



**Written Statement of the American Civil Liberties Union**

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***Religious Accommodations in the Armed Services***

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of individual liberty and justice embodied in the U.S. Constitution, we thank you for giving us the opportunity to submit this statement for the record on “Religious Accommodations in the Armed Services.”

The goal of the ACLU’s work on freedom of religion and belief is to guarantee that all are free to follow and practice their faith, or no faith at all, without governmental influence or interference. Through litigation, public education, and advocacy, the ACLU promotes religious freedom and works to ensure that government neither prefers religion over non-religion, nor favors any faith.

The ACLU vigorously advances and defends religious freedom, which includes two mutually reinforcing protections: the right to religious belief and expression, and a guarantee that the government neither promotes nor disparages religion or any particular faith. Because of these protections, we are all free to believe, or not believe, according to the dictates of our conscience. Just in the last decade, the ACLU has brought over 100 cases defending the rights of individuals to exercise their religions freely. While over half of these cases were brought on behalf of those who are Christians, our work in this area knows no preference, just as the government’s should not.<sup>1</sup> The ACLU also advocates for laws that heighten protections for religious exercise.<sup>2</sup>

The hearing will examine an important topic facing the military today—religious accommodations. Laws and policies, including the newly revised “Accommodation of Religious Practices Within the Military Services,”<sup>3</sup> guarantee religious liberty and allow for appropriate religious accommodations. As a result, religious liberty in the military is and remains protected.

### **Religious Accommodations in the Military**

Religious liberty is one of our nation’s most cherished liberties. It guarantees us the freedom to hold any belief we choose and the right to act on our religious beliefs, unless those actions harm others. This is true for all Americans—including service members. The First Amendment to the Constitution protects service members’ religious liberty and they are all free to hold their sincerely held religious beliefs and can face no adverse consequences for those beliefs.

Longstanding policies and regulations have provided guidance on how to carry out these constitutional protections. Under these policies, people of different religious beliefs and none at all have served together in the military and treated one another with dignity and respect. They all share, and honorably uphold, their duty to protect and defend our nation.

Over the past two years, Congress has weighed in on the way the military has successfully navigated this issue for decades.

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<sup>1</sup> ACLU Defense of Religious Practice and Expression, <http://www.aclu.org/aclu-defense-religious-practice-and-expression>.

<sup>2</sup> Examples of legislation we have supported include the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc – cc-5, and the Workplace Religious Freedom Act, S. 3686 (2012).

<sup>3</sup> Dep’t of Defense Instruction 1300.17, “Accommodation of Religious Practices Within the Military Services.”

The Fiscal Year 2013 National Defense Authorization Act, as amended,<sup>4</sup> put into effect in relevant part by the Department of Defense’s “Accommodation of Religious Practices Within the Military Services,” like most laws and regulations on accommodating religious practices, calls for an assessment of an accommodation and the effect it would have on important military objectives. The revised policy, implementing the provisions in the defense authorization bill, calls for an accommodation unless it could have an adverse impact on mission accomplishment, including military readiness, unit cohesion, good order, discipline, health, and safety. This necessarily includes an assessment of whether any particular accommodation of religious belief or conscience could result in discrimination or harm to others.<sup>5</sup> Religious liberty—in the civilian and military context—has never been without limits, nor should it be. The recently enacted laws and revised policy embody this constitutional reality.

Some have called for accommodating religious practices unless doing so would actually harm military objectives. This kind of standard, though, would obviously undermine good order and discipline by tying commanders’ hands and prohibiting them from addressing threats to unit cohesion that any accommodation might create. This sort of standard would erect personal, social, and institutional barriers from which the military should be free and make it very difficult for commanders to remove such barriers when they do arise.

As with all laws and policies on accommodating religious practice, people affected may occasionally disagree with the assessment and the resulting denial or grant of an accommodation. Congressional attention on this issue over the last few years seems to have arisen out of reports asserting that some service members’ religious exercise has been curbed. But for every story on one side, there are stories on the other about service members being subject to unwanted proselytizing. Some of these anecdotes may indeed have been a result of overly broad or overly narrow religious accommodation. Often, though, these stories are misreported and sensationalized for other purposes.<sup>6</sup>

Yet, there have been systemic problems in the military with regard to religion and the military has responded by implementing important policy changes. One example is the Air Force Academy’s response to a report documenting an environment of religious intolerance and inappropriate proselytizing.<sup>7</sup> The Academy has worked with outside experts to create a better

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<sup>4</sup> National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 533(a) (2013), amended by National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, § 532 (2013).

<sup>5</sup> See Dep’t of Defense Instruction 1300.17 §4.h. (requiring consideration of “the importance . . . of putting unit before self” and “the effect on unit cohesion”).

<sup>6</sup> See, e.g., Oriana Pawlyk, “AF: Religious Intolerance Claim Unsubstantiated,” *Military Times*, Oct. 11, 2013, available at <http://www.militarytimes.com/article/20131011/NEWS/310110013/AF-Religious-intolerance-claim-unsubstantiated>.

<sup>7</sup> *Report of the Headquarters Review Group Concerning the Religious Climate at the U.S. Air Force Academy*, U.S. Air Force (June 22, 2005).

environment, including implementing mandatory training for cadets on religious respect and creating more inclusive worship spaces.<sup>8</sup>

One systemic issue the revised religious accommodation policy addresses is the difficulty some religious minorities face when volunteering to protect and defend our country. They have often been asked to give up obeying the requirements of their faith in order to serve. The military is stronger when service members can abide by the requirements of their faith—wearing, for instance, head coverings or a neat beard if obligated by their faith—when doing so does not undermine safety or other necessary objectives. The prior policy had permitted these sorts of accommodations, but attaining them has been extraordinarily difficult, sometimes requiring years of work.<sup>9</sup> Under the revised policy, for the first time, there is a formal process for granting these religious minorities an accommodation to wear their articles of faith.<sup>10</sup> The revised policy also contemplates that accommodations will be made for grooming, appearance, and body art, in addition to religious apparel previously covered by the policy.<sup>11</sup> We are, however, concerned that immediate commanders may not be able to grant requests for an accommodation,<sup>12</sup> that the revised policy’s heavy emphasis on “maintaining uniform military grooming and appearance standards”<sup>13</sup> may unduly limit such accommodations, and that an accommodation granted is not valid for a service member’s entire commitment and must be resubmitted upon a new assignment or transfer of duty station.<sup>14</sup> These aspects of the revised policy may continue to serve as hurdles for some religious minorities to serve their country.

Finally, the military has just revised its religious accommodation policy to reflect changes Congress has made over the last two years. This year’s defense authorization bill<sup>15</sup> calls for an Inspector General report in eighteen months on the effect of the revisions. Congress should allow the military time to fully implement its revised policy and study how it works.

## **Military Chaplains**

Religious freedom is a fundamental and defining feature of our national character. Given our robust, longstanding commitment to the freedom of religion and belief, it is no surprise that the United States is among the most religious, and religiously diverse, nations in the world. This is

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<sup>8</sup> E.g., *2009/2010 Cadet & Perm Party Climate Assessment Survey*, U.S. Air Force Academy (Oct. 29, 2010) available at <http://www.usafa.af.mil/shared/media/document/AFD-101029-013.pdf>; Don Branum, “Academy Air Officers Commanding Conduct Religious Respect Training,” *Academy Spirit*, Oct. 18, 2013, available at <http://www.usafa.af.mil/news/story.asp?id=123367610>; Dan Elliott, “Air Force Academy Calls Its Religious Climate Improved,” *Associated Press*, Dec. 17, 2009, available at [http://www.boston.com/news/nation/articles/2009/12/17/air\\_force\\_academy\\_calls\\_its\\_religious\\_climate\\_improved/](http://www.boston.com/news/nation/articles/2009/12/17/air_force_academy_calls_its_religious_climate_improved/).

<sup>9</sup> See, e.g., James Dao, “Taking On Rules to Ease Sikhs’ Path to the Army,” *N.Y. Times* at A9, July 8, 2013, available at <http://www.nytimes.com/2013/07/08/us/taking-on-rules-so-other-sikhs-join-the-army.html?pagewanted=1&adxnnl=1&adxnnlx=1390071647-SYe4hP7agr2sadWtwf/FgQ>; see also “Why Do Sikhs Want To Serve In The Military?” Interview with Maj. Kamaljeet Kalsi, Tell Me More, Nat’l Public Radio, Aug. 16, 2013, available at <http://www.npr.org/templates/story/story.php?storyId=212603796>.

<sup>10</sup> Dep’t of Defense Instruction 1300.17 §4.f.1. – .2.

<sup>11</sup> *Id.*, §3.b. – .d.

<sup>12</sup> *Id.*, §4. f.1. – .2.

<sup>13</sup> E.g., *id.*, §4.c.

<sup>14</sup> *Id.*, §4.j.

<sup>15</sup> National Defense Authorization Act for Fiscal Year 2014, § 533.

equally true in the Armed Forces. Department of Defense reports show that nearly one-third of all members of the Armed Forces identify as non-Christian.<sup>16</sup>

Military chaplains have two separate duties and attendant responsibilities. Chaplains must fulfill the duty to serve this religiously diverse population and must care for and facilitate the religious requirements of service members and their families who come from all faiths and none.<sup>17</sup> This is in addition to serving as members of the clergy for their faith groups. All denominations and faiths that sponsor military chaplains agree to provide chaplains who will honorably fulfill the office's dual responsibilities.<sup>18</sup>

Chaplains' free exercise rights are, of course, protected by the First Amendment and federal law.<sup>19</sup> Chaplains are not required to engage in practices that are contrary to their religious beliefs when performing their religious services. What this means for prayers, which have needlessly become controversial over the years, is that chaplains may close prayers according to their faith traditions when performing their religious services. Moreover, chaplains cannot be forced to violate their conscience in matters regarding their religious ministry and can refuse, for example, to perform prayers or marriage ceremonies that violate their religious beliefs.

But these laws do not give chaplains an affirmative right to ignore their other duties to serve equally all service members and their families. For more than two hundred years, military chaplains fostered a reputation for putting the needs of service members first. The trust in and respect for chaplains is based on their upholding their duty to serve fellow service members and not seeking to take advantage of their role by infringing on the rights of those they serve.

In recent years, there have been attempts by some to interfere with chaplains' roles and responsibilities. Allowing chaplains to proselytize and engage in sectarian prayer when carrying out their duty to care for and facilitate the religious requirements of all service members and their families would put the desires of individual chaplains ahead of the interests, rights, and needs of those they are required to serve. These efforts demonstrate a lack of respect for service members and the diversity of religious beliefs in our military.

When chaplains are performing their religious services, they have an almost unlimited opportunity to pray according to their own conscience and faith. Command functions, such as non-routine military ceremonies or events of special importance, are not, however, religious services. Commanders are constitutionally obligated to ensure that such functions are neutral with regard to religion and not used as an occasion to promote or disparage any religious belief. Service members attending non-voluntary events should not be forced to participate in sectarian prayers given by a chaplain.<sup>20</sup> Changes to chaplains' roles and responsibilities would interfere with commanders' obligation to ensure command functions are neutral with regard to religion.

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<sup>16</sup> *Religious Diversity in the U.S. Military*, Military Leadership Diversity Comm'n, Issue Paper No. 22 (June 2010).

<sup>17</sup> *E.g.*, Dep't of Defense Directive 1304.19, "Appointment of Chaplains for the Military Departments," § 4.2.

<sup>18</sup> *E.g.*, Dep't of Defense Instruction 1304.28, "Guidance for the Appointment of Chaplains for the Military Departments," § E.2.1.5.

<sup>19</sup> *E.g.*, National Defense Authorization Act for Fiscal Year 2013, § 533(b) (2013); National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 544 (2011).

<sup>20</sup> *See* Bishop James Magness, "Military Chaplains: Religious Freedom in the Public Square," *Huffington Post*, Sept. 9, 2013, [http://www.huffingtonpost.com/bishop-james-magness/military-chaplains-religi\\_b\\_3893789.html](http://www.huffingtonpost.com/bishop-james-magness/military-chaplains-religi_b_3893789.html).

Indeed, religious liberty is alive and well in this country precisely because our government cannot tell us how or even whether to worship. Permitting military chaplains to proselytize and conduct sectarian prayer at all times would, thus, harm religious liberty and violate the Constitution.<sup>21</sup>

An ongoing concern regarding chaplains is the lack of training and resources available to enable them to serve one of the largest (and growing) groups of service members, non-theists and the religiously unaffiliated, or “nones.”<sup>22</sup> Chaplains have the duty to serve everyone, even those of no faith.<sup>23</sup> In addition, because chaplains must advise the chain of command on matters of religious practice and accommodation,<sup>24</sup> they must thoroughly understand the belief systems of all service members they serve (just as they do for religious traditions other than their own).

A second concern regarding chaplains is whether there is adequate correlation between the religions of those serving as chaplains and the religions and belief systems of service members and their families.<sup>25</sup> Currently the Armed Forces contract for some chaplains and have no chaplains from some of the religions or beliefs held by the largest segments of service members and their families. While a perfect match will never be attained, in order to best serve service members and their families, undertaking efforts to recruit and approve those who seek to be chaplains from under-represented religions and belief systems would be greatly beneficial.

### **Lesbian, Gay, and Bisexual Service Members and Their Families**

More than three years ago, the discriminatory “Don’t Ask, Don’t Tell” policy was repealed. Prior to its repeal, many argued that ending DADT would somehow harm service members and weaken military readiness and unit cohesion. That has not come to pass. In 2012, General James Amos, Commandant of the Marine Corps, said repeal had not been an issue<sup>26</sup> and according to a study, authored by professors at the U.S. Military Academy, U.S. Naval Academy, U.S. Air Force Academy, and U.S. Marine Corps War College, open service for lesbian, gay, and bisexual members of the Armed Forces “has had no overall negative impact on

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<sup>21</sup> See generally Robert W. Tuttle and Ira C. Lupu, *Instruments of Accommodation: The Military Chaplaincy and the Establishment Clause*, 110 W. Va. L. Rev. 87 (2007).

<sup>22</sup> See *Religious Diversity in the U.S. Military* (finding Humanists (which included atheists and agnostics) comprised 3.61% of service members and 25.5% of service members identified as having no religious preference, with higher numbers among younger service members); Defense Manpower Data Center, “Pay Grade and Religion of Active Duty Personnel by Service (no Coast Guard)” (2009), [http://www.dod.mil/pubs/foi/Personnel\\_and\\_Personnel\\_Readiness/Personnel/09-F-1173ActiveDuty\\_Religion\\_andPayGrade\\_byService\\_as\\_of\\_May\\_31\\_09.pdf](http://www.dod.mil/pubs/foi/Personnel_and_Personnel_Readiness/Personnel/09-F-1173ActiveDuty_Religion_andPayGrade_byService_as_of_May_31_09.pdf) (showing a larger number of atheists and agnostics than all those who listed minority faiths and all but a few Christian denominations; those identifying no religious preference constituted 20% of the total).

<sup>23</sup> The newly revised Department of Defense Instruction 1300.17 §4.a. states, “The DoD places a high value on the rights of members of the Military Services to observe the tenets of their respective religion or *to observe no religion at all.*” (emphasis added).

<sup>24</sup> E.g., Dep’t of Defense Directive 1304.19 § 4.1.

<sup>25</sup> The ACLU is concerned about the current structure of the chaplaincy itself, but broader reforms are outside the scope of this hearing. This paragraph, instead, recommends improvements to the current structure.

<sup>26</sup> E.g., Sydney J. Freedberg Jr., “Marines Must Live With ‘Good Enough’ As Budget Shrinks: Amos,” *Breaking Defense*, Aug. 28, 2012, <http://breakingdefense.com/2012/08/marines-must-live-with-good-enough-as-budget-shrinks-amos/>.

military readiness or its component dimensions, including cohesion, recruitment, retention, assaults, harassment or morale.”<sup>27</sup>

There were also dire predictions about the chaplain corps—that vast numbers of chaplains would leave the military. A 2012 article reported, however, that only two or three active-duty chaplains left in the wake of DADT repeal.<sup>28</sup>

In June 2013, Secretary of Defense Chuck Hagel recognized the important contributions of LGB service members:

Our nation has always benefited from the service of gay and lesbian soldiers, sailors, airmen, and coast guardsmen, and Marines. Now they can serve openly, with full honor, integrity and respect. This makes our military and our nation stronger, much stronger. The Department of Defense is very proud of its contributions to our nation's security. We're very proud of everything the gay and lesbian community have contributed and continue to contribute. With their service, we are moving closer to fulfilling the country's founding vision, that all of us are created equal.<sup>29</sup>

In an August 13, 2013, memorandum, Secretary Hagel stated that “all spousal and family benefits . . . will be made available to same-sex spouses”<sup>30</sup> as required by the Supreme Court’s ruling striking down section three of the Defense of Marriage Act. In a memorandum from the same date, Acting Under Secretary of Defense for Personnel and Readiness Jessica Wright explained that the “Department will work to make the same benefits available to all spouses, regardless of whether they are in same-sex or opposite-sex marriages.”<sup>31</sup>

One benefit is the counseling, relationship education, and skills training for married couples (such as Strong Bonds in the Army). These programs are chaplain-led on behalf of commanders in order to build relationship resiliency.<sup>32</sup> On September 5, 2013, the Chief of Chaplains of the Army issued guidance on implementation of the Strong Bonds program. Reiterating that the “Chaplain Corps upholds the Army Values and treats all Soldiers and Family Members with

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<sup>27</sup> *One Year Out: An Assessment of DADT Repeal’s Impact on Military Readiness*, Palm Center, Sept. 20, 2012, available at [http://www.palmcenter.org/files/One%20Year%20Out\\_0.pdf](http://www.palmcenter.org/files/One%20Year%20Out_0.pdf).

<sup>28</sup> David Crary, “Air Force Chaplains Adjust to Gays Serving Openly,” *Associated Press*, July 5, 2012, available at <http://www.standard.net/stories/2012/07/05/air-force-chaplains-adjust-gays-serving-openly>.

<sup>29</sup> Remarks by Secretary Hagel at the Lesbian, Gay, Bisexual, Transgender Pride Month Event in the Pentagon Auditorium, June 15, 2013, <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=5262>.

<sup>30</sup> Sec’y of Defense, “Extending Benefits to the Same-Sex Spouses of Military Members,” Aug. 13, 2013, available at <http://www.defense.gov/home/features/2013/docs/Extending-Benefits-to-Same-Sex-Spouses-of-Military-Members.pdf>.

<sup>31</sup> Under Sec’y of Defense for Personnel and Readiness, “Further Guidance on Extending Benefits to Same-Sex Spouses of Military Members,” Aug. 13, 2013, available at <http://www.defense.gov/home/features/2013/docs/Further-Guidance-on-Extending-Benefits-to-Same-Sex-Spouses-of-Military-M.pdf>.

<sup>32</sup> *E.g.*, Chaplain (LTC) Birch Carleton, “What Is Strong Bonds,” *Army News Service*, Dec. 16, 2010, [http://www.strongbonds.org/skins/strongbonds/display.aspx?CategoryID=425d7e3b-254f-4a3b-bfd6-bf574faa967a&ObjectID=87957844-3dbc-4b70-af49-b60faa74ccdc&Action=display\\_user\\_object&Mode=user&ModuleID=f6c229ca-03ae-4c81-8d0a-81a5a0c208f9](http://www.strongbonds.org/skins/strongbonds/display.aspx?CategoryID=425d7e3b-254f-4a3b-bfd6-bf574faa967a&ObjectID=87957844-3dbc-4b70-af49-b60faa74ccdc&Action=display_user_object&Mode=user&ModuleID=f6c229ca-03ae-4c81-8d0a-81a5a0c208f9).

dignity and respect,” the guidance explained that “Soldiers and Family members may participate in Army programs without any restriction on the basis of sexual orientation, including Chaplain-led programs such as Strong Bonds.”<sup>33</sup>

Following the Department of Defense announcement that spousal benefits must be available equally, some chaplains’ endorsing organizations have prohibited their chaplains from facilitating this benefit for same-sex married couples. The Army guidance says that if this happens, “the chaplain should coordinate with another chaplain or qualified individual who is conducting a Strong Bonds event that would include same-sex couples.”<sup>34</sup> There have been reports, however, that at one installation, no chaplains are able to conduct these events and that at other installations, couples have faced difficulty participating.

Counseling and relationship education assist commanders in building individual resiliency and increasing readiness of individual soldiers and their families. Thus, it must be available to all soldiers and their families equally. If chaplains cannot or will not lead the programs, it is the obligation of the command to ensure that the programs are available to all couples who want to attend. The military should address this issue sooner rather than later to avoid problems and ensure that this important program, which contributes to readiness, is available to all service members and their families.

### **Army Equal Opportunity Trainings**

Over the past year, there have been a series of reports about presentations given by Army Equal Opportunity staff that contained information about “hate groups” and “religious extremism” that was unnecessary and potentially harmful to both civil liberties in the military and morale. The presentations attempted to describe what constitutes a “hate group” and “religious extremism” but identified numerous groups, religions, and causes, some of which may be controversial, but are entirely lawful and receive full constitutional protection. To the extent these trainings served to dissuade personnel from engaging in lawful associational or expressive activities, they raised serious concerns under the First Amendment.

On October 18, 2013, Secretary of the Army John McHugh issued a “Memorandum on Standardization of Equal Opportunity Training within the Army.”<sup>35</sup> We strongly support standardizing these programs of instruction and training plans, which we believe will help avoid the concerns that prompted the memorandum.

Soldiers reflect the great diversity of our nation—coming from myriad backgrounds with varied experiences and holding a multitude of political and religious beliefs. Army policies promote honorable service and a corps that treats all personnel with dignity and respect. Equal Opportunity training is a valuable means of accomplishing this. It is a way the Army can share its goals, beliefs, and values, including fair treatment and equal opportunity for all soldiers. It

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<sup>33</sup> Army Chief of Chaplains, “Strong Bonds Events and Same-Sex Couples,” Sept. 5, 2013, *available at* <http://militaryatheists.org/news/wp-content/uploads/2013/09/OCCH-strongbonds-DOMA.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> Sec’y of the Army, “Memorandum on Standardization of Equal Opportunity Training within the Army,” Oct. 18, 2013, *available at* <http://downloads.frc.org/EF/EF13J55.pdf>.



also helps eliminate discriminatory behaviors or practices that undermine mutual respect and trust. But by presenting incorrect information that prompts criticism, the laudable goals of the entire Equal Opportunity program are unnecessarily put at risk.

Rather than rely on inconsistent material prepared through haphazard research, produced without command oversight or approval, the better course will be standardized programs of instruction and training plans. These should be developed in consultation with the General Counsel and experts inside and outside the military. This will further ensure that the presentations are not just consistent and carefully prepared, but that they are legally accurate, and as a result, better serve the Army's goals.

We believe the Army should consider three issues as it moves to standardize its training.

- First, when conducting Equal Opportunity trainings, especially regarding the Army's policy on participation in "extremist organizations and activities,"<sup>36</sup> it is essential to include specific instruction on the First Amendment rights of soldiers. Soldiers have a First Amendment right to associate freely, and the Army must be diligent to prevent interference with that right. To be sure, certain affinity groups espouse objectionable views. In practice, however, labeling an organization as a "hate group" or "extremist" is subjective and the results could be troublingly over-inclusive. The inherent vagueness of the terms will invariably sweep in organizations on both the left and right engaged in what some may view as controversial, but lawful and constitutionally protected, advocacy and association.<sup>37</sup> It also invites discriminatory and selective discipline by commanders, regardless of political or religious viewpoint, who object to the ideological or religious views of their subordinates.

Just as troubling, it necessitates a searching inquiry by commanders into the associational and expressive activities of their troops. To the extent an individual soldier's actions harm good order and discipline, interfere with mission accomplishment, or are criminal, the Uniform Code of Military Justice is well suited to address the issue. But no soldier

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<sup>36</sup> Army Regulations define these terms as ones that "advocate racial, gender or ethnic hatred or intolerance; advocate, create, or engage in illegal discrimination based on race, color, gender, religion, or national origin, or advocate the use of force or violence or unlawful means to deprive individuals of their rights under the United States Constitution or the laws of the United States, or any State by unlawful means." U.S. Dep't of Army, Reg. 600-20, "Army Command Policy," §4-12(a).

<sup>37</sup> For instance, critics refer to groups advocating for religious liberty, including the separation of church and state as "hate groups." See Matt Schneider, "Tea Party Nation President: NAACP, DHS and ACLU are 'Liberal Hate Groups'," *Mediaite*, Dec. 30, 2010, <http://www.mediaite.com/online/tea-party-nation-president-naacp-dhs-and-aclu-are-liberal-hate-groups/>; Judson Phillips, "The Top Five Liberal Hate Groups," *Tea Party Nation*, Dec. 29, 2010, <http://www.teapartynation.com/forum/topics/the-top-five-liberal-hate>; "Coulter: ACLU is 'America's Leading Anti-Christian Hate Group'," *Media Matters*, Dec. 16, 2009, <http://mediamatters.org/video/2009/12/16/coulter-aclu-is-americas-leading-anti-christian/158199>; Steve Bussey, "Religious Bigots & Hate Groups Attack Gov. Perry," Steve Bussey, Aug. 6, 2011, <http://bit.ly/16twhWG> (identifying the Secular Coalition for America and Americans United for Separation of Church and State as hate groups). Similar claims are frequently levied against some organizations, including Christian organizations, because of opposition to religious pluralism and religiously informed positions on issues like abortion or LGBT equality. The label is applied all too freely to disfavored and controversial groups, especially on the internet, which is why the soldiers' reliance on internet research that may be biased, disputed, or inaccurate as a primary source for content was particularly troubling.

should be punished for mere thought, no matter how deplorable, or membership in a lawful group, no matter how controversial.<sup>38</sup>

- Second, the Army should take steps to ensure the presentation of information about religions, beliefs, and practices is done with sensitivity, objectivity, and a commitment to accuracy. According to reports, at least one of the presentations<sup>39</sup> mischaracterized and maligned religions and religious practices. This is just one in a series of examples of inaccuracy in military and law enforcement trainings<sup>40</sup> wherein some have even suggested that all adherents of a particular faith are the enemy.<sup>41</sup> This undermines the goals of the Army's Equal Opportunity program. Indeed, the inclusion of inaccurate information undermines the opportunity in these trainings to inform commanders of their responsibility to provide appropriate accommodations of religious practices, such as time off for religious observance and allowances for dietary practices and wearing articles of faith. .
- Third, we fear that the unnecessary and negative attention created by presenting inaccurate information jeopardizes other important Army goals and values. The Army strives to maximize human potential and to ensure fair treatment and equal opportunity for all persons based solely on merit, fitness, and capability in support of readiness. It seeks to eliminate personal, social, and institutional barriers that prevent anyone from rising to the highest level of responsibility possible. It also endeavors to maintain an environment that fosters dignity, mutual respect, and trust. The Armed Forces successfully transitioned to open service for lesbian, gay, and bisexual soldiers in the fall of 2011. Thus, in order to ensure that the goals of fair treatment and equal opportunity are inclusive of and apply equally to all soldiers, the Army should now explicitly add sexual orientation to its non-discrimination standards.<sup>42</sup>

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<sup>38</sup> When the Department of Defense first promulgated its policy permitting service members' membership, but limiting their participation, in "hate groups," the ACLU expressed concern that the policy may be overly broad. See "A.C.L.U. Criticizes Pentagon 'Hate' Group Policy," *U.P.I.*, Oct. 30, 1986, available at <http://www.nytimes.com/1986/10/30/us/aclu-criticizes-pentagon-hate-group-policy.html>.

<sup>39</sup> See presentation on "Extremism and Extremist Organizations," <http://www.adfmedia.org/files/ExtremismPresentation.pdf>.

<sup>40</sup> E.g., Spencer Ackerman, "FBI 'Islam 101' Guide Depicted Muslims as 7th-Century Simpletons," *Wired Danger Room*, July 27, 2011, <http://www.wired.com/dangerroom/2011/07/fbi-islam-101-guide/>.

<sup>41</sup> E.g., Noah Schachtman & Spencer Ackerman, "U.S. Military Taught Officers: Use 'Hiroshima' Tactics for 'Total War' on Islam," *Wired Danger Room*, May 10, 2012, <http://www.wired.com/dangerroom/2012/05/total-war-islam/>.

<sup>42</sup> This recommendation applies equally to all branches of the military and we urge that sexual orientation be added to the list of enumerated characteristics protected from discrimination under the Military Equal Opportunity Program.

Religious freedom in the United States—including in the military—includes two protections: the right to religious belief and expression, and a guarantee that the government neither promotes nor disparages religion or any particular faith. Because of these protections, we are all free to believe, or not believe, according to the dictates of our conscience. We must guard against using these freedoms and protected beliefs for political gain. Rather, we should cherish and safeguard them.

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