

FREEDOM FROM RELIGION *foundation*

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March 14, 2018

Chaplain (Rear Admiral) Margaret G. Kibben
Chief of Chaplains of the Navy
Department of the Navy Chief of Chaplains
2000 Navy Pentagon
Washington, DC 20350

Vice Admiral Robert P. Burke
Deputy Chief of Naval Operations
(Manpower, Personnel, Training and Education)
2000 Navy Pentagon
Washington, DC 20350

Re: Recommendation of Dr. Jason Heap to serve as humanist chaplain

Dear Chaplain Kibben and Vice Admiral Burke:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to rebut the false assertions and misinformation presented in the March 9, 2018 letter sent to you by various Members of the House and the March 13, 2018 letter sent by Members of the Senate opposing the recommendation that Jason Heap be accepted to serve as a secular-humanist chaplain. FFRF is a nationwide nonprofit organization with more than 32,000 members across the country, including more than 7,500 nonreligious members who are active military or veterans. Our purposes are to protect the constitutional separation of church and state and to educate the public on matters related to nontheism.

The March 9 letter begins with the faulty assumption that the chaplain corps is capable of serving “all members of our armed forces without regard to religious preference or belief.” The reality is that the current makeup of the chaplaincy is overwhelmingly Christian, with 63% of military chaplains identifying as Evangelistic, 27% as “Other Christian,” and 7% as Catholic. This accounts for 97% of all military chaplains as of 2012.¹ These numbers contrast starkly with the current religious makeup of the military, in which Christianity is on the decline. Fully 33% of all military members do not identify as Christian, including those who identify with a minority religion, as atheist or agnostic, and those with an “unknown” religion (the category that previously included “no religious preference” as well as other nontheists).² Christian chaplains are not necessarily qualified or willing to meet the needs of this significant, growing portion of the military population. And more importantly, nontheistic military members *want* an alternative.

This disconnect between the demographics of the chaplaincy and active service members is a problem that is only going to get worse. Younger Americans are not just religiously unaffiliated, they are largely atheist or agnostic. A recent survey found that fully 21% of Americans born after 1999 are atheist or agnostic.³ It is these atheists and nonreligious Americans who will be joining the ranks of our military. The Navy was right not to ignore this pressing need for a more diverse chaplaincy.

The authors of the March 9 and March 13 letters turn a blind eye to the expanding unmet need for nontheistic support within the current military and seek to deny nontheists access to chaplains that can supply services while speaking to their lack of belief in a god. In doing so, they mischaracterize

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

² See MAAF 2017 Religious Demographics Update Summary (2017), <http://militaryatheists.org/resources/MAAF-DoD-Religious-Preference-201709.png> (reflecting a 200% increase in nontheist identification since 2009, now outnumbering all non-Christian denominations combined).

³ *Atheism Doubles Among Generation Z*, THE BARNAGROUP (Jan. 24, 2018), www.barna.com/research/atheism-doubles-among-generation-z/.

the very nature of humanism. A main premise of the March 9 letter is that military chaplaincies are designed to facilitate the free exercise of “religious” beliefs and it would therefore be a departure from that goal to allow a humanist chaplain to join the ranks of the predominantly Christian military chaplains. The truth is that courts have long recognized that humanism receives the same constitutional protections as any religion. While humanism is a *nontheistic* belief system (most humanists do not believe in any god), nontheistic belief systems, like humanism and Unitarian Universalism, are protected by the Constitution to the same extent as monotheistic belief systems, like Christianity, Judaism, and Islam, and polytheistic belief systems like Hinduism and Shintoism. Both letters suggest otherwise, stating, “non-religious beliefs . . . may not rely on the Religion Clauses for protection.” Both letters are *flat out wrong*.

The Supreme Court definitively established that belief in a god or gods is not required to be protected by the Constitution’s Religion Clauses when the Court held that government must not “aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.” *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961). And the Court has specifically identified humanism as one of the many “religions in this country which do not teach what would generally be considered a belief in the existence of God.” *Id.* at 495 n.11. *See also United States v. Seeger*, 380 U.S. 163, 165–66 (1965) (applying draft exemption that expressly covered those with a “belief in a relation to a Supreme Being” to any nontheistic belief “that is sincere and meaningful[ly] occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God . . .” because “[w]here such beliefs have parallel positions in the lives of their respective holders we cannot say that one is ‘in a relation to a Supreme Being’ and the other is not”); *id.* at 188, 191 (Douglas, J., concurring) (noting that if a statute were interpreted to provide an exemption only to those who hold an orthodox belief in God while excluding faiths such as Buddhism, which sometimes has been characterized as “atheistic,” “that kind of discrimination . . . would violate the Free Exercise Clause of the First Amendment. It would also result in a denial of equal protection by preferring some religions over others . . .”). Whether one semantically refers to humanism as a “religion,” a “belief system,” or something else entirely, Supreme Court precedent definitively establishes that one need not be a theist to enjoy full and equal constitutional protections.

This is not an obscure point of constitutional law. It is well-established and widely recognized by federal courts that nontheists, including atheists, humanists, Buddhists, Ethical Culturists, and Unitarian Universalists receive the same protections as adherents to theistic belief systems for purposes of the Constitution, civil-rights laws, and tax laws. *See, e.g., Kaufman v. McCaughtry*, 419 F.3d 678, 682 (7th Cir. 2005) (“[T]he Court understands the [Establishment Clause’s] reference to religion to include what it often calls ‘nonreligion.’” (citing and discussing *McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844 (2005); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Torcaso*, 367 U.S. 488)); *Glassroth v. Moore*, 335 F.3d 1282, 1294 (11th Cir. 2003) (“The Supreme Court has instructed us that for First Amendment purposes religion includes non-Christian faiths and those that do not profess belief in the Judeo-Christian God; indeed, it includes the lack of any faith.”); *United States v. Moon*, 718 F.2d 1210, 1227 (2d Cir. 1983) (characterizing the 1890s definition of “religion”—“having reference to a person’s views of his relations to his Creator”—as “unduly narrow today”; and offering, in the First Amendment context, “Buddhism and the Unitarian Church” as examples of “religions which do not positively require the assumption of a God”); *Theriault v. Silber*, 547 F.2d 1279, 1281 (5th Cir. 1977) (“To the extent that [a test of what constitutes a “religion” includes] the requirement that one possess a ‘. . . belief in a Supreme being . . .’ and such a criterion excludes, for example, agnosticism or conscientious atheism, from the Free Exercise and Establishment shields, that requirement is too narrow.”); *Wash. Ethical Soc’y v. District of Columbia*, 249 F.2d 127, 129 (D.C. Cir. 1957) (applying tax exemption for “a religious corporation or society” to an Ethical Culture congregation and noting “[t]o construe exemptions so strictly that unorthodox or minority forms of worship would be denied the exemption benefits granted to those conforming to the majority beliefs might well raise constitutional issues”).

By opening up the Navy's chaplaincy to the inclusion of humanists, the Navy would be following a long line of federal government recognitions that atheism, agnosticism, humanism, and Unitarian Universalism are equally recognized and protected under policies regarding religions. The Department of Defense recognizes atheism, agnosticism, humanism, and Unitarian Universalism as among the "faith and belief groups" in its code meant to protect "the rights of conscience of members of the Armed Forces." See Memorandum from Lernes J. Hebert, Acting Deputy Assistant Sec'y of Def. for Military Pers. Policy, to various Dep't of Def. officials 1, 6-7 (Mar. 27, 2017), <http://bit.ly/2qk8vYu>. Similarly, the Department of Veterans Affairs recognizes atheist, humanist, and Unitarian Universalist symbols as unique "emblems of belief" available for placement on government-furnished headstones for deceased veterans. See *Available Emblems of Belief for Placement on Government Headstones and Markers*, National Cemetery Administration, <http://1.usa.gov/1ElvZM8> (last visited Feb. 21, 2018). Outside of the military context, the I.R.S. recognizes the Humanist Society (which ordains humanist clergy) and the American Ethical Union (which ordains ethical humanist/ethical culture clergy) as religious organizations and the Federal Bureau of Prisons recognizes humanism as an equally protected belief system for inmates. See Steven DuBois, *Federal Prisons Agree to Recognize Humanism as Religion*, AP (July 28, 2015), <http://bit.ly/2EANnnJ>.

And yet the hypothetical slippery slope toward recognizing Marxism, bizarrely alluded to in the March 9 letter, has not come to pass.

The chaplain corps is intended to accommodate the religious beliefs of our nation's military members. But the Constitution equally protects everyone's freedom of conscience, including the beliefs of nontheists. If the Navy does as this handful of legislators request and deliberately turns its back on humanist and nonreligious military members, a rapidly growing demographic, it will be doing a disservice to roughly one-in-three active military members. And the chaplain corps—with its 97% Christian chaplaincy—will slip a little bit further out of touch with the 47% of Americans under 30 who identify as non-Christian, including the 38% who are nonreligious.⁴

Sincerely,



Sam Grover
Associate Counsel
Freedom From Religion Foundation

⁴ Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at www.prrri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.