

(UNCLASSIFIED)

INFORMATION PAPER

DACH-OPZ
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SUBJECT: Legal Requirements Respecting Chaplains' Religious Beliefs in the Performance of all Religious Support (RS) Functions

1. **Purpose.** This paper summarizes legal/regulatory protections of Army Chaplains' rights to perform all functional RS services IAW endorser requirements and their own conscience, moral principles, or religious beliefs.
2. **The First Amendment of the U.S. Constitution** protects chaplains' discretion in performing RS functions IAW endorser religious requirements. *Religious support* is the authoritative term used for all chaplain branch-specific functional activities and capabilities (FM 1-05, AR 165-1). Any DOD adverse action against chaplains based on content-based evaluations of acceptability of religious viewpoints (of the chaplain or their endorser) in the course of official chaplain functional tasks and duties risks clear violation of the Free Exercise and Establishment Clauses of the First Amendment.
3. **Religious Freedom and Restoration Act** (10 U.S.C. 2000bb, et seq.) extends legal protection of chaplains beyond constitutional Free Exercise protections. The Army generally may not deny accommodation of a chaplain desiring to avoid a governmental burden on sincerely held religious beliefs unless: a) The (otherwise valid) military policy, practice, or duty furthers a compelling governmental interest; and b) There is no less restrictive means of furthering that compelling governmental interest.
4. **National Defense Authorization Act (NDAA) for FY 2013/2014.** Sect. 533 of NDAA FY13 (amended by Sect. 532 of NDAA FY14) states that 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; or (2) discriminate or take any adverse personnel action against a chaplain... on the basis of the refusal by the chaplain to comply with a requirement prohibited by paragraph (1)."
5. **AR 165-1.** Army policy prohibits requiring chaplains "to perform a religious role in worship services, command ceremonies, or other events if doing so would be in variance with the tenets or practices of their religion", requiring chaplains to "uphold requirements of their endorsing religious group" (paras. 3-1,3-2). Para. 6-14b explains "chaplains remain accountable to their endorsers in all matters pertaining to the continued maintenance of their credentials... if a chaplain does something to jeopardize religious credentials, the sponsoring agency may withdraw its endorsement. A chaplain cannot continue to function as a chaplain and may face separation from service if he or she loses professional religious credentials or ecclesiastical endorsement." These Army-wide authoritative policies override policies not similarly driven by Constitutional/federal legal considerations. Investigations into content of chaplains' religious beliefs may be coordinated with HQDA, Chief of Chaplains (DACH-OPZ).

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