

# FREEDOM FROM RELIGION *foundation*

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May 20, 2013

The Honorable Ray Mabus  
Secretary of the Navy  
1000 Navy Pentagon  
Washington DC 20350-2000

Re: Stop broadcasting Christian prayers on Navy ship loudspeakers

Dear Mr. Secretary:

I am writing to you on behalf of the Freedom From Religion Foundation (“FFRF”) to renew our objections to serious violations of the Constitution occurring aboard Navy ships. The Freedom From Religion Foundation (“FFRF”) is a nationwide nonprofit organization with more than 19,000 members including more than 4,500 currently active and former members of the U.S. military. FFRF’s purpose is to protect the constitutional principle of separation between church and state. FFRF and six other secular organizations wrote to protest this practice in 2009.

We urge you to end the practice of broadcasting official nightly prayers over the loudspeakers on Navy ships. We recently received complaints about prayers on the *USS Momsen*, but the practice is widespread. We have received complaints from service members and civilians about prayers on other vessels, including the *USS Abraham Lincoln*.

It is our information and understanding that Navy ships broadcast a prayer every night over the intercom system. The prayers are announced with “Tattoo, tattoo, stand by for the evening prayer.” We understand that the loudspeakers are typically reserved for official business such as events, meal times, and emergencies. The prayers are invariably delivered by Christians, typically the chaplain or a chaplain designee, and broadcast a Christian message.

It is our further understanding that the prayer is broadcast on all areas of the ship including service members’ private staterooms. We are also told that, on some ships, the televisions (including those in staterooms) are remotely turned off during the prayer. Service members relate that they feel compelled to participate or at least remain silent in observance of the prayer.

This practice is coercive and a violation of the very document — the Constitution — every sailor promises to uphold upon joining the Navy. Sailors should not be compelled to participate in or show obeisance to official prayers while serving the country that invented the separation of state and church.

## **The prayers are an unconstitutional endorsement of religion over nonreligion**

Perhaps these prayers started with benign intent, but: “Experience should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficent. ... The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.” *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (J. Brandeis dissenting) *overruled by Katz v. United States*, 389 U.S. 347 (1967).

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The Supreme Court has said, “The touchstone for our analysis is the principle that the ‘First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.’” *McCreary County v. ACLU*, 545 U.S. 844, 860 (2005), (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 15-16 (1947); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985)).

The Establishment Clause of the First Amendment prohibits the government from taking action that will “aid one religion, aid all religions, or prefer one religion over another.” *Everson v. Board of Education*, 330 U.S. 1, 16 (1947). The Supreme Court has held that allocating public funds in direct aid to particular religious institutions is unconstitutional. See *Committee For Public Ed. and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973).

It is unconstitutional for the U.S. military to enact or support any policy that advances, promotes or endorses one religion over another, or religion over nonreligion. Official prayers broadcast to the entire ship flagrantly violate this rule. When striking down similar prayers before meals at the Virginia Military Institute as a violation of the Establishment Clause, the court wrote: “The supper prayer has the primary effect of promoting religion, in that it sends the unequivocal message that VMI, as an institution, endorses the religious expressions embodied in the prayer.” *Mellen v. Bunting*, 327 F.3d 355, 374 (4th Cir. 2003). The nightly prayer practice on ships sends an identical message and is likewise unconstitutional.

### **The prayers are coercive**

The government cannot compel or coerce military personnel to attend or participate in religious exercises or worship. See, e.g., *Lee v. Weisman*, 505 U.S. 577, 578 (1992) (“at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way in which ‘establishes a [state] religion or religious faith, or tends to do so.’”); *Anderson v. Laird*, 466 F.2d 283, 285 (D.C. Cir. 1972) (“Attendance at religious exercises is an activity which under the Establishment Clause a government may never compel.”). The court in *Anderson* continued, “[f]reedom from governmental imposition of religious activity is a core value protected by the Establishment Clause ... a government may not require an individual to engage in religious practices or be present at religious exercises.” *Id.* at 291. But that is just what the Navy is doing.

These prayers, patently religious exercises clearly endorsed by the Navy, are inescapable, regardless of the religious belief of the listener. By broadcasting the religious rituals over the loudspeakers so that no sailor can avoid them, the Navy is effectively compelling attendance and expecting participation in the religious ritual.

Several other factors contribute to the coercive nature of this practice. The loudspeaker is used for official announcements. In fact, the signal preceding the prayers, “Tattoo, Tattoo” is the official warning announcement for lights out. This gives the prayers the quality of an order, not a suggestion. This is exacerbated by the top-down command structure of the Navy. The promotion of religion by the Navy itself or superior officers acting in their official capacity, using their official title, clothed in official uniform bearing the badges of their rank, and using the official loudspeakers of a Navy ship will inevitably pressure the lower ranks to conform to that religion. During the debate over the First Amendment, Daniel Carroll of Maryland said, “[T]he rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand.” I Annals of

Cong. 757, August 15, 1789. When the governmental hand is gloved with military authority the rights of conscience are in even more susceptible to pressure.

The public nature of the ritual creates an environment for religious peer pressure. Each ship is meant to be a uniform fighting unit. This practice makes religion a relevant factor in acceptance to that unit. But there is no good reason religion should be relevant and every legal reason it should not be.

The unavoidability of the prayers is exacerbated on ships that remotely turn off of the televisions during the prayer. This particular aspect of the practice brings to mind the telescreens in George Orwell's *1984*. The Thought Police monitor and change the volume and programming on telescreens at will, including airing daily moments of reverence to Big Brother and hate toward his enemies. Orwell's totalitarian dystopia is so terrifying because Big Brother successfully invades and enslaves the minds of his subjects. They have lost their freedom of conscience. Although not as extreme as Orwell's fiction, non-Christian sailors on Navy ships have lost their freedom of conscience, too.

### **A greater tradition**

We understand that the practice of forcing all members of a ship to listen to a prayer, regardless of their personal religious beliefs, has been going on for decades. No doubt many view it as a "tradition." The first sentence of *Common Sense*, Thomas Paine's work that helped unite the colonies in the cause of independence more than anything else, reads "... a long habit of not thinking a thing wrong gives it the superficial appearance of being right, and raises at first a formidable outcry in defense of custom."

The U.S. Navy has a greater and more worthy tradition to protect and fulfill: the defense of the U.S. Constitution. Every sailor and soldier in this country promises to "support and defend the Constitution of the United States against all enemies, foreign and domestic." That oath is the core duty of our military and is a far superior tradition than using the PA system to endorse a particular religion's sacred ritual. Some 68% of the military are Christian, but 100%, including the 23.4% who are nonreligious,<sup>1</sup> promised to defend the Constitution — an entirely godless and secular document whose only references to religion are exclusionary.

Protecting the rights of conscience of citizens and service members must be the Navy's highest priority. It has been our country's priority since before the First Amendment: "The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right." James Madison, *Memorial and Remonstrance against Religious Assessments* (1785).

Thomas Jefferson thought that, "No provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority." Letter to the Society of the Methodist Episcopal Church at New London, Conn., February 4, 1809.

Jefferson also cautioned us on the importance of protecting this right, a warning the Navy would do well to heed: "It behooves every man who values liberty of conscience for himself, to resist invasions of it in the case of others; or their case may, by change of circumstances, become his own." Letter to Benjamin Rush, April 21, 1803.

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<sup>1</sup> 2010 MAAF study based on Department of Defense data.

**Ceasing this practice would not violate the conscience of Christian sailors**

Legal and moral issues aside, this practice is as unnecessary as it is exclusionary. There is no need for the top-down imposition of religious rituals on every sailor aboard, regardless of their personal religious convictions or lack thereof. Sailors can freely worship in their own way on their own time. They will still be able to say a blessing at meals, attend religious services, kneel before going to sleep, and visit and pray with chaplains if they wish.

By not broadcasting these prayers to every sailor the Navy is not imposing a burden, it is lifting a burden. The Navy provides chaplains to serve the religious needs of military personnel who wish to use them, not to force religious activity on military personnel. *See Katcoff v. Marsh*, 755 F.2d 223, 231-232 (2nd Cir. 1985).

Service members have the constitutional right to decide how or whether to observe religious practices. While non-Christians and nonbelievers are fighting to protect the freedoms for all Americans, their freedoms are being trampled upon. The military may *accommodate* the religious practices of service members, but must not *impose* religious practices on a captive audience.

This practice clearly violates the “fixed star in our constitutional constellation ... that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943). It should be stopped immediately.

We appreciate hearing back from you at your earliest convenience.

Sincerely,



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