial or labor-intensive tasks to cadets who elect not to participate in worship services, these facilities are violating the equal protection principles enshrined in the Due Process Clause of the Fifth Amendment. The United States cannot make a citizen's right to defend the nation contingent on that citizen's sacrifice of the right to be free from religious coercion or the right to be free from religious discrimination.

### **Coerced religious observance is unconstitutional.**

According to numerous reports from cadets, service members, and their families, graduation ceremonies at military training facilities across the country consistently include a prayer delivered by a military chaplain. Subsequent investigation has confirmed these reports.<sup>6</sup> Recruits at each of these facilities are required to attend the graduation ceremony, adorned in dress uniforms, and standing in formation. Each of the training facilities encourages cadets' family members to attend the ceremony. Those family members are then instructed to stand during the delivery of the prayer. In the case of the United States Military Academy in West Point, New York, the prayer is included despite the multi-day graduation program also including a designated time during which recruits and their family members can participate in a baccalaureate at the house of worship of their choice.

Mandatory participation in prayers does not appear to be limited to graduation ceremonies. According to reports, cadets at Marine Corp Recruit Depot San Diego have been pressured to participate in prayers prior to commencing the Crucible, a 54-hour physical and mental test that all cadets at the Marine Corp Recruit Depot must complete prior to becoming Marines.<sup>7</sup>

The Establishment Clause of the First Amendment prohibits the government from coercing any citizen into participating in religious exercise.<sup>8</sup> The chaplaincy programs maintained by the Army,<sup>9</sup> the Air Force,<sup>10</sup> and the Navy and Marine Corps<sup>11</sup> are legally justifiable only as a means of accommodating the free exercise rights of military members.<sup>12</sup> Military chaplains may provide religious services to those who seek them out, but their mission does not include proselytizing or infusing secular ceremonies with the chaplain's personal religious beliefs. Graduation ceremonies held at military training facilities involve all cadets, not just those of one religious faith. Participation in the practice of religion at such an event is not being left "solely to the

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<sup>6</sup> The graduation ceremonies of most, if not all, of the military training facilities are available online, including the United States Military Academy (<https://www.youtube.com/watch?v=Y7b-ECiULHc>), the Marine Corps Recruit Depots (San Diego: <https://www.youtube.com/watch?v=IGt7JEhZJC>; Parris Island: <https://www.youtube.com/watch?v=PCkmUab4gZY>), Recruit Training Command (<https://www.youtube.com/watch?v=ZPrEKIFusvU>), and others.

<sup>7</sup> The Crucible During Marine Corps Recruit Training, Recruit Parents (Jan. 9, 2018, 9:05 AM), <http://recruitparents.com/bootcamp/crucible.asp>.

<sup>8</sup> *Everson v. Bd. of Educ.*, 330 U.S. 1, 15-16 (1947); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *Anderson*, 466 F.2d at 294-95, Bazelon, C.J., concurring; *Id.* at 298, Leventhal, J., concurring.

<sup>9</sup> 10 U.S.C. 3073.

<sup>10</sup> 10 U.S.C. 8039.

<sup>11</sup> 10 U.S.C. 5142.

<sup>12</sup> *Katcoff v. Marsh*, 755 F.2d 223, 234 n.4 (2d Cir. 1985).

individual soldier, ... free to worship or not as he [or she] chooses without fear of any discipline or stigma.”<sup>13</sup> To the contrary, the recruits’ attendance at the graduation ceremony is not only mandatory, but the cadets are in formation throughout the ceremony, at the direct command of their reviewing officers. Family members are eager to attend the event, a rite of passage which is likely to be unparalleled in each cadet’s life. Prayers delivered by military chaplains in such a setting violate the fundamental rights of each and every cadet.

The military has a heightened obligation to keep its ceremonies inclusive, given that coercion plays an integral role in the curricula of military training facilities and in the military command structure. The Army refers to its training process, in which cadets “model the actions, behaviors, and Army Values exhibited by [their] Drill Sergeants and AIT Platoon Sergeants,” as “soldierization.”<sup>14</sup> The Fourth Circuit Court of Appeals recognized this distinction between conventional institutions of higher education and military academies and training facilities when it determined that the emphasis on obedience and conformity as central tenets of the Virginia Military Institute’s educational philosophy placed significant coercive pressure on students to conform to prevailing norms and the conduct of their instructors.<sup>15</sup> The same could be said of any military training facility.

Beyond placing intense coercive pressure on cadets and their families to engage in religious exercise, the inclusion of prayer in graduation ceremonies violates each of the *Lemon* test’s requirements.<sup>16</sup> First, no secular purpose is achieved by including prayer in graduation ceremonies. Some, if not all, of the military training facilities provide time for the cadets and their families to celebrate the significant rite of passage in whatever manner they see fit, either by expressly providing time for baccalaureate services in the graduation program itself<sup>17</sup> or by providing a period of leave.<sup>18</sup> Second, the principle effect of advancing a religious point of view is unavoidable where the government has included prayer in ceremonies with such extreme coercive pressure, delivered by government-supported members of the clergy. Third, the government creates an excessive entanglement with religion when its officers enlist a government-supported chaplain, whose position is constitutionally justifiable only because of the voluntary nature of the services they provide,<sup>19</sup> in delivering a mandatory prayer.

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<sup>13</sup> *Id.* at 231–32.

<sup>14</sup> U.S. Dep’t of Army, Training and Doctrine Command, TP 600-4, The Soldier’s Blue Book, para. 4-5 (2017), available at <http://www.tradoc.army.mil/tpubs/pams/tp600-4.pdf>

<sup>15</sup> *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003).

<sup>16</sup> *Lemon v. Kurtzman*, 403 U.S. 602 (1971). The *Lemon* test states that a government act violates the Establishment Clause if it either 1) it lacks a secular purpose; 2) has the principle or primary effect of advancing religion; or 3) fosters an excessive entanglement between the government and religion. *Id.* at 612-13.

<sup>17</sup> United States Military Academy, Graduation Activities 2018 (2018), available at <https://www.usma.edu/parents/SiteAssets/Graduation%20Activities%202018.pdf> (“Baccalaureate Services – services are held at the respective chapels”).

<sup>18</sup> Marine Corps Recruit Depot San Diego, Graduation program (2018), available at <http://www.mcrdsd.marines.mil/Portals/3/Echo%20Online%20.pdf?ver=2018-01-12-161734-480> (“After graduating from recruit training, and taking a well deserved [sic] ten days of Leave...”).

<sup>19</sup> *Katcoff*, 755 F.2d at 234-35.

The practice of including prayer in graduation ceremonies also runs afoul of the endorsement test by conveying to the assembled cadets and families that the religious among them are “insiders, favored members of the political community,” while those who do not believe (or who do not believe accordingly) are outsiders.<sup>20</sup> A reasonable observer could only conclude that the inclusion of prayer, delivered by government-supported clergy, to an audience whose attendance is effectively mandatory, at a ceremony of such significance as to be unparalleled in the lives of those present, was intended to endorse the religious point of view espoused in the prayer. This endorsement is all the more clear when that reasonable observer is aware of the treatment to which nonbelieving cadets are subjected at our military training facilities prior to their graduation.

### **Subjecting nonreligious cadets to disfavored treatment is unconstitutional.**

In addition to undermining the protections provided by the Establishment Clause, military training facilities are violating the cadets’ right to the equal protection of the laws as enshrined in the Due Process Clause of the Fifth Amendment by engaging in religious discrimination.<sup>21</sup> According to incident reports received by the American Atheists Legal Center and the Freedom From Religion Foundation, cadets who elect not to participate in worship services are routinely ordered to instead perform menial tasks. The effect of this practice is to convey to the cadets that being religious is preferable to being non-religious in the eyes of commanding officers. The D.C. Circuit Court of Appeals has already concluded that requiring cadets either to attend worship services—even if at a location of the cadet’s own choosing—or face expulsion, amounts to an unconstitutional establishment of religion.<sup>22</sup> Replacing expulsion with grunt work or other disfavored treatment as the consequence of avoiding worship services is equally impermissible. Such practices not only violate the Establishment Clause for the reasons laid out above, but also run afoul of the Due Process Clause.

The Due Process Clause protects citizens against unwarranted deprivations of “life, liberty, or property” by the government. “Liberty under law extends to the full range of conduct which the individual is free to pursue,”<sup>23</sup> including the decision to enter into the ranks of the armed forces. The government may not, therefore, discriminate between like individuals on the basis of religion,<sup>24</sup> nor may it place religious burdens on a citizen’s exercise of her liberty by choosing to enlist in the armed forces.<sup>25</sup>

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<sup>20</sup> *County of Allegheny v. ACLU*, 492 U.S. 573, 595 (1989), quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984), O’Connor, J., concurring.

<sup>21</sup> *Buckley v. Valeo*, 424 U.S. 1, 93 (1976).

<sup>22</sup> *Anderson*, 466 F.2d at 283-84.

<sup>23</sup> *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

<sup>24</sup> See *Oyler v. Boles*, 368 U.S. 448, 456 (1962) (selective enforcement along religious lines triggers strict scrutiny); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (same); *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (same).

<sup>25</sup> *Doe v. Trump*, 2017 U.S. Dist. LEXIS 178892, 2017 WL 4873042, at \*89 (D.D.C. Oct. 30, 2017) (applying equal protection analysis to the right to participate in military service).

## Conclusion

In order to remedy these violations of the rights of cadets, their family members, and the service members assigned to military training facilities, the signatory organizations respectfully request that the Department of Defense immediately take steps to ensure that these violations do not occur in the future. We ask you to meet with us to discuss these concerns and work together to find viable solutions.

Coerced prayers have no place in our nation's armed forces. Cadets who are so inclined are, as always, free to engage in private prayers, individually or in groups, prior to any evaluation or ceremony. Instructor-led prayers prior to the Crucible, as well as similar examinations at other military training facilities, must be discontinued. West Point's graduation ceremonies already provide a period during which graduating cadets may participate in a baccalaureate event should they so choose. An additional, mandatory prayer serves no secular purpose. These break periods provide a more-than-adequate accommodation for the religious beliefs and practices of the cadets and their families while avoiding any violation of the Establishment Clause.

Finally, a cadet who elects not to participate in worship services deserves the same respect afforded to the cadets who do engage in religious observance, and any practice of assigning non-religious or non-practicing cadets menial work to perform during the time allotted for worship should be eliminated.

Sincerely,



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