

TOPIC

Invocations/Prayers by Chaplains at Official Events and Ceremonies

Text of the decision

This opinion addresses your request for guidance on three issues: (1) whether military chaplains may espouse personal religious beliefs when providing an invocation¹ or prayer at widely attended, official events, such as an annual awards banquet, noncommissioned officer academy graduation, or a dining in ceremony; (2) may a commander of a certain faith invite a chaplain of the same faith to give the invocation at the annual awards banquet knowing that chaplain might end his or her prayer “in Jesus’ name;” and (3) whether the chaplain would be permitted to use this invocation at an official function as an opportunity to express the views of his faith on topics such as homosexuality, transgenderism, or nonreligious personnel.

The practice of permitting prayers or invocations at awards banquets and ceremonies is permissible. Military chaplains may espouse personal religious beliefs when providing an invocation (for example, a Christian chaplain may end a prayer “In Jesus’ name.”). The commander may invite a specific chaplain to provide the invocation, or he or she may inform the wing chaplain of the event and allow the wing chaplain to select who provides the invocation. If a commander invites a chaplain to speak at such an event, the commander cannot require the chaplain to provide an invocation contrary to the chaplain’s conscience, moral principles, or religious beliefs. Any prayer or invocation offered must not denigrate, proselytize, or betray an impermissible government purpose. Accordingly, the chaplain could not express the views of his or her faith on topics such as homosexuality, transgenderism, or nonreligious personnel.

Discussion

In OpJAGAF 1998/76, we opined the practice of having prayers offered during the regular course of official meetings is not appropriate under the Establishment Clause of the Constitution of the United States and, therefore, should be avoided. In that opinion, we discussed President Clinton’s “Guidelines on Religious Exercise and Religious Expression in the Federal Workplace.”² The Guidelines offered this example:

¹ According to www.merriam-webster.com, an “invocation” is “the act or process of petitioning for help or support.”

² The 6 October 2017 Department of Justice memorandum, “Federal Law Protections for Religious Liberty,” refers favorably to President’s Clinton’s guidelines. The Clinton Guidelines have the force of an Executive Order. *See* Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order, 24 Op. O.L.C. 29, 29 (2000) (“[T]here is no substantive difference in the legal effectiveness of an executive order and a presidential directive that is styled other than as an executive order.”); *see also* Memorandum from President William J. Clinton to the Heads of Executive Departments and Agencies (Aug. 14, 1997) (“All civilian executive branch agencies, officials, and employees must follow these Guidelines carefully.”).

At the conclusion of each weekly staff meeting and before anyone leaves the room, an employee leads a prayer in which nearly all employees participate. All employees are required to attend the weekly meeting. The supervisor neither explicitly recognizes the prayer as an official function nor explicitly states that one need participate in the prayer. This course of conduct is not permitted unless under all the circumstances a reasonable observer would conclude that the prayer was not officially endorsed.

Staff meetings occur during the duty day and are mandatory in nature. We concluded that while there may be situations where prayer in the workplace would be acceptable based upon special circumstances (e.g., a spontaneous prayer for an ill co-worker) or based upon unique military circumstances (e.g., a chaplain's prayer with a unit preparing to carry out a dangerous operation), the routine military workplace is not the appropriate place for the establishment of religious practices.

This review looks beyond the mandatory weekly staff meeting. Events such as award banquets and monthly wing-wide promotion ceremonies are official³ but unlike staff meetings, they are not compulsory. They generally do not occur during the duty day or in the normal workplace. Normally, Airmen, including the promotees and award winners, are invited to attend, and should not be subject to disciplinary action if they are unable or choose not to attend the event. Leaders, co-workers, and family members of the nominees are also commonly encouraged to attend and support the nominee, but are not required to attend. Since they are being recognized for their accomplishments, the nominees should have the opportunity to receive their award in front of their friends, peers, and leadership.

Additionally, events such as award banquets and monthly wing-wide promotion ceremonies are also distinguishable from personal promotion ceremonies. Although personal promotion ceremonies have indicia of being official functions (for example, the playing/singing of the National Anthem, the oath, reading of official orders, the singing of the Air Force Song, etc.), they are fundamentally personal in nature and are not the focus of this discussion.

³ AFI 34-1201, *Protocol*, 9 June 2017, paragraph 14.1, instructs the reader to refer to AFPAM 34-1202, *Guide to Protocol*, 10 January 2013, Incorporating Change 1, 30 January 2015, Chapter 14, for “additional protocol guidance concerning customs and procedures for military ceremonies including funerals, retirements, promotions, changes and assumptions of command, activations, inactivations, re-designations, reenlistments, *awards*, decorations, reveille, retreat, building rededications, ribbon cuttings, and POW/MIA.” According to paragraph 14.1.1, “[a]ll other ceremonies *shall not* be considered an official ceremony...” (*Emphasis added*) As provided in AFI 34-1201, paragraph 15.1.1:

Social events such as receptions, which are tied to an official ceremony should be considered part of the official ceremony and permit the use of resources commensurate with an official ceremony (including manpower and transportation). Retirement dinners, farewell events, picnics, sports days, etc., are unofficial social events and will be planned and executed by volunteers. The use of resources in this context, however, does not extend to funding. Normally, social events held in conjunction with an official ceremony are paid for by the principles of the ceremony or all of the attendees.

A. Personal Religious Beliefs During Invocation at an Official Function

1. Invocations at Official Functions.

Establishment Clause

The Establishment Clause of the First Amendment to the Constitution prohibits any law “respecting an establishment of religion.”⁴ Government sends a message when it permits religious speech or bans it. The courts have not addressed the specific issue of military chaplains providing prayers or invocations at military events. The Supreme Court has used different tests to determine whether government action amounts to an establishment of religion.

During the last half-century, the primary test used to evaluate claims under the Establishment Clause was *Lemon v. Kurtzman*,⁵ wherein the Supreme Court established a three-part test for evaluating the requirements of the Establishment Clause. The test is whether the government's action: (1) reflects a clearly secular purpose; (2) has a primary effect that neither advances nor inhibits religion; and (3) avoids excessive government entanglement with religion. Generally, *Lemon* does not apply to direct aid of religion (where strict scrutiny would apply); rather, it was designed to apply to “incidental” aid cases.⁶

Another test the Supreme Court has used to evaluate Establishment Clause cases permits acts that involve religion if the Court finds the religious element has played a part in the history of the nation, or as the Court has phrased it, has become “part of the fabric of our society.”⁷ In *Marsh v. Chambers*,⁸ the Supreme Court upheld the constitutionality of the Nebraska Legislature's chaplain's program, and determined the prayer at the opening of state legislative sessions served historical ceremonial purposes and did not have a prohibited effect of advancing religion.

⁴ U.S. Const. amend. I.

⁵ *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

⁶ Although *Lemon* was consistently followed between 1971 and 1992 (in which the Supreme Court applied the *Lemon* test in 30 of 31 Establishment Clause cases), it has also been subject to criticism by some Justices who have applied the test in different ways. As explained by the Congressional Research Service:

One examination focuses on whether the government has endorsed religion. The government is prohibited “from making adherence to a religion relevant in any way to a person's standing in the political community.” *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O'Connor, J., concurring). [This application of the *Lemon* test forbids “government endorsement or disapproval of religion,” noting that “endorsement sends a message to nonadherents that they are outsiders ... and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message.” *Id.* at 688.] Another application of the *Lemon* test focuses on neutrality as the governing principle in Establishment Clause challenges. Under this interpretation, the essential element in evaluating challenges under the *Lemon* test is whether or not the government act is neutral between religions and between religion and non-religion. [*Epperson v. Arkansas*, 393 U.S. 97, 103-04 (1968).]

See Mason, R. Chuck, and Cynthia Brougher, Congressional Research Service, “Military Personnel and Freedom of Religious Expression: Selected Legal Issues,” April 8, 2010, 3.

⁷ *Marsh v. Chambers*, 463 U.S. 783 (1983).

⁸ *Id.*

In differentiating the permissiveness of invocations prior to legislative sessions from a Pennsylvania law requiring public schools to read from the bible at the opening of each school day, Justice Brennan, concurring, asserted:

For one thing, there is no element of coercion present in the appointment of military ... chaplains; the soldier ... who declines the opportunities for worship would not ordinarily subject himself to the suspicion or obloquy of his peers. Of special significance to this distinction is the fact that we are here dealing with adults, *not with impressionable children* as in the public schools. (*Emphasis added*).⁹

Justice Brennan further noted:

The saying of invocational prayers in legislative chambers, state or federal, and the appointment of legislative chaplains, might well represent no involvements of the kind prohibited by the Establishment Clause. Legislatures, federal and state, are mature adults who may presumably absent themselves from such public and ceremonial exercises without incurring any penalty, direct or indirect.¹⁰

Similarly, in *Katcoff v. Marsh*,¹¹ the Second Circuit Court of Appeals upheld the Army's chaplain's program. The decisions in these cases rested heavily on the historical precedent for these particular programs. In other words, the programs themselves did not violate the Establishment Clause because they actually pre-dated the Constitution and thus were implicitly condoned by our founding fathers.

2. May a Chaplain Espouse Personal Religious Beliefs During the Invocation?

The Supreme Court followed this line of reasoning in 2014 when it decided the case of *Town of Greece, New York v. Galloway*,¹² in which the Court held the town's practice of inviting local ministers to give a prayer before each monthly meeting was not unconstitutional. The Court determined the "content of the prayer is not of concern to judges," provided "there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief."¹³ Accordingly, "[a]bsent a pattern of prayers that over time denigrate, proselytize, or betray an impermissible government purpose, a challenge based solely on the content of a prayer will not likely establish a constitutional violation."¹⁴ A call to action, "directing the public to participate in the prayers, stand [when seated], bow their heads, or make the sign of the cross" is a factor in whether the invocation is constitutionally permissible.¹⁵

⁹ *Sch. Dist. of Abington Twp. V. Schempp*, 374 U.S. 203, 299 (1963) (Brennan, J., concurring).

¹⁰ *Id.*, at 299-300. It is worth noting, however, Justice Brennan reversed his position in his dissent in *Marsh v. Chambers*, concluding an invocational prayer is unconstitutional. See *Marsh*, 463 U.S., at 796.

¹¹ *Katcoff v. Marsh*, 755 F.2d 223 (2d Cir. 1985).

¹² *Town of Greece, New York v. Galloway*. 134 S. Ct. 1811 (2014).

¹³ *Id.*, at 1821.

¹⁴ *Id.*, at 1824.

¹⁵ "The analysis would be different if town board members directed the public to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person's acquiescence in the prayer opportunity. No such thing occurred in the town of Greece. Although board members themselves stood,

Although neither the *Galloway* nor *Marsh* Courts define the terms “betray an impermissible government purpose,”¹⁶ “proselytize,” or “disparage”¹⁷, the 4th Circuit defined proselytize, stating “To ‘proselytize’ on behalf of a particular religious belief necessarily means to seek to ‘convert’ others to that belief[.]”¹⁸ *Lund* involved the Board of Commissioners of Rowan County, North Carolina, which opened its public meetings with an invocation delivered by a member of the Board.¹⁹ The court stated, “There is no prayer in the record asking those who may hear it to convert to the prayer-giver’s faith or belittling those who believe differently. And even if there were, it is the practice as a whole – not a few isolated incidents – which controls.”²⁰

The *Galloway* Court further stated:

To hold that invocations must be nonsectarian would force the legislatures that sponsor prayers and the courts that are asked to decide these cases to act as supervisors and censors of religious speech, a rule that would involve government in religious matters to a far greater degree than is the case under the town’s current practice of neither editing or approving prayers in advance nor criticizing their content after the fact.²¹

Further, the Court held: “Offense, however, does not equate to coercion. Adults often encounter speech they find disagreeable, and an Establishment Clause violation is not made out any time a

bowed their heads, or made the sign of the cross during the prayer, they at no point solicited similar gestures by the public. Respondents point to several occasions where audience members were asked to rise for the prayer. These requests, however, came not from town leaders but from the guest ministers, who presumably are accustomed to directing their congregations in this way and might have done so thinking the action was inclusive, not coercive.” *Id.*, at 1826.

¹⁶ “[I]n the general course legislative bodies do not engage in impermissible coercion merely by exposing constituents to prayer they would rather not hear and in which they need not participate.” *Id.*, at 1826 (quoting *County of Allegheny*, 492 U.S., at 60).

¹⁷ Merriam-Webster’s online dictionary defines “denigrate” as: (1) to attack the reputation of: defame; (2) to deny the importance or validity of: belittle.” See <https://www.merriam-webster.com/dictionary/denigrate>.

¹⁸ *Lund v. Rowan Cty.*, 837 F.3d 407, 422 (4th Cir. 2016).

¹⁹ The invocation delivered at the Board’s October 17, 2011, meeting is illustrative of what the Board members and the public in Rowan County would here:

Let us pray. Father, we do thank you for the privilege of being here tonight. We thank you for the beautiful day you’ve given us, for health and strength, for all the things we take for granted. Lord, as we read the paper today, the economic times are not good, and many people are suffering and doing without. We pray for them; we pray that you would help us to help. We pray for the decisions that we will make tonight, that God, they will honor and glorify you. We pray that you would give us wisdom and understanding. We’ll thank you for it. In Jesus’ name. Amen.

The court held: “Such a prayer comes nowhere near the realm of prayer that is out of bounds under the standards announced in [*Galloway*]. Prayers that chastise dissenters or attempt to sway nonbelievers press the limits of the Supreme Court’s instruction and may not merit constitutional protection, but no such prayers have been proffered in this case.” *Id.* However, in a later case, *Lund v. Rowan Ct.*, 863 F.3d 268, 284-285 (4th Cir. 2017), the court listed several prayers purporting to confess spiritual shortcomings on the community’s behalf, and stated that “By portraying the failure to love Jesus or follow his teachings as spiritual defects, the prayers implicitly ‘signal[ed] disfavor toward’ non-Christians.”

²⁰ *Id.*

²¹ *Galloway*. 134 S. Ct., at 1822.

person experiences a sense of affront from the expression of contrary religious views....”²²
(*Emphasis added*)

Air Force Chaplain’s Historical Role

During the Air Force’s infancy as part of the Army Air Corps, chaplains participated in a wide range of activities at all posts. On the one hand, they participated in significant ceremonies, such as giving the invocation and benediction for the School of Aviation Medicine graduation exercises, and on the other they took part in athletic events.²³ From 1947 through 1960, once the Air Force became its own service, invocations and benedictions were offered for all sorts of events: the dedication of barracks, housing units, highways, streets, bases, and planes; patriotic events; recreational activities; official meetings; dinners; even fashion shows and beauty contests.²⁴

In 1993, the Office of the Inspector General addressed a complaint regarding chaplains praying at public events. The Inspector General responded to the complaint noting, “The U.S. Constitution protected the free exercise of religion and that the protection of this freedom traditionally had been applied at public functions.”²⁵ Chaplains were advised to remain sensitive to the pluralistic attendance at official/mandatory gatherings.²⁶ In October 2000, the Chaplain Corps was asked to provide a rationale for providing prayer at military events, given that children in Department of Defense Schools were prohibited from praying. The Office of the Chief of Chaplains replied that since it was official DoD policy to prohibit prayer at schools, the DoD enforced this policy. However, prayer at official military functions had no policy, nor a body of federal case law to point to for guidance. It was determined that prayer at official military functions was not policy, but tradition. Prayer at these events was deemed appropriate as long as the DoD maintained a policy of neutrality, neither requiring nor prohibiting public prayer at such functions. “In all such cases, it was to be the totality of the circumstances that determined the appropriateness of public prayer.” Chaplains, therefore, continue to make themselves available to pray at these events.²⁷

The Air Force chaplaincy does not have regulations or other written guidance that govern invocations at non-religious ceremonies. Guidance is provided through training and observation. This Air Force chaplaincy guidance includes recommendations that invocations at ceremonies should be short and inclusive. If asked to provide an invocation at any event, to include mandatory and non-mandatory official events, the content of the prayer is solely at the discretion of the chaplain. At the core of a chaplain's training is sensitivity to the religiously pluralistic nature of the Air Force. Typically, chaplains should not state or imply Air Force endorsement of a specific religion, proselytize, or intentionally disparage any other faith or belief system. Chaplains should be brief in their prayers, and refrain from using the invocation as an opportunity to make a speech. As a noted exception, individual retirement and promotion ceremonies are by nature personal to

²² *Id.*, at 1826.

²³ Air Force Chaplain Corps History, “Air Force Chaplains, Vol I: The Service of Chaplains to Army Air Units, 1917-1946,” Chapter 5, What Did a Chaplain Do and with What, page 66.

²⁴ Air Force Chaplains, Volume II: Air Force Chaplains, 1947-1960, page 219.

²⁵ USAF Chaplain Service, Volume VI: History of the United States Air Force Chaplain Service, 1991-2000, page 126.

²⁶ *Id.*

²⁷ *Id.*, at.127-128.

the honoree. It is appropriate for the chaplain to pray in accordance with the faith tradition of the honoree, if the honoree so requests it.

Additional Air Force chaplaincy guidance reminds chaplains to be mindful that they are not performing this invocation for themselves. Rather, at an award ceremony, the invocation is for the award nominees, their leaders, subordinates, peers, and support network. Invocations generally solemnize the event. Invocations often request wisdom, strength, and perseverance for the nominees to continue to perform at a high level, and give thanks for those who supported the nominees. But the delivery of the message is up to each individual chaplain, so long as the message does not denigrate, proselytize, or betray an impermissible government purpose.

Although the courts have traditionally given great deference to discretionary decisions made by military officials in carrying out the military's mission, the deference given to military officials in situations involving religious freedom is generally centered on providing military members access to religious support, not requiring military members to participate in or acquiesce to religious practices at the workplace.²⁸ The government's interest in protecting potentially captive audiences from proselytizing, coercion, or disparaging statements about any other faiths or beliefs outweighs a chaplain's interest in doing so.²⁹ However, commanders and their judge advocates should not actively censor or edit a chaplain's proposed invocation and need to remember that "offense . . . does not equate to coercion."³⁰ "It is no part of the business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by government."³¹

Federal courts have sustained government references to God, the government's use of religious symbols, and even prayers in government-sponsored public settings. However, under these lines of cases, these practices should be "uniquely suited to serve wholly secular purposes as solemnizing public occasions, or inspiring commitment to meet some national challenge in a manner that simply could not be fully served in our culture if government were limited to purely nonreligious phrases."³² Courts have upheld these practices, referred to as "enlightened"³³ deism, "ceremonial"³⁴ deism or "cultural" deism,³⁵ because they "do not convey a message of

²⁸ See *Mellen v. Bunting*, 372 F.3d 355, 372 (4th Cir. 2003)(The Court found VMI cadets were uniquely susceptible to coercion. Given the coercive atmosphere, "the Establishment Clause preclude[d] school officials from sponsoring an official prayer, even for mature adults.")

²⁹ See *Connick v. Meyer*, 461 U.S. 138, 140 (1983); *Mt. Healthy City Sch. Dist. v. Doyle*, 429 U.S. 274, 284 (1977).

³⁰ *Galloway*, 134 S. Ct, at 1826.

³¹ *Engel v. Vitale*, 370 U.S. 421, 425 (1962). See also *Santa Fe*, 530 U.S., at 304-305 (Because "fundamental rights may not be submitted to vote; they depend on the outcome of no elections.")(Internal citations omitted)

³² *Id.*, citing *Lynch v. Donnelly*, 465 U.S. 668, 717 (1984)(Brennen J., dissenting)(*emphasis added*).

³³ *McCreary County v. ACLU*, 545 U.S. 844, 880 (2005).

³⁴ *Schempp*, 374 U.S., at 308, citing *Engel*, 370 U.S., at 435, n.21 ("There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State ... has sponsored this instance.")

³⁵ See Charles Gregory Warren, Comment, No Need to Stand on Ceremony: The Corruptive Influence of Ceremonial Deism and the Need for a Separationist Reconfiguration of the Supreme Court's Establishment Clause Jurisprudence, 54 *Mercer L. Rev.* 1669, 1685 (2003) (citation omitted) ("Ceremonial deism ... generally refers to a

endorsement of particular religious beliefs.”³⁶ Some of the factors considered when assessing whether the use of religious phrases in governmental activities is permissible include “the absence of worship or prayer, except where the prayer is defensible as ceremonial deism; the absence of a reference to a particular religion; and the relatively minimal nature of the religious content.”³⁷ It is important to note, however, that these cases pre-date *Galloway* and the 2017 Department of Justice “Federal Law Protections for Religious Liberty” guidance.

B. Command Invitation to Offer an Invocation

Free Exercise

In light of the court decisions regarding the Establishment Clause, our analysis must differentiate between programs and practices. The issue is not the legitimacy of military chaplains, but the extent of their permissible activities in the federal workplace and the individual chaplain’s Free Exercise rights. For instance, chaplains are required to hold worship services, but the military does not dictate the content of such services.³⁸ Similarly, chaplains cannot be forced to perform services contrary to their beliefs.³⁹ For instance, a Buddhist chaplain cannot be required to perform baptisms; a Jewish chaplain cannot be required to perform a Christian marriage; and a Muslim chaplain cannot be required to perform a bar mitzvah. This practice is in keeping with the Free Exercise Clause in that it allows chaplains to follow their own religious backgrounds while also ensuring the military avoids running afoul of the Establishment Clause by dictating religious policy. The focus of any analysis in official ceremonies and events should thus be on the nature of a member’s participation and the type of function where the prayer is conducted.

As a general rule, prayer constitutes protected religious expression. Congress has made it clear that if a commander invites a chaplain to speak at an event, the chaplain cannot be required to “perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain.”⁴⁰ Accordingly, a Muslim or Jewish chaplain could not be required to end a prayer with the phrase “In Jesus’ name.”

The commander may request any chaplain to provide the invocation at these events. For instance, if a wing commander practices a certain faith and the wing has an assigned chaplain of the same faith, the commander could permissibly ask that chaplain to provide an invocation at the wing-wide event. This action alone is not an Establishment Clause violation. Although the chaplain practices a certain faith, his presence at the event is not an Air Force endorsement of that faith. The chaplain attends these events and provides an invocation as an Air Force chaplain to provide

category of practices deeply rooted in our cultural history that possess discernable religious content yet are nonetheless immune from Establishment Clause challenges because they are “a class of public activity which ... could be accepted as so conventional and uncontroversial as to be constitutional.”)

³⁶ *County of Allegheny v. ACLU, Greater Pittsburgh Chapter*, 492 U.S. 573, 631 (1989) (O’Connor, J., concurring). See also Stephen B. Epstein, “Rethinking the Constitutionality of Ceremonial Deism,” 96 *Colum. L. Rev.* 2083, 2083 (1996).

³⁷ Richard D. Rosen, “Katcoff v. Marsh at Twenty-Two: The Military Chaplaincy and the Separation of Church and State,” 38 *U. Tol. L. Rev.* 1137, 1173 (2007).

³⁸ See 10 U.S.C. § 3547(a); 10 U.S.C. § 6031(a); 10 U.S.C. § 8547(a).

³⁹ See 10 U.S.C. prec § 1030.

⁴⁰ *Id.*

spiritual support for all Airmen present. While the Air Force Chaplain Corps is composed primarily of Christian chaplains, and the preponderance of chaplains at most (if not all) wings are Christian, the fact that a predominantly Christian set of chaplains are invited to provide invocations does not violate the Establishment Clause. As long as the commander maintains a policy of nondiscrimination, “the Constitution does not require [the commander] to search beyond [the wing’s] borders for non-Christian prayer givers in an effort to achieve religious balancing.”⁴¹ If, as described above, a wing commander and one of the wing chaplains were both members of the same small faith, the commander should be cautious about only inviting that one chaplain to all events, as that can give the appearance of discriminating against other faith groups and of endorsing this particular faith.

Commanders who opt for an invocation could also consult with their installation Chaplain Corps Senior Religious Support Team on the assignment of the most appropriate chaplain to provide the prayer. While most chaplains are capable of providing prayers at all official mandatory events, the Department of Defense and Air Force instructions compel chaplains to maintain the requirements of their religious endorsing bodies. The law prohibits anyone from requiring chaplains to violate the requirements of their endorsing bodies, religious beliefs, or conscience.⁴² The Senior Religious Support Team is the subject matter expert and best suited to determine if a particular official event would conflict with a chaplain’s ability to provide a prayer. This way, the government can “stay out of the business of writing or sanctioning”⁴³ prayers or invocations and leave that purely religious function to the individual chaplain.

C. Invocation as Occasion to Express Views of the Chaplain’s Faith on Specific Topics

Congress and the courts have taken steps to protect a chaplain’s freedom of expression as it relates to prayer. But their freedom of expression is not limitless. A chaplain providing a prayer or invocation at an annual awards ceremony cannot express his or her personal views on the morality of topics such as sexual preference, gender identity, contrary religious views, nihilism, atheism or agnosticism. Such comments serve only to denigrate, proselytize, and betray an impermissible government purpose.

D. *Post-Galloway Analysis*

Religious issues and complaints must be assessed on their facts and on a case-by-case basis.⁴⁴ However, based on the discussion above and the *Galloway* Court’s conclusions, we recommend the following analysis to determine the lawfulness of prayer or invocations at wing events. First, is the event an official, public event, or is it a personal, private event? Personal, private events may be tailored to the individual more than official events. Second, if it is an official, public event, is the chaplain asked to say something contrary to his or her conscience, moral principles, or religious beliefs? Third, if the chaplain is not asked to say something contrary to his or her

⁴¹ *Galloway*, 134 S. Ct., at 1824.

⁴² 10 U.S.C. prec § 1030. "(b) Protection of chaplain decisions relating to conscience, moral principles, or religious beliefs. No member of the Armed Forces may—(1) require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain."

⁴³ *Engel*, 370 U.S., at 435.

⁴⁴ *Galloway*, 134 S. Ct., at 1825.

conscience, moral principles, or religious beliefs, will the prayer denigrate, proselytize, or betray an impermissible government purpose? If not, then the prayer or invocation is permissible.

Conclusion

In summary, in the case of official events, such as quarterly and annual award ceremonies, chaplains may espouse personal religious beliefs when providing an invocation or prayer. Commanders may invite a chaplain to provide a prayer. If a commander invites a chaplain to provide a prayer, the commander should do so with the understanding that he or she cannot require the chaplain to provide a prayer contrary to the chaplain's conscience, moral principles, or religious beliefs. However, any prayer or invocation the chaplain offers must not denigrate, proselytize, or betray an impermissible government purpose. Accordingly, a commander or a chaplain could not use such an event as an opportunity to disparage anyone, to specifically include those against whom they hold negative personal religious views; similarly, they could not use such an event to proselytize or to disparage those who are non-religious or who adhere to different faiths.

This opinion was coordinated with the Air Force Office of General Counsel, Deputy General Counsel (Intelligence, International & Military Affairs), who concurs with the conclusions herein.

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