

FREEDOM FROM RELIGION *foundation*

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May 4, 2016

SENT VIA MAIL & EMAIL TO:

peayjb@vmi.edu

General J.H. Binford Peay III
Superintendent
Virginia Military Institute
201 Smith Hall
Lexington, VA 24450

Re: Unconstitutional bible and religious book distribution at commencement

Dear General Peay:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to object to the distribution of bibles and religious books to graduating cadets at Virginia Military Institute commencement ceremonies. FFRF is a national nonprofit organization with more than 23,500 members across the country, including nearly 500 members in Virginia. Our purpose is to protect the constitutional separation between state and church.

We were informed by a VMI alumnus that you personally hand bibles to graduating cadets at commencement ceremonies. We understand that the Institute has been doing this for many years and is intimately involved in providing the bibles to cadets. We understand that VMI collects order forms for cadets' preferred holy book to distribute as part of the ceremony. We also understand that in past years, George C. Marshall's Rubrics of Leadership was offered to non-religious cadets.

We request that VMI end the practice of providing bibles and religious texts to cadets as part of commencement ceremonies.

Your cadet class includes a large number of men and women who are atheist, agnostic, or who otherwise identify as nonreligious. Nationally, about 35% of millennials (such as your cadets) are nonreligious.¹ Your statement on diversity says, "We must count the diverse nature of the Corps of Cadets among VMI's chief virtues." If VMI truly views religious diversity as a virtue, it should discontinue religious practices that alienate cadets.

As a public institution, VMI's actions must comport with the Establishment Clause of the First Amendment. It is well settled that public schools may not advance or endorse religion. *See generally, Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 393 U.S. 97 (1967); *Engel v. Vitale*, 370 U.S. 421 (1962); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963). Disseminating bibles and holy books to cadets as part of the culmination of their education violates the principle that "the preservation and transmission of

¹ *America's Changing Religious Landscape*, Pew Research Center (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

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*, 505 U.S. at 589). The bible distribution by VMI fails all Establishment Clause tests.

First, the practice of providing bibles and religious texts on stage, as part of commencement, coerces students to accept a bible. VMI has reiterated the importance of this event: “Commencement is the culmination of four years of study at the Institute. The walk across the stage during this ceremony is a moment every graduate remembers.”² Because of the significance of this event, cadets will view the corresponding religious book distribution as a significant event as well. Cadets are receiving these books on stage in front of their instructors and families. This pressures cadets to conform to what their peers and families expect, no matter if it may conflict with their personal religious or nonreligious views.

As you are aware, VMI has a history of violating the Establishment Clause and the constitutional rights of cadets. *See Mellen v. Bunting*, 327 F.3d 355 (4th Cir. 2003). The Fourth Circuit Court of Appeals noted in *Mellen*, “[I]n VMI’s educational system [cadets] are uniquely susceptible to coercion.” *Id.* at 371. The court held, “Because of VMI’s coercive atmosphere, the Establishment Clause precludes school officials from sponsoring an official prayer, even for mature adults. *Id.* at 371-72. Likewise, VMI’s coercive atmosphere places pressure on cadets to accept a bible at the Institute’s commencement ceremony.

Second, the bible and religious book distribution lacks a secular purpose. The claim that this is a “tradition” dating back to the early years of the Institute does not justify its continuation. In *Mellen*, the court questioned the claimed secular purpose for the tradition of supper prayers saying, “In assessing General Bunting’s asserted purposes for the prayer we are concerned that he seeks to obscure the difference between educating VMI’s cadets about religion, on the one hand, and forcing them to practice it, on the other. When a state-sponsored activity has an overtly religious character, courts have consistently rejected efforts to assert a secular purpose for that activity.” *Id.* at 373.

VMI’s efforts to provide bibles to cadets so that they would keep the bible and read the bible, is squarely a religious objective. The Supreme Court has said that a claimed secular purpose “has to be genuine, not a sham, and not merely secondary to a religious objective.” *McCreary Cty. V. ACLU of Ky.*, 545 U.S. 844, 864. Even if several religious texts are offered, that does not transform the religious nature of the government’s purpose. *See Anderson v. Laird*, 466 F.2d 283, 292 (D.C. Cir. 1972) (holding that military academy regulations mandating attendance at Protestant, Catholic or Jewish chapel services violated the “purpose and effect” Establishment Clause tests).

Third, the bible and religious book distribution constitutes religious advancement and endorsement. Government actions must not have a principal effect that “suggest[s] preference for a particular religious view or for religion in general.” *Mellen*, 327 F.3d at 374 (citation omitted). Cadets, and all in attendance, will understand that the religious texts are a central component of the commencement ceremony and are being provided and promoted by the Institute. Again, it is no excuse that more than one religion may be aided by the practice. As the Supreme Court and Fourth Circuit Court of Appeals have made clear regarding prayer, “[n]either the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can

² <http://www.vmi.edu/Content.aspx?id=20593>

serve to free it from the limitations of the Establishment Clause.” *Id.* at 366, 375; quoting *Engel v. Vitale*, 370 U.S. at 430.

Finally, the VMI bible distribution amounts to unconstitutional entanglement with religion. Decisions on what, if any, religious texts should be read and cherished, are personal matters of conscience. The Institute has directly involved itself in this personal decision by providing a bible to the majority of cadets and soliciting other chosen religious texts.

This entanglement is fraught with peril. Has the Institute selected a translation and version of a Christian bible for cadets to receive? How did the Institute decide what version and translation is the true bible, making it worthy of dissemination? Will the Institute purchase and provide copies of Richard Dawkin’s The God Delusion if requested by atheist cadets or are those cadets restricted from selecting a book of their choice? The way to avoid these difficult First Amendment questions is to leave religion to individual cadets as a personal matter of conscience.

We expect that you and others will desire to defend the practice as “tradition.” But not all traditions are worthy of continuation. VMI was the last public college in Virginia to admit black men. It finally admitted black students in 1968 under threat of losing federal funding.³ In the 1970’s, VMI ceremonies and traditions that included mandatory salutes of the Confederate flag began to be discontinued amid cadet protests.⁴ Despite long established tradition, VMI was forced by the Supreme Court in 1996 to treat women equally and allow them to enroll in the Institute for the first time. *United States v. Virginia*, 518 U.S. 515 (1996). As a matter of tradition, VMI instituted paternalistic mealtime prayers for cadets until it was ordered to cease doing so by the Fourth Circuit Court of Appeals. *See Mellen v. Bunting*, 327 F.3d 355, 362 n.5 (noting that General Bunting brought back the traditional supper prayer after it was discontinued in 1990).

We request that VMI discontinue the practice of providing bibles and religious texts to cadets as part of commencement. This is yet another “tradition” that violates the constitutional rights of cadets and should be stopped. VMI has injected religion into what should be a secular celebration. Please let us know what action you will be taking regarding this matter.

Sincerely,



Patrick C. Elliott
Staff Attorney

CC: Governor Terry McAuliffe
President Pete Ramsey, Board of Visitors

³ Finn, Peter. “At VMI, pioneers recall breaking earlier barrier.” *Washington Post* Oct. 5, 1997: <https://www.washingtonpost.com/archive/local/1997/10/05/at-vmi-pioneers-recall-breaking-earlier-barrier/bb370fde-f457-4fc1-8249-e09a3e1395ff/>

⁴ *Id.*