



**Written Statement of Liberty Institute**

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***RELIGIOUS ACCOMMODATION IN THE ARMED FORCES***

**Submitted to the House Armed Services Committee  
Subcommittee on Military Personnel**

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To Chairman Wilson and Ranking Member Davis:

My name is Michael Berry and I am Senior Counsel and Director of Military Affairs for Liberty Institute. Liberty Institute is the largest legal organization dedicated to restoring religious liberty in America's churches, schools, the public arena, and within our military. Within the military, Liberty Institute represents service members, veterans, and veterans support organizations. Our clientele include The American Legion, the Veterans of Foreign Wars, the Military Order of the Purple Heart, not to mention scores of individual service member and veterans.

By way of illustration, Liberty Institute currently represents three active duty service members whose religious freedom has been threatened by the military just within the past six months. In each case, our clients—each with years of decorated and honorable service to their credit—simply tried to serve their nation while remaining true to the tenets of their faith. Yet each experienced uncertainty, fear, hostility or outright denial of the right to freely exercise their religious beliefs.

In one instance, an active duty Airman with over nineteen years of dedicated service was relieved of his duties and transferred to a different unit because he did not agree with his lesbian commander's opinion that any religious or moral opposition to same-sex marriage violated Air Force and Department of Defense policy. To be clear, the commander initiated the conversation and asked my client if he agreed with her, to which he respectfully declined to answer. Nevertheless, she relieved him of his duties and transferred him, placing his military retirement and honorable service in jeopardy. Liberty Institute filed a formal complaint alleging religious discrimination. The Air Force responded by accusing my client of lying, initiating a criminal investigation into his conduct, and reading him his Miranda rights. At the conclusion of the investigation, the Air Force took no action and stated it is Air Force policy that, although religious belief is constitutionally protected, religious actions and speech are distinct from belief and may be punished. In other words, it is Air Force policy that Airmen are free to hold whatever religious beliefs they wish, but they are not free to act or speak in accordance with their sincerely-held religious beliefs.

In another case, an active duty Army officer, in a non-public e-mail that was kept within his unit, raised questions and concerns about a new Army policy extending special privileges and benefits to homosexual Soldiers for which heterosexual Soldiers were ineligible. Our client—a decorated combat veteran—also asked whether he, as a commanding officer, would be required to publicly endorse same-sex marriages within his unit, which would violate his religious beliefs. In response, the Army suspended his security clearance and initiated an investigation into his conduct.

In yet another case, an active duty Army Soldier attended a mandatory training event during which an Army equal opportunity advisor instructed the attendees that the American Family Association—a non-profit Christian ministry—was a domestic hate group. Liberty Institute investigated and discovered that all equal opportunity advisors within the Department of Defense are trained at the Defense Equal Opportunity

Management Institute (DEOMI). We obtained copies of DEOMI's training materials and were shocked to discover that DEOMI instructors are taught to provide the following training to service members with respect to extremism in the military:

- The standard hate message has not changed, but it has been packaged differently. Modern extremist groups run the gamut from the politically astute and subtle to the openly violent.
- Nowadays, instead of dressing in sheets or publicly espousing hate messages, many extremists will talk of individual liberties, states' rights, and how to make the world a better place.

Our client, a devout Christian, was deeply offended by what he heard and saw during the equal opportunity training. But because equal opportunity advisors are considered subject-matter authorities on such issues, our client was fearful that his support of the American Family Association would be used against him, and he questioned whether he could continue to support such non-profit ministries. He also feared retaliation by the Army for being a whistle-blower on the incident.

In each of these incidents, the military used existing laws, regulations, or policies to justify its hostility towards religious freedom. Our service members of faith—any faith—are less able to freely express their sincerely-held religious beliefs than at any time in our history. As a result, our men and women in uniform are losing the very constitutional freedoms they swore an oath to protect. And despite what some critics may claim, these incidents are not isolated. There is a real and growing threat that our service members may lose the First Amendment right to freely exercise their religious beliefs.

Each year Liberty Institute conducts a survey of religious hostility in America.<sup>1</sup> We have successfully used this report to rebuff critics who argue that there is no threat to religious liberty in America, and that any reported instances are anecdotal or exaggerated.

Prior to our 2013 survey, we did not have a separate category for instances of religious hostility that directly affect our service members and veterans. But over the past few years, we noticed an alarming spike in the number of such instances. As a result, we were compelled to include threats to religious liberty in our military as a new and separate section. Clearly, instances of religious hostility within the military—including our veterans—have increased in frequency and severity. In full disclosure, we do not represent each instance that is captured in the survey. Nevertheless, we respectfully invite the Committee's attention to the Survey in order to provide an accurate representation of the facts necessary to safeguard the Constitutional rights of our service members.

In light of these incidents, we commend the Department of Defense for its recent changes to Department of Defense Instruction 1300.17. On its face, 1300.17 appears to address past deficiencies with respect to service members' religious liberties. It is critical,

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<sup>1</sup> An abridged copy of our Survey is included herein; the unabridged Survey and an Executive Summary are available at: <http://www.libertyinstitute.org/pages/survey-of-religious-hostilities>

however, that the Department of Defense follows this promising start by ensuring that all service members are truly free to exercise their religious beliefs without fear, intimidation, threat, or punishment. Our service members deserve better than lip service paid to the sacrifices they continue to make on behalf of all Americans.

In conclusion, Liberty Institute encourages the Subcommittee to hold the Department of Defense accountable to its promise of religious freedom within the military. We must ensure that the Department of Defense is prohibited from using a service member's sincerely-held religious belief—including actions and speech stemming from such belief—as a basis for adverse or punitive action *unless* there is an actual harm to good order and discipline within the Armed Forces.

Thank you for your valuable time and consideration on this vital issue.