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Report of Americans United for Separation of Church and State on Religious Coercion and Endorsement of Religion at the United States Air Force Academy

Americans United for Separation of Church and State has received numerous complaints from a variety of sources, representing diverse religious backgrounds, about extremely troubling religious policies and practices at the United States Air Force Academy. We have investigated those complaints and come to the conclusion that the policies and practices constitute egregious, systemic, and legally actionable violations of the Establishment Clause of the First Amendment to the United States Constitution.

Coerced Religious Practice

Americans United has received reports from former and current cadets — confirmed by members of the U.S. Air Force Academy's "Permanent Party"[1] — that Academy faculty, staff, members of the Chaplains' Office, and upperclass cadets frequently pressure members of the Cadet Wing to attend chapel and undertake religious instruction.

1. We have been informed, for example, that, during a Basic Cadet Training session attended by a team of observers from the Yale Divinity School, one of the Academy chaplains — Major Warren "Chappy" Watties — led a Protestant worship service in which he encouraged the attending cadets to return to their tents and proselytize cadets who had not attended the service, with the declared penalty for failure to accept this proselytization being to "burn in the fires of hell." Although literally hundreds of witnesses can attest to the fact that Major Watties ran the service and encouraged attendees to proselytize their non-attending classmates, we are informed that the Academy has downplayed the significance of the incident, reporting to the Air Staff at the Pentagon that the chaplain who conducted that service and encouraged proselytization of cadets was not a member of the Academy's Permanent Party but instead was merely a visiting Air Force reservist. That report is incorrect: Major Watties is a full-time chaplain at the Academy. Indeed, he enjoys the distinction of having been named as the U.S. Air Force's current Chaplain of the Year. What is more, the Air Staff has now expressly condoned Major Watties' actions — at the same time that the Academy is denying that Major Watties ever made the statements reported by the Yale Divinity School team and the other attendees at the service. *See* Pam Zubeck, *Air Force deems chaplain's call appropriate*, GAZETTE (Colo. Springs), Apr. 27, 2005.

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[1] The Permanent Party includes those permanently assigned to the Academy as faculty and staff.

More generally, the Yale Divinity School team reported, and our complainants have confirmed, that Academy chaplains regularly encourage cadets to "witness" other cadets — *i.e.*, attempt to convert them to evangelical Christianity. We have also been informed that, when cadets declined to attend chapel after dinner during Basic Cadet Training, they were made to suffer humiliation by being placed by upperclass cadet staff into a "Heathen Flight" and marched back to their dormitories. Similarly, we have learned that, at a football practice just before an Easter Sunday, head-football-coach Fisher DeBerry informed the cadets on the team that he expected to see them in church for Easter services. All of these incidents — which are, we have been assured, merely a representative sampling of routine occurrences at the Academy — constitute forms of unlawful religious coercion or pressure by members of the Academy's Permanent Party and the Cadet Wing.

The United States Supreme Court has consistently held that, "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 which 'establishes a [state] religion or religious faith, or tends to do so.'" *Lee v. Weisman*, 505 U.S. 577, 587 (1992) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 678 (1984)) (alteration in original). To be sure, it is both constitutionally permissible and appropriate for the armed forces to provide military chaplains insofar as this is necessary to ensure that service-members can satisfy their spiritual needs. *See Sch. Dist. v. Schempp*, 374 U.S. 203, 226 n.10 (1963); *Katcoff v. Marsh*, 755 F.2d 223, 237-38 (2d Cir. 1985). But neither chaplains, nor other members of the Academy's Permanent Party, nor even upperclass cadets — who are, of course, imbued by the Air Force with command authority over underclass cadets — may aggressively proselytize for any particular faith. *See, e.g.*, *Baz v. Walters*, 782 F.2d 701, 709 (7th Cir. 1986) (finding that public-hospital chaplain cannot proselytize patients because, although government could lawfully provide hospital chaplains, it must "ensure that the existence of the chaplaincy does not create establishment clause problems," and "[u]nleashing a government-paid chaplain who sees his primary role as proselytizing upon a captive audience of patients could do exactly that").

2. We have also been informed of numerous instances in which prayer was a part of mandatory or otherwise official events at the Academy. For example, we have learned that each mandatory meeting of the cadet cadre during Basic Cadet Training has opened with a prayer, and that many other official events at the Academy — including mandatory meals in Mitchell Hall (the Academy's Cadet Dining Facility), mandatory awards ceremonies, and mandatory military-training-event dinners — have been opened with prayers. The federal courts have upheld certain forms of government-sponsored prayer in only two very narrow contexts: prayer at the opening of legislative sessions (*see Marsh v. Chambers*, 463 U.S. 783, 790-91 (1983)), and prayer at university graduation ceremonies (*see Chaudhuri v. Tennessee*, 130 F.3d 232 (6th Cir. 1997); *Tanford v. Brand*, 194 F.3d 982 (7th Cir. 1996)). But a central rationale for the decisions allowing prayer at university graduation ceremonies is that those events are "significant, once-in-a-lifetime event[s]," for which nonsectarian, non-proselytizing prayer may be appropriate as a means to solemnize the occasion. *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 406-07 (5th Cir. 1995); *see also, e.g.*, *Chaudhuri*, 130 F.3d at 236. As for other school activities, which are "far less solemn and extraordinary" than graduation ceremonies, the courts have consistently held that officially sponsored prayer is impermissible. *See, e.g.*, *Doe v. Santa Fe Indep. Sch. Dist.*, 168 F.3d 806, 823 (5th Cir. 1999)

(rationale for permitting nonsectarian student-initiated prayer at university graduation ceremony "hinged on the singular context and singularly serious nature of the graduation ceremony," and did not apply to school sporting events), *aff'd on other grounds*, 530 U.S. 290 (2000); *Chaudhuri*, 130 F.3d at 236; *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274 (5th Cir. 1996) (striking down state statute permitting student-initiated prayer at school sporting events); *Duncanville*, 70 F.3d at 406-07; *Jager v. Douglas County Sch. Dist.*, 862 F.2d 824 (11th Cir. 1989) (striking down regulation calling for holding of invocations at high-school sporting events).

Especially pertinent is the decision of the United States Court of Appeals for the Fourth Circuit in *Mellen v. Bunting*, 327 F.3d 355 (4th Cir. 2003), *cert. denied*, 541 U.S. 1019 (2004), in which the court held that the Establishment Clause strictly prohibited school-sponsored prayer during mealtimes at the Virginia Military Institute — even though cadets were not required either to attend meals or to participate in the prayers if they did. *Id.* at 371-72. Among the reasons for that holding was the court's conclusion that "the First Amendment prohibits [a publicly funded military academy] from requiring religious objectors to alienate themselves from the [academy] community in order to avoid a religious practice." *Id.* at 372 n.9 (citing *Lee*, 505 U.S. at 596).

And even in the very limited contexts where courts have approved government-sponsored prayer, they have made clear that only ***nonsectarian*** prayer is allowed and that prayers specific to any particular faith invariably violate the Establishment Clause. *See, e.g.*, *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004) (town council violated Establishment Clause by opening sessions with prayers containing references to Jesus Christ), *petition for cert. filed*, 73 U.S.L.W. 3473 (U.S. Jan 28, 2005) (No. 04-1052); *Bacus v. Palo Verde Unified Sch. Dist. Bd. of Educ.*, 52 Fed. Appx. 355, 356-57 (9th Cir. 2002) (school board's practice of ending prayers with phrase "in the Name of Jesus" "displays the government's allegiance to a particular sect or creed," namely Christianity, and therefore violates principle that "one religious denomination cannot be officially preferred over another"); *Coles ex rel. Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369, 371, 385 (6th Cir. 1999) (Board of Education's practice of opening meetings with prayer held unconstitutional in part because "the prayers in this case were clearly sectarian, with repeated references to Jesus and the Bible"); *Rubin v. City of Burbank*, 124 Cal. Rptr. 2d 867 (Cal. App. 2002) (references to "Jesus Christ" in prayers that opened city-council meetings held unconstitutional).

Meals, cadet cadre meetings during the course of Basic Cadet Training, and the like are all, of course, relatively routine occurrences at the Academy — and certainly not once-in-a-lifetime events. And hence, even nonsectarian, non-proselytizing prayer — much less the explicitly Christian prayer that apparently occurs with some frequency at such events at the Academy — cannot be squared with the strict mandates of the Establishment Clause. And although the constitutional violations here are made all the more egregious by virtue of the fact that attendance at these events is mandatory for cadets (*see generally, e.g.*, *Lee*, 505 U.S. at 587), the Establishment Clause would prohibit prayer in these contexts even if the events were entirely optional, insofar as cadets were forced to choose between being subject to a prayer in order to attend and fully participate in an Academy event, on the one hand, and refraining from attending the event, on the other (*see Mellen*, 327 F.3d at 372 n.9; *see also, e.g.*, *Santa Fe*, 530 U.S. at 312 ("'[i]t is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and

benefits as the price of resisting conformance to state-sponsored religious practice'" (quoting *Lee*, 505 U.S. at 596)); *Thomas v. Review Bd.*, 450 U.S. 707, 716 (1981) ("A person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program.")). Nor does it make any difference to the constitutional analysis whether cadets at the events are required either to speak or otherwise to participate actively in prayers. For the Supreme Court has held that merely requiring objectors to maintain silence during a prayer constitutes coerced participation in that prayer. *See Lee*, 505 U.S. at 593. And the Fourth Circuit has held that, in light of the special nature of military-academy life, the ***mere presence*** of cadets at an official prayer is unconstitutional, even if there is no requirement that the cadets remain silent or stand at attention. *See Mellen*, 327 F.3d at 371-72.

3. In addition to receiving reports of coerced attendance at religious services and prayers at official events, we have also learned of a number of other methods by which members of the Permanent Party and upperclass cadet staff have encouraged or put pressure on classmates and underclass cadets to engage in religious practices generally, and most especially in evangelical Christian religious practices.

For example, we have been told that a number of faculty members have introduced themselves to their classes as born-again Christians and encouraged their students to become born-again during the course of the term. We have also been informed of at least one instance where a history instructor at the Academy ordered students to pray before they were permitted to begin their final examination for the course. In addition, we have received copies of a full-page "USAFA CLM 2003 Christmas Greeting" published in the Academy's newspaper, the *Academy Spirit*. The "Greeting" lists approximately 300 signatories — arranged by Academy department — who jointly declared their "belie[f] that Jesus Christ is the only real hope for the world;" announced that "[t]here is salvation in no one else;" and directed cadets to contact them in order to "discuss Jesus." Among the signatories are 16 heads or deputy heads of the Academy's academic departments, 9 permanent professors, the then-Dean of the Faculty, the current Dean of the Faculty, the then-Vice Dean of the Faculty, the Academy's Director of Athletics, and the Academy's head football coach, as well as spouses of these and other members of the Academy faculty and staff. And we have received copies of a sign placed on every plate in the Cadet Dining Hall and posted widely throughout the Academy announcing a Christian-themed program related to the movie *The Passion of the Christ*. The flyers announced that the program was sponsored by the Christian Leadership Ministeries "in coordination with the Office of Cadet Chaplains," and stated that "This is an officially sponsored USAFA event — please do not take this flyer down" — a notation that does not generally appear on flyers announcing programs of a non-religious nature.

The Establishment Clause of the First Amendment to the U.S. Constitution forbids public officials from taking any action that "has the purpose or effect of 'endorsing' religion." *County of Allegheny v. ACLU*, 492 U.S. 573, 592 (1989). Impermissible governmental endorsement of religion occurs whenever a public official — such as a military officer or faculty member at a public educational institution — takes any action that "'convey[s] or attempt[s] to convey a message that religion or a particular religion is *favored or preferred*.'" *Id.* at 593 (quoting *Wallace v. Jaffree*, 472 U.S. 38, 70 (1985) (O'Connor, J., concurring in judgment)) (emphasis in original). Reduced to

simplest terms, the Supreme Court has held that the Establishment Clause prohibits any official action that promotes religion generally or shows favoritism toward any particular faith. *See, e.g.*, *Bd. of Educ. v. Grumet*, 512 U.S. 687, 703 (1994) ("a principle at the heart of the Establishment Clause [is] that government should not prefer one religion to another, or religion to irrelegion"); *Allegheny*, 492 U.S. at 604 ("Whatever else the Establishment Clause may mean (and we have held it to mean no official preference even for religion over nonreligion), it certainly means at the very least that government may not demonstrate a preference for one particular sect or creed (including a preference for Christianity over other religions)."); *Larson v. Valente*, 456 U.S. 228, 244 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.").

When faculty members evangelize or proselytize in the classroom, the message is manifest: To please their instructors, cadets should embrace the instructors' faith. And when large portions of the Academy's Permanent Party issue a joint statement in the Academy's official newspaper espousing one particular creed and encouraging cadets to approach them about it as the path to "salvation," the message is equally clear: To curry favor with the officers who hold sway over their lives, cadets should seek religious instruction from those officers. In short, faculty members and other officers who use their official positions to communicate such messages — as so many members of the Academy's Permanent Party have — are sending a strong and unequivocal message of the Academy's and the United States Air Force's unconstitutional endorsement of religion.

4. What is more, we have received numerous reports about non-Christian cadets being subjected to proselytization or religious harassment by other, more senior or upperclass cadets, thus reinforcing the message of endorsement conveyed by the Permanent Party. Even setting aside the fact that these upperclass cadets apparently are not punished for their conduct (even when they attack other cadets using religious epithets — a common occurrence at the Academy, we have discovered), upperclass cadets are, of course, given command authority over their subordinates; and hence, they act in an official capacity under the auspices of the United States Air Force. As one recent Academy graduate explained the situation to us, upperclass cadets have virtually total control over the lives of underclass cadets — and therefore often exercise far more direct influence than even the Academy's Permanent Party does. For that reason, not only does harassment by an upperclass cadet constitute official governmental conduct, but cadets who face proselytization or religious harassment from upperclass cadets will naturally conclude that mimicking their superiors' religious beliefs and practices is necessary to succeed at the Academy — or at least to avoid the wrath or ill-will of those with the power to punish. Harassment by upperclass cadets — especially when combined with proselytizing of cadets by the Permanent Party — thus creates a pervasively religious atmosphere that sends "a message to nonadherents that they are outsiders, not full members of the political community." *Allegheny*, 492 U.S. at 595. That divisive message, communicated by faculty, staff, and upperclass cadets, constitutes a clear violation of the Establishment Clause. *See id.* at 593-94 (government must refrain from conveying message that religion generally, or any religious belief in particular, is favored or preferred).

Pervasiveness of the Problem

Because of the nature of the military command structure, the Academy leadership is singularly well-positioned to stamp out official religious discrimination and favoritism by giving appropriate orders and enforcing them under the terms of the Uniform Code of Military Justice. By the same token, actions by senior Academy leadership in the officer ranks that undercut attempts to achieve those ends send a strong message to cadets about what conduct is permissible and even favored at the Academy — a clear and unequivocal endorsement of religion in violation of the First Amendment. And in that regard, complaints from multiple sources make clear that violations of the Establishment Clause are not merely aberrant acts by a few rogue individuals, but instead are reflections of ***systematic and pervasive religious bias and intolerance at the highest levels of the Academy command structure.***

1. Notably, we have received a host of reports about incidents in which Brigadier General Johnny Weida, in his official capacity as Commandant of Cadets, has endorsed religion generally and his own faith (as an evangelical Christian) in particular, in clear violation of the Establishment Clause.

General Weida has, for example, officially endorsed "National Prayer Week" in a mass e-mail message to the Cadet Wing that can only be described as a prayer and a directive to pray. Among other things, General Weida's e-mail message instructed cadets to "[a]sk the Lord to give us the wisdom to discover the right, the courage to choose it, and the strength to make it endure"; and the message informed the cadets that "He has a plan for each and every one of us." Similarly, in an official "Commander's Guidance" document, General Weida instructed cadets that they "are accountable first to your God." Such official proselytization and prayer by a public official is, of course, the hallmark of unconstitutional conduct under the Establishment Clause. *See Allegheny*, 492 U.S. at 592 (government officials may not take action that "has the purpose or effect of 'endorsing' religion").

And if those incidents were not enough to demonstrate the severity of the problems at the Academy, it seems that General Weida has established a system of code words that he shares with evangelical Christian cadets in order to provide them with opportunities to proselytize others in the Cadet Wing. Specifically, at a Protestant chapel service during Basic Cadet Training, General Weida told the attendees the New Testament parable of the house built on rock — a metaphor for building faith on the firm foundation of Jesus. *See* Matthew 7:24-29; Luke 6:46-49. General Weida then instructed the cadets that, whenever he uses the phrase "Airpower!," they should respond with the phrase "Rock Sir!," thus invoking the parable from the New Testament. General Weida advised the cadets that, when asked by their classmates about the meaning of the call and response, the cadets should use the opportunity to discuss their Christian faith. And General Weida regularly invokes the "Airpower!" call in official statements in order to prompt the religiously based "Rock Sir!" response.

Indeed, General Weida has used his "Airpower!" call-and-response to undercut even the few attempts that have been made at the Academy to address particular incidents of religious intolerance

and coercion — thus sending an especially strong message of favoritism toward Christianity and those who share General Weida's Christian faith. For example, after the Academy received complaints arising out of the placement on every cadet's plate at mealtime of advertisements for a screening of the movie *The Passion of the Christ*, Lieutenant General John Rosa apparently ordered General Weida to read to the fully assembled Cadet Wing an official "apology" (or, more accurately, a statement, drafted by the Chaplains' Office, of the Academy's policy regarding the posting and distribution of flyers). But General Weida opened his remarks with the "Airpower!" chant, thus sending the strong message that cadets should ignore his perfunctory reading of the statement. What is more, throughout General Weida's speech, a quotation from the New Testament Book of Ephesians was projected onto several large screens strategically positioned throughout Mitchell Hall (the huge Cadet Dining Facility where General Weida addressed the Cadet Wing at the mandatory noon meal), further reinforcing General Weida's message of official endorsement of Christianity and belying any apparent message of religious neutrality, inclusion, or toleration. Similarly, in a mass e-mail message sent to the Cadet Wing in the wake of the incident over the *Passion of the Christ* flyers, General Weida instructed cadets to "be very careful about forcing your faith into your professional realm"; yet he opened the message with the "Airpower!" invocation, thus unequivocally incorporating his own faith into his "professional realm."

General Weida's incitement of cadets to proselytize other cadets in his preferred form of Christianity, and his creation of the call-and-response system to facilitate their doing so, are particularly clear instances of official Academy endorsement of religion. And his undercutting of any message of religious toleration, mutual respect, or separation of church and state through his well-timed use of that mechanism only serves to underscore the message that the Academy command gives preference to evangelical Christianity over other faiths.

At a more basic level, we have been informed that General Weida has cultivated and reinforced an attitude — shared by many in the Academy Chaplains' Office and, increasingly, by other members of the Academy's Permanent Party — that the Academy, and the Air Force in general, would be better off if populated solely with Christians. A stronger message of official preference for one particular faith is hard to imagine. And because, as a number of senior Air Force career officers have now confirmed for us, Air Force Academy cadets and junior Air Force officers rapidly come to the conclusion that rewards go to those who think like their general officers, these young people learn that professional success comes with emulation of the practice of explicitly incorporating Christianity into the performance of their official duties. So when leaders such as General Weida support and contribute to a culture of religious intolerance and official favoritism, Establishment Clause violations become commonplace.

2. Thus, it should come as no surprise that other members of the Air Force Academy's Permanent Party are equally unrestrained in their egregious violations of the Establishment Clause. As we have already described such widespread practices as faculty members proselytizing in the classroom and directives from Academy chaplains to proselytize other cadets, we will not belabor the point unduly by trying to recount all of the violations by Academy officials about which we have received complaints. But to underscore the open, notorious, and pervasive nature of the violations, we do wish to call special attention to the actions of one other member of the Academy staff —

head-football-coach Fisher DeBerry — as his conduct in violation of the Establishment Clause is not only clear, but also longstanding and well-documented.

Last fall, Coach DeBerry placed a banner reading "I am a Christian first and last * * * I am a member of Team Jesus Christ" in the locker room used by the Academy's football team. He posted the banner just two weeks after the Academy had initiated a program of religious sensitivity training — a topic to which we will return later — and one day after General Rosa had informed the Academy's Board of Visitors of his plans for addressing religious intolerance at the Academy. *See* Pam Zubeck, *DeBerry gets sensitivity training*, GAZETTE (Colo. Springs), Dec. 1, 2004. Although DeBerry supposedly received "counseling" from General Rosa concerning the banner (*see id.*), DeBerry's official favoritism towards Christianity has not wavered: He has since been quoted as saying that religion is "'what we're all about'" at the Academy (Todd Jacobson & Pam Zubeck, *AFA coach says religion is paramount at school*, GAZETTE (Colo. Springs), Feb. 26, 2005 (quoting Coach DeBerry)). He has also stated that he continues to "advise[] his players to attend church the day after games." *Id.* He has further stated that, after games, the team members and he "get on our hands and knees and we wrap our arms around each other and we thank God for the opportunity of having competed that particular day." *Id.* We have also been informed that DeBerry routinely gives speeches at official Academy and prep-school events, and that his speeches have overtly sectarian themes and are invariably laden with explicit references to Jesus. Indeed, DeBerry has consistently incorporated religion into his coaching and the performance of his other official duties throughout his many years at the Academy. *See e.g.*, Jacobsen & Zubeck, *supra* (noting DeBerry's self-report that he has held team prayers during his entire 21-year coaching career at the Academy).

Yet aside from the one occasion of "counseling" by General Rosa over the "Team Jesus Christ" banner, it seems that no action has ever been taken to discipline Coach DeBerry for his behavior — and certainly none that was sufficient to cause DeBerry to change that behavior. On the contrary, the Colorado Springs *Gazette* recently reported that General Rosa has announced that it is permissible for DeBerry to lead the football team in prayers, as long as those prayers do not promote any particular religion. *See* Jacobsen & Zubeck, *supra*.

3. But General Rosa's statement of policy is wrong as a matter of law. The U.S. Supreme Court and all other courts to consider the question have held that officially sponsored prayer may not be held at athletic events at public educational institutions. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 305-08 (2000) (striking down student-initiated, student-led prayer before football games); *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274 (5th Cir. 1996) (striking down state statute permitting student-initiated prayer at sporting events); *Jager v. Douglas County Sch. Dist.*, 862 F.2d 824 (11th Cir. 1989) (striking down regulation calling for holding of invocations at high-school sporting events). Indeed, the U.S. Court of Appeals for the Fifth Circuit has ruled that coaches or other school employees may neither participate in nor supervise prayer during practice or in the locker room before a game, even if the prayer is initiated and led by the students themselves. *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995).

Among the many reasons that team prayer accompanying sporting events at public institutions has been held to be unconstitutional is the fact that attendance at games is not voluntary

for members of the team; and, in any event, the courts have held that the Establishment Clause forbids even what are clearly designated as voluntary pre-game prayer sessions because the hierarchical nature of the coach-player relationship might make team members feel pressure to attend. *See, e.g.*, *Doe v. Duncanville Indep. Sch. Dist.*, 994 F.2d 160, 165 (5th Cir. 1993) (coach's involvement in religious activity with students would be "perceived by the students as inducing participation they might otherwise reject"). Thus, it is irrelevant as a legal matter as well as illusory as a practical matter that Coach DeBerry purports to allow non-Christians to opt out of post-game team prayer (*see* Jacobson & Zubeck, *supra* (relating not only DeBerry's description of supposed opt-out right for non-Christians, but also his report that no team members have ever exercised that right)).

Official Discrimination Against Non-Christians and Non-Religious Cadets

We have also received multiple reports of unequal treatment of, and official discrimination against, non-Christian cadets who wish to attend religious services or study sessions.

1. It is our understanding that Christian cadets who wish to attend Christian religious services and religious study sessions (such as "Sunday school" or Bible study) on Sundays are eligible for "non-chargeable passes" — *i.e.*, special passes to leave the Academy grounds that do not count as regular leave. By contrast, cadets who celebrate the Sabbath on other days of the week — such as Jewish or Seventh-Day Adventist cadets, who celebrate the Sabbath on Saturday — are not able to obtain such non-chargeable passes to attend Saturday services off the Academy grounds. Indeed, we have been told that Saturday Sabbath observers frequently are denied any opportunity at all to attend religious services because mandatory events such as training, parades, and football games are routinely scheduled for Saturdays, and cadets are not permitted to miss those activities in order to attend religious services. Meanwhile, such mandatory events are not scheduled for Sundays, when they might otherwise conflict with the ability of cadets to attend Christian worship services.

The provision of special passes for attendance at Christian religious services and religious study sessions that are not available on equal terms to persons of other faiths is a straightforward instance of one faith being preferred over others, in violation of the Establishment Clause. *See, e.g.*, *Allegheny*, 492 U.S. at 593-94, 604; *Larson*, 456 U.S. at 244. Simply put, the Air Force is constitutionally obligated to ensure a diversity of religious viewpoints in the religious programming that it provides; and granting special favors to Christians or special status to their preferred forms of religious observance is highly improper. *See, e.g.*, *Katcoff*, 755 F.2d at 226-27 & n.1 (approving provision of military chaplaincy in part because Army "provid[ed] religious facilities for soldiers of some 86 different denominations" and did not favor any particular faith over others); *Adair v. England*, 183 F. Supp. 2d 31, 56-58 (D.D.C. 2002) (Navy's chaplaincy policy favoring liturgical over non-liturgical Christians held to be presumptively unconstitutional).

2. We have also been informed that Academy officials have discriminated against non-religious students by denying them other privileges that are routinely available to religious students. For example, General Weida has authorized cadets to hang crosses or other religious items in their

dorm rooms, whereas Academy regulations prohibit cadets from displaying non-religious items in similar fashion. In addition, we have been informed that at least one cadet was denied a non-chargeable pass to attend a Freethinkers' meeting off base because the officers and the cadets in his chain of command regarded Freethinkers' meetings as not faith-based, and therefore not entitled to the same treatment given to Christian worship or study. And, based on that same official determination, the officers and cadets in the chain of command also denied this same cadet's request to form a Freethinkers' "SPIRE" group under the auspices of the Academy's Special Program in Religious Education.

When the cadet complained about these and other incidents to the Academy's MEO office (*i.e.*, its equal-opportunity office), the officer in charge, Captain Joseph Bland, refused to recognize the complaint as one for religious discrimination because the cadet had identified himself as an atheist. Captain Bland then attempted to proselytize the cadet into Catholicism. We understand that Captain Bland was competitively selected as, and currently holds the title of, the U.S. Air Force's MEO Officer of the Year. In sum, the Air Force officer charged with investigating and resolving complaints of religious discrimination at the Academy, and recognized by the Air Force as being the outstanding MEO officer for that entire branch of the service, not only had a fundamental misunderstanding of the legal definition of religious discrimination (*see generally, e.g.*, *Wallace v. Jaffree*, 472 U.S. 38, 53-54 (1985) ("the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all")), but also thought it entirely proper to commit a straightforward violation of the Establishment Clause in the course of performing the official duties of the MEO office.[2]

The Supreme Court has consistently held that the First Amendment prohibits government from preferring religion to non-religion just as much as it prohibits government from preferring one faith to any other. *See, e.g.*, *Grumet*, 512 U.S. at 703 ("a principle at the heart of the Establishment

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[2] Additionally, serious Establishment Clause concerns are implicated by the composition of the Chaplains' Office and the SPIRE program. In this regard, we are informed that the Academy's Cadet Wing consists of approximately 30% Catholics, 30% non-evangelical Protestants, and 30% evangelical Protestants, with the remaining 10% including Jewish, Islamic, and other non-Christian cadets as well as cadets who elect not to declare any religious affiliation. Yet the Academy's chaplains' core is overwhelmingly composed of Protestant chaplains, virtually all of whom are evangelical Christians. The vast majority of the SPIRE groups are designated as "Protestant." And all of the "Protestant" SPIRE groups are evangelical. The United States District Court for the District of Columbia has held, however, that the Navy's chaplaincy program was presumptively unconstitutional because two-thirds of the Navy's chaplain slots were filled with liturgical Christian clergy, when liturgical Christians constituted only one-third of the Navy's religious personnel. *See Adair*, 183 F. Supp. 2d at 56-58. Under *Adair*, the dramatic mismatch between the overwhelming numbers of evangelical Protestant chaplains and SPIRE groups, on the one hand, and the actual percentage of evangelical Protestants in the Cadet Wing on the other, would be strong evidence of an unconstitutional preference for evangelical Christianity over other Christian and non-Christian religious denominations.

Clause [is] that government should not prefer one religion to another, or religion to irreligion"); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 8-9 (1989) (plurality opinion) (it "is part of our settled jurisprudence" that First Amendment "'prohibits government from abandoning secular purpose in order to put an imprimatur on one religion, or on religion as such, or to favor the adherents of any sect or religious organization'" (citation omitted)); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) ("The First Amendment mandates governmental neutrality between religion and religion, and between religion and non-religion"); *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961) (government cannot "constitutionally pass laws or impose requirements which aid all religions as against non-believers"); *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947) (First Amendment "requires the state to be a neutral in its relations with groups of religious believers and non-believers").[3]

Providing non-chargeable passes to cadets for attendance at religious services and study sessions — and specifically Christian ones — without providing similar opportunities to attend non-religious alternatives clearly constitutes providing a special benefit to religious cadets not available to others. Additionally, it is our understanding that while a few of the Academy's SPIRE groups are run by Academy chaplains, the Academy also permits several outside Christian groups to host SPIRE groups, thus affording them special access to the Academy facilities and to the cadets, while denying the same privilege to an outside Freethinkers' group. Doing so is plainly the "unjustifiable

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[3] Thus, the Supreme Court held in *Texas Monthly*, for example, that a state violated the Establishment Clause by enacting a sales-tax exemption for religious periodicals without extending the exemption to non-religious periodicals. 489 U.S. 1. The plurality explained that when a law directs a benefit exclusively to religious organizations, the government "'provide[s] unjustifiable awards of assistance to religious organizations' and cannot but 'conve[y] a message of endorsement' to slighted members of the community." *Id.* at 15 (plurality opinion) (quoting *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 348 (1987)). Similarly, in *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703 (1985), the Supreme Court struck down as violative of the Establishment Clause a state statute that provided Sabbath observers with an absolute right not to work on their Sabbath (*id.* at 710-11), holding that the statute constituted unconstitutional governmental preference for Sabbath observers over "other employees who have strong and legitimate, but non-religious, reasons for wanting" a particular day off. *Id.* at 710 n.9. And the lower federal courts have similarly held governmental benefits to be unconstitutional when they are directed exclusively to religious organizations or persons. *See, e.g., Finlator v. Powers*, 902 F.2d 1158, 1162-63 (4th Cir. 1990) (statute exempting "Holy Bibles" from state's retail-sales and use taxes violated Establishment Clause); *Haller v. Pa. Dep't of Revenue*, 728 A.2d 351 (Pa. 1999) (sales-tax exemption for religious articles, Bibles, and other religious publications sold by religious organizations violated Establishment Clause); *In re Springmoor*, 498 S.E.2d 177 (N.C. 1998) (statute granting property-tax exemptions to nursing homes only if homes were owned, operated, and managed by religious or Masonic organizations violated Establishment Clause); *Thayer v. S.C. Tax Comm'n*, 413 S.E.2d 810 (S.C. 1992) (exemption from use tax for religious publications violated Establishment Clause); *Port Wash. Union Free Sch. Dist. v. Port Wash. Teachers Ass'n*, 702 N.Y.S.2d 605 (N.Y. App. Div. 2000) (religious-holidays provision of collective-bargaining agreement violated Establishment Clause by giving religiously observant teachers more leave than non-religious teachers).

assistance to religious organizations" that slights both non-believers and adherents to alternative religions, in violation of the First Amendment.[4] *Texas Monthly*, 489 U.S. at 15 (quoting *Amos* 483 U.S. at 348).

Inadequate Remedial Measures

We do not know what disciplinary actions, if any, senior Air Force Academy leadership has ever taken as a result of any complaints of religious intolerance or harassment. We are aware that the Academy has recently instituted a program known as "Respecting the Spiritual Values of All People." But firsthand, eyewitness reports confirm that this "RSVP" program is woefully inadequate to address the pervasive and systemic problems of official religious intolerance, discrimination, and coercion at the Academy.

First of all, we have been told that the RSVP program as currently constituted is not the program of religious sensitivity training originally developed by members of the Chaplains' Office and sanctioned by the team of outside experts from the Yale Divinity School. As it was described to us, the original proposal was to implement a program to expose attendees to forms of religious expression with which they are unfamiliar; to teach toleration and mutual respect in order to counteract the official culture of religious discrimination and coercion at the Academy; and to explain the importance of ensuring that official conduct is strictly neutral with respect to religion. But we have learned that the program was substantially modified after a visit from the Air Force's chief of chaplains — Major General Charles Baldwin — and that the resulting RSVP program does not adequately teach and promote the fundamental constitutional requirement of separation of church and state.

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[4] In that regard too, the determination that a Freethinkers' group is not religious, and the denial of non-chargeable passes and the denial of permission to form a SPIRE group on that basis, cannot be squared with the federal courts' recognition that legal protections for "religion" necessarily must extend not only to mainstream religions, but also to any other deeply held belief systems. "In considering a first amendment claim arising from a non-traditional 'religious' belief or practice, the courts have looked to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions.'" *Africa v. Pennsylvania*, 662 F.2d 1025, 1032 (3d Cir. 1981) (quotation marks, brackets, and citation omitted). As long as a sincerely held belief system "confront[s] the same concerns" (*id.*) as a traditional religion, in other words, government lacks the power to assess the validity of that belief system, and must afford it the same treatment as any recognized, mainstream religion. *See, e.g., United States v. Seeger*, 380 U.S. 163, 184 (1965). And hence, the Academy's official determination that Freethinkers' meetings are non-religious and unworthy of treatment as a religion may well constitute an unconstitutional preference for traditional religious sects and creeds over what as a matter of law must also be treated as a religion.

We have also learned that even the watered-down message of this current incarnation of the RSVP program is being implicitly undercut. Among other things, we have been told that senior Air Force Academy officials — including General Weida — have just within the past few days, and during their actual duty hours, attended a program (held by an evangelical Christian group and specifically endorsed by the Air Force Academy Office of Cadet Chaplains) that identified "secularism" and "pluralism" as specific threats to "the followers of Jesus." This program, which was attended by General Weida and other senior Air Force Academy officials, directly contradicted the message of mutual respect and toleration that the RSVP program purportedly conveys. Furthermore, the Office of Cadet Chaplains endorsed the program notwithstanding the fact that the Chaplains' Office is the entity charged with conducting the RSVP program — thus casting serious doubt on the sincerity of the Chaplains' Office's commitment to the stated goals of the RSVP program.

Effect of Religious Discrimination at U.S. Air Force Academy

Finally, we are aware of at least two cases in which highly qualified individuals were dissuaded from attending the Academy and entering into the Air Force officer corps — despite longstanding and fervent desires to do so — after learning of the official culture of religious intolerance and hostility toward those who do not subscribe to and practice evangelical Christianity. When the Air Force is denied the service of the country's best and brightest young people because they feel excluded from the Academy by religious intolerance, the armed forces and the Nation as a whole are weakened. What is more, in light of the traditional role that military-officer training has played in cultivating local, state, and national leaders in both the public and private sectors, the effective exclusion from the Academy of highly qualified, highly motivated young men and women on the basis of their religion — or their unwillingness to conform to the religious practices of those in charge — is the very archetype of the "message to nonadherents that they are outsiders, not full members of the political community," that the Constitution forbids. *Allegheny*, 492 U.S. at 595. A public institution that conveys that message straightforwardly violates the Establishment Clause. *See, e.g., id.*

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The investigation by Americans United for Separation of Church and State into the policies and practices of the United States Air Force Academy has revealed numerous flagrant and egregious violations of the Establishment Clause of the First Amendment to the U.S. Constitution, as well as a general climate of religious coercion and official hostility toward those who do not practice evangelical Christianity. ***We have concluded that both the specific violations and the promotion of a culture of official religious intolerance are pervasive, systematic, and evident at the very highest levels of the Academy's command structure.***

This report was prepared by the Legal Department of Americans United for Separation of Church and State. For further information, contact:

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