



February 12, 2014

VIA U.S. MAIL AND FAX

Honorable Jessica L. (Garfola) Wright
Acting Under Secretary for Personnel & Readiness
4000 Defense Pentagon
Washington, D.C. 20301-4000
Fax: 703-697-1682; 703-571-0847

Re: Religious-preference designations

Dear Ms. Wright:

We write on behalf of U.S. Army Major Ray Bradley whose repeated requests to change the religious preference on his official records have been ignored. Major Bradley is a Humanist. However, Humanism is not among the religious-preference options available to service members, despite numerous requests to add it to the authorized list of faiths and belief systems. Given the wide range of religious-preference designations currently allowed by the armed forces, there is no reason to deny Humanism similar recognition. Indeed, the Department of Veterans Affairs has recognized Humanist veterans for many years, allowing them to identify as such on their grave markers.¹ The current discrepancy between the two departments puts military Humanists like Major Bradley in the untenable position of having their beliefs recognized only after death.

The Department of Defense (DoD) defines religion as “[a] personal set or institutionalized system of attitudes, moral or ethical beliefs, and practices that are held with the strength of traditional religious views, characterized by ardor and faith, and generally evidenced through specific religious observances.”² Humanism – a non-theistic, progressive system of beliefs based around the moral values of compassion, pursuit of knowledge, and commitment to human rights – fits well within this definition. The basic tenets of Humanism have been clearly defined by national and international Humanist organizations.³ Individual Humanist congregations have qualified

¹ *National Cemetery Administration*, U.S. DEP’T OF VETERANS AFFAIRS, <http://www.cem.va.gov/hmm/emblems.asp> (last visited Nov. 8, 2013).

² Department of Defense Military Equal Opportunity (MEO) Program, DoD Directive 1350.2 (Nov 2003).

³ See, e.g., *What Is Secular Humanism?*, COUNCIL FOR SECULAR HUMANISM, <http://www.secularhumanism.org/index.php/3260> (last visited Nov. 6, 2012); *IHEU Minimum Statement on Humanism*, INTERNATIONAL HUMANIST AND ETHICAL UNION, <http://iheu.org/content/iheu-minimum-statement-humanism> (last visited Nov. 6, 2013).

for the same tax benefits given to theistic churches,⁴ and Humanist celebrants conduct weddings, funerals, and other ceremonies.⁵

Although Major Bradley first requested that his religious preference be changed to “Humanist” in September 2011, his request has yet to be granted. Instead, in January 2012, he was informed by Human Resources Command (HRC) that the Office of the Chief of Chaplains would not approve “Humanist” as a religious-preference code. But when Major Bradley contacted the Chief of Chaplains, he was told that the authority to make the change rested with HRC. In March 2012, after repeatedly contacting both the HRC and Chief of Chaplains in an effort to resolve the matter, Major Bradley filed an Inspector General (IG) Action Request. In June 2012, the IG informed Major Bradley that the HRC would not act without the approval of the Office of the Chief of Chaplains, but that the Chief of Chaplains was waiting on an action by the Secretary of Defense to determine whether “Humanist” should be a permissible religious designation.⁶ Major Bradley was informed that the DoD’s decision would be based on the recommendation of the Armed Forces Chaplains Board (AFCB), which was set to discuss the issue at its June 2012 meeting. However, every AFCB meeting between June 2012 and November 2012 was canceled, after which Major Bradley was informed that the AFCB would not take action before the DoD had made a decision on the matter—the decision Major Bradley had been told was awaiting action by the AFCB.

Frustrated and discouraged, in January 2013, Major Bradley had his religious affiliation changed from “No Religious Preference” to “Atheist,” which he finds more accurate but nevertheless insufficient to reflect his belief system.⁷ While there may be some overlap between Atheism and Humanism, they are not identical, especially to Major Bradley. To Major Bradley, “‘Atheist’ only says what I’m *not*. ‘Humanist’ is what I am. It is how I live my life. The principles of Humanism guide me through life’s challenges and provide me with a sense of purpose to experience life to its fullest. Atheism does neither.” Adding an additional category for Humanists would give Major Bradley the ability to answer the religious-preference question with a positive and accurate expression of his beliefs.

⁴ See, e.g., *Strayhorn v. Ethical Soc. of Austin*, 110 S.W.3d 458, 470 (Tex. App. 2003) (holding that a humanist congregation qualified for tax-exempt status as a religion); *Fellowship of Humanity v. County of Alameda*, 315 P.2d 394 (Cal. App. 1957) (granting a religious tax exemption to a humanist organization); c.f. *Washington Ethical Society v. District of Columbia*, 249 F.2d 127 (D.C. Cir. 1957) (granting tax-exempt status to a non-theistic religious humanist group).

⁵ See *Humanist Celebrant State Listing*, HUMANIST SOCIETY, <http://humanist-society.org/celebrants/> (last visited Nov. 8, 2013).

⁶ Letter from John A. Hoyman, Department of the Army, Office of the Inspector General, to Major Ray Bradley, Office of the USARC Surgeon (June 1, 2012).

⁷ Currently, non-theistic service members can only choose to identify as “Atheist,” “Agnostic,” “None,” or “No Religious Preference.”

The lack of religious-preference options for non-theistic service members stands in stark contrast to the array of options available to theists. Christian service members may, for example, choose from more than eighty Christian denominations in self-identifying their faith. This approved list of Christian denominations includes three different Episcopal sects, four different Pentecostal sects, six different Methodist sects, and ten different Baptist sects, as well as the catch-all categories “Christian No Denominational Preference” and “Protestant Other Churches.”⁸ Indeed, there are even several approved denominations that have fewer than ten identified practitioners in the military, including Asbury Bible Churches (5), European Free-Churches (4), and Tioga River Christian Conference (2).⁹

Allowing this level of differentiation makes sense because there are significant variations between and among denominations. This privilege, though, cannot be confined to one faith. Allowing this level of differentiation for Christians but not for other belief systems is unconstitutional discrimination. The government cannot “pass laws which aid one religion or that prefer one religion [or belief system] over another,” and government conduct that clearly privileges one faith system over others is subject to strict scrutiny. *Larson v. Valente*, 456 U.S. 228, 246-47 (1982) (internal quotes omitted) (holding that a rule that “clearly grants denominational preferences . . . must be invalidated unless it is justified by a compelling governmental interest and unless it is closely fitted to further that interest” (internal citations omitted)). There is no compelling interest in granting service members’ requests to add new Christian denominations to the list of religious preferences while denying similar requests made by non-Christian service members. Preventing Major Bradley and other Humanists from identifying as such in their military records could not conceivably harm any rational interest of the military. Modern technology provides no barrier to adding one option to a list of over 100. In fact, the Department of Veterans Affairs had a greater obstacle in recognizing Humanism – the design, approval, and manufacture of an entirely new grave marker symbol – yet it was able to do so.

Self-identification of one’s own belief system is perhaps the most basic way to exercise conscience and should, therefore, be accommodated as broadly as possible. In addition, the religious-preference designations have other implications for service members. For example, the military uses them

⁸ *Raw Data: Religious Preference in the Military*, CNN (Nov. 12, 2009), <http://ac360.blogs.cnn.com/2009/11/12/raw-data-religious-preference-in-the-military/>.

⁹ *Id.* Although the DoD does not have data on the number of Humanist service members, a 2009 survey by the Defense Equal Opportunity Management Institute found that 3.61% of respondents identify as non-theists (Humanist, Atheist, or Agnostic)—more than any other non-Christian affiliation. See MILITARY LEADERSHIP DIVERSITY COMMISSION, ISSUE PAPER #22, RELIGIOUS DIVERSITY IN THE U.S. MILITARY (2010), *available at* <http://militaryatheists.org/resources/MLDC-RIPSDemographics.pdf>.

to ensure that sponsorship assignments are given to people with similar backgrounds and that an appropriate chaplain accompanies casualty-notification officers. In addition, religious preference is considered when treating and counseling members of the Wounded Warriors program. With such important interests at stake, the DoD cannot continue to avoid action on this issue.

We urge you to order that “Humanist” be added to the list of religious preferences in each branch of the military, ensuring that no other service member is denied this basic accommodation. These changes should also be incorporated into reporting from the Defense Manpower Data Center to ensure that the DoD has access to the most accurate information regarding the diversity of belief within the military. Our diverse military requires the armed forces to act with open-mindedness and tolerance toward increasingly varied systems of belief. Adding “Humanism” to the list of religious preferences would be a simple step toward creating a climate of equality and acceptance for non-theistic members of the military.

We would like the opportunity to meet to discuss further how you intend to address this matter. Please let us know within fourteen days from the receipt of this letter when we can meet with you or how you have resolved this issue. You may reach us via phone at (202) 675-2330 or via email at dmach@aclu.org, hweaver@aclu.org, and dsheer@aclu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Mach".

Daniel Mach, Director
Heather L. Weaver, Senior Staff Attorney
ACLU Program on Freedom of Religion
and Belief

Dena Sher, Legislative Counsel
American Civil Liberties Union

CC:

Virginia S. Penrod, Deputy Assistant Secretary of Defense (Military Personnel Policy), 4000 Defense Pentagon, Washington, D.C. 20301

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