

December 19, 2012

Lt. Gen. David H. Huntoon, Superintendent (david.huntoon@usma.edu)
Brig. Gen. Timothy E. Trainor, Dean (timothy.trainor@usma.edu)
Brig. Gen. Theodore D. Martin, Commandant (theodore.martin@usma.edu)
United States Military Academy
646 Swift Rd.
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Re: Prayers at official West Point events

Dear Lt. Gen. Huntoon, and Brig. Gens. Trainor and Martin:

We have received several complaints about the United States Military Academy at West Point's pattern of presenting prayers at events held throughout the four-year program of instruction, including, among others, Plebe Parent Weekend, Yearling Winter Weekend, Thanksgiving Dinner, Christmas Dinner, the Thayer Award Dinner, the MLK Award Dinner, 500th Night, 100th Night, Ring Weekend, and graduation. These events are milestones in the careers of West Point cadets, and all require cadets' attendance. West Point's inclusion of government-sponsored prayers at these events creates a pervasive atmosphere of religiosity and cannot be reconciled with the Establishment Clause of the First Amendment to the U.S. Constitution.

The U.S. Supreme Court has held that "[i]t is beyond dispute that, at a minimum, the constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Lee v. Weisman*, 505 U.S. 577, 587 (1992). Improper coercion arises when prayers are presented at events where attendance is mandatory for some members of the audience, or where circumstances impose social pressures on attendees to participate in the prayers. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000) (prayer at high school football game "has the improper effect of coercing those present to participate in an act of religious worship"); *Lee*, 505 U.S. at 593-94 (graduation prayer unconstitutional because the State "in effect required participation in a religious exercise"); *Warnock v. Archer*, 380 F.3d 1076, 1081 (8th Cir. 2004) (Establishment Clause prohibits government-sponsored prayers at mandatory faculty meetings).

The prohibition against religious coercion applies with equal force to the military academies. Indeed, the risk of coercion is magnified in the academies, where "obedience and conformity [are] central tenets of the [] educational philosophy." *Mellen v. Bunting*, 327 F.3d 355, 371 (4th Cir. 2003). Thus, in *Anderson v. Laird*, 466 F.2d 283, 284, 297 (D.C. Cir. 1972), the U.S. Court of Appeals for the D.C. Circuit struck down as unduly coercive regulations requiring cadets at West Point and other military service academies to attend church services. And in *Mellen v. Bunting*, the U.S. Court of Appeals for the Fourth Circuit struck down the Virginia Military Institute's policy of presenting prayers at school meals. *Mellen*, 327 F.3d at 365-76. The court explained that within the "coercive atmosphere" of a military college, the

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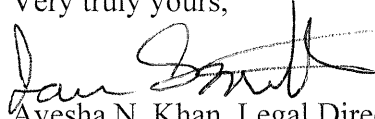
inclusion of a state-composed prayer—even a nonsectarian one—at the college’s events “plainly coerced [cadets] into participating in a religious exercise” in violation of the Establishment Clause. *Id.* at 371-72.

Spokesman Francis DeMaro, Jr. has sought to justify West Point’s practice by claiming that participation in the prayers is voluntary. Moni Basu, *West Point cadet quits over religion*, CNN InAmerica Blog, http://inamerica.blogs.cnn.com/2012/12/06/west-point-cadet-quits-over-religion/?hpt=us_c1 (Dec. 6, 2012). But to call West Point’s prayers voluntary is “formalistic in the extreme,” and “the argument lacks all persuasion.” *Lee*, 505 U.S. at 595. Cadets are uniformly told that attendance at these events is required. They are further instructed that the only way that they may be excused from the event is to write a formal letter requesting an exemption from the activity, and to present that letter to superior officers within the cadet’s chain of command. And even if a cadet were to write such a letter, objection to the prayer would not provide a valid ground for recusal from attendance: Former Cadet Blake Page’s request to be excused from attending the Thayer Award Dinner was denied. *See* Blake Page, *Petitioning United States Department of Defense: Stop requiring service members to attend mandatory religious ceremonies*, Change.org, <http://www.change.org/petitions/united-states-department-of-defense-stop-requiring-service-members-to-attend-mandatory-religious-ceremonies> (last visited Dec. 7, 2012). Being forced to attend an event that includes a prayer is at the heart of the kind of religious coercion that the Constitution prohibits. *Anderson*, 466 F.2d at 291 (“It is derived from these cases, as well as from history, that freedom from governmental imposition of religious activity is a core value protected by the Establishment Clause, and that therefore a government may not require an individual to engage in religious practices or be present at religious exercises.”). The government does not have to physically force someone to utter a prayer or to genuflect before God in order to run afoul of that prohibition. *See id.*; *see also Mellen*, 327 F.3d at 371-72.

It is doubtful that the constitutional problem could be cured by allowing cadets to opt out of attending these events. To be sure, in *Tanford v Brand*, 104 F.3d 982 (7th Cir. 1997), and *Chaudhuri v. State of Tennessee*, 130 F.3d 232 (6th Cir. 1997), courts permitted nonsectarian prayer at college events where attendance was discretionary. *See Tanford*, 104 F.3d at 985 (“here there was no coercion—real or otherwise—to participate” and “[m]any students chose not to attend the stadium exercises”); *Chaudhuri*, 130 F.3d at 239 (noting that attendance was voluntary and that “TSU has represented without contradiction that it does not monitor faculty attendance at the university events in question and that no faculty member has ever been penalized for non-attendance.”). But the Fourth Circuit held in *Mellen* that pre-supper prayers at VMI ran afoul not just of the coercion test, but also of the endorsement test, which prohibits prayers regardless of whether coercion exists. *Mellen*, 327 F.3d at 372-75. Because the facts here are far closer to those in *Mellen* than they are to the circumstances in *Tanford* and *Chaudhuri*, we urge you to omit prayers from official West Point events, whether or not cadets’ attendance is required.

In sum, we ask that you discontinue West Point's practice of including prayers at official school events. Because of the seriousness of this matter, we would appreciate a response to this letter within thirty days. You may contact Ian Smith at (202) 466-3234 or ismith@au.org if you have any questions about this matter.

Very truly yours,



Ayesha N. Khan, Legal Director

Ian Smith, Staff Attorney

