

MILITARY LAW SECTION STATE BAR OF TEXAS



LAW, RELIGION & THE MILITARY
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TAXPAYER STANDING

“[The interests of a taxpayer] in the moneys of the treasury—partly realized from taxation and partly from other sources—is shared with millions of others, is comparatively minute and indeterminable, and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for [standing].”

— *Frothingham v. Mellon*, 262 U.S. 447 (1923)

**TAXPAYER STANDING:
CHALLENGES TO MILITARY CHAPLAINCY**

Elliott v. White,
23 F.2d 997 (D.C. Cir. 1928)

TAXPAYER STANDING

- (1) Does the plaintiff challenge Congress' exercise of its taxing and spending authority (U.S. Const. art. I, § 8)?
- (2) Does the enactment exceed a specific constitutional limitation on the Taxing and Spending Clause (*i.e.*, Establishment Clause)?

— *Flast v. Cohen*, 392 U.S. 83 (1968)

CONSTITUTIONAL CHALLENGES TO MILITARY CHAPLAINCY

Katcoff v. Marsh,
755 F.2d 223 (2d Cir. 1985)

KATCOFF V. MARSH

“The purpose and effect of the [Army’s chaplaincy] is to make religion, religious education, counseling and religious facilities available to military personnel and their families under circumstances where the practice of religion would otherwise be denied as a practical matter to all or a substantial number. As a result, the morale of our soldiers, their willingness to serve, and the efficiency of the Army as an instrument for our national defense rests in substantial part on the military chaplaincy, which is vital to our Army’s functioning.”

MILITARY LAW SECTION



“JN8:12” for the Book of John, Chapter 8, Verse 12

MILITARY CHAPLAINS: WORSHIP SERVICES

“Each chaplain shall, when practicable, hold appropriate religious services at least once on each Sunday for the command to which he is assigned, and shall perform appropriate religious burial services for members of the Army who die while in that command.”

— 10 U.S.C. 3547(a) (Army), 8547(a) (Air Force)

MILITARY CHAPLAINS: WORSHIP SERVICES

“An officer in the Chaplain Corps may conduct public worship according to the manner and forms of the church of which he is a member.”

— 10 U.S.C. 6031(a) (Navy)

MILITARY CHAPLAINS: WORSHIP SERVICES

“The commanders of vessels and naval activities to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, others in the naval service diligently to attend at every performance of the worship of Almighty God.”

— 10 U.S.C. 6031(b) (Navy)

“Let us pray. Almighty God, today we pray imprecatory prayers from Psalm 109 against the enemies of religious liberty, including Barry Lynn and Mikey Weinstein, who issued press releases this week attacking me personally. God, do not remain silent, for wicked men surround us and tell lies about us. We bless them, but they curse us. Therefore find them guilty, not me. Let their days be few, and replace them with Godly people. Plunder their fields, and seize their assets. Cut off their descendants, and remember their sins, in Jesus’ name. Amen.”

— Klingenschmitt prayer (April 2009)

PRAYERS AT OFFICIAL CEREMONIES

“Restricting speech that owes its existence to a public employee’s professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen. It simply reflects the exercise of employer control over what the employer itself has commissioned or created.”

— *Garcetti v. Ceballos*, 547 U.S. 210 (2006)

PRAYERS AT OFFICIAL CEREMONIES

“We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”

— *Garcetti v. Ceballos*, 547 U.S. 210 (2006)

PRAYERS AT OFFICIAL CEREMONIES

“The ‘establishment of religion’ clause of the First Amendment means at least this: [Neither a state nor the Federal Government] can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance.”

— *Everson v. Board of Educ.*, 330 U.S. 1, 15-16 (1947)

**PRAYERS AT
OFFICIAL CEREMONIES**

Chalker v. Gates,
No. 08-2467-KHV (D. Kan., Jan. 7. 2010)

PROSELYTIZING & EVANGELIZING

“Senior faculty and staff members, in efforts that may have been well intentioned, have made public expressions of faith that some faculty, staff and cadets believed to be inappropriately influential or coercive. As a result of this, some military and civilian faculty expressed concern about the impact of religious affiliation on their personal career advancement. Some cadets expressed objections to what they perceived to be mandatory prayers at official functions and in sports locker rooms. Additionally, some faculty members and coaches consider it their duty to profess their faith and discuss this issue in their classrooms in furtherance of developing cadets’ spirituality.”

**— U. S. AIR FORCE REPORT CONCERNING RELIGIOUS CLIMATE AT THE U.S.
AIR FORCE ACADEMY (June 22, 2005)**

PROSELYTIZING & EVANGELIZING

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The Pentagon

In our post-9/11 world, we recognize the significance, and stress, associated with your job. We offer a variety of opportunities and resources to help you remain purpose-driven in your fast-paced job.

- **Wednesday Morning Prayer Breakfast Meetings**
Our weekly Wednesday morning breakfast meetings are enjoyable, informal events open to military and civilians of all ranks and grades. Start your day with an encouraging talk from a noted keynote speaker about how to integrate faith, personal beliefs and work. Join us each Wednesday from 0700 to 0750 in the Pentagon Library Conference Center (PLCC). Check the video monitor at the information desk for the conference room number for the week. No reservations are required.
- **Small Groups**
For more information contact Christian Embassy at 703-525-1770.

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Bible Studies

To see past and present Bible studies used in the Pentagon [click here](#).

PROSELYTIZING & EVANGELIZING

I found a wonderful opportunity as a Director on the Joint Staff, as I meet the people that come in to my directorate, and I tell them right up front who Jack Catton is, and I start with the fact that I'm an old-fashioned American, and my first priority is my faith in God, then my family, and then country. I share my faith because it describes who I am. I would say Christian Embassy in my interaction with my fellow Flag officers has helped inspire some of that. You know, we talk about that kind of stuff, and I think it's a huge impact because you have many men and women who are seeking God's counsel and wisdom as we advise the Chairman and the Secretary of Defense. Hallelujah!

**DoD IG Report (20 July 2007)
(MG Catton's comments in film)**

PROSELYTIZING & EVANGELIZING

However, we substantiated the allegation with regard to the military officers. The seven officers participated in interviews with Christian Embassy, excerpts of which were also included in the promotional video. The officers were filmed during the duty day, in uniform with rank clearly displayed, in official and often identifiable Pentagon locations. Their remarks conferred approval of and support to Christian Embassy, and the remarks of some officers implied they spoke for a group of senior military leaders rather than just for themselves. None of the officers sought or received approval to participate in the interview in an official capacity or in uniform. The overall circumstances of the interviews emphasized the speakers' military status and affiliation and implied they were acting within the scope of their official positions as DoD spokespersons. Based on these circumstances, we concluded the officers violated JER Sections 2635.702(b), "Appearance of governmental sanction," and 3-300.a. on personal participation in non-Federal entities; DoD Directive (DoDD) 1334.1, "Wearing of the Uniform"; and Army and Air Force uniform standards.

DoD IG Report (20 July 2007)

DISCRIMINATION

In re Navy Chaplaincy,
534 F.3d 756 (D.C. Cir. 2008)