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PSC 1 (OTS, 13-07, Flight 1-16)  
550 E. Maxwell Blvd.  
Maxwell AFB, Alabama 36112-5000

August 5, 2013

**Re: URGENT: Unconstitutional Religious Commissioning Oath**

Gentlemen:

This letter is written on behalf of Officer Trainee (OT) Jonathan M. Bise, who was recently coerced into signing a commissioning oath with the language “so help me God,” contrary to his deeply-held beliefs. He has also been told that he will be required to take a verbal oath **tomorrow (August 6)** with the same theistic language. Requiring OT Bise to take an oath containing this religious affirmation violates his clearly established constitutional rights. You are constitutionally obligated to allow OT Bise to take a secular verbal oath at his graduation and to reissue a secular written oath for him to sign that excludes the words “so help me God.”

The American Humanist Association (the “AHA”) is a national nonprofit organization with over 20,000 members and 125,000 supporters across the country. The mission of AHA’s legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring separation of church and state.<sup>1</sup> OT Bise, whom we represent in this matter, was referred to us by the Military Association of Atheists and Freethinkers.

On July 31, 2013, OT Bise was required by his flight commander, 1st Lt. Griffin, to sign an oath containing the words “so help me God.” AFI 36-2006 requires the signing of AF Form 133 upon commissioning. The form contains the oath found in 5 U.S.C. 3331, which includes the default language “so help me God.” Tomorrow, 1st Lt. Griffin will be administering the verbal form of this oath to OT Bise with the same theistic words. Maj. Rountree, on August 1, 2013, confirmed in a lecture to the wing that the oath containing “so help me God” is mandatory. This policy on its

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<sup>1</sup> The very first sentence of the Bill of Rights mandates that the state be secular: “Congress shall make no law respecting an establishment of religion.” This provision, known as the Establishment Clause, “build[s] a wall of separation between church and State.” Reynolds v. United States, 98 U.S. 145, 164 (1878).

face and as applied to OT Bise violates the Constitution.

The courts have made very clear that the government cannot compel a person to take an oath that invokes any god or gods, and that any objector must be allowed take a secular version of the oath omitting such language. Any attempt to coerce an atheist “to take an affirmation despite her sincere religious objections [is] a violation of the Free Exercise Clause.” Separationists, Inc. v. Herman, 939 F.2d 1207, 1215 (5th Cir. 1991).<sup>2</sup> In addition, the Establishment Clause specifically prohibits the government from requiring a non-believer to take an oath that affirms the existence of God. See Torcaso v. Watkins, 367 U.S. 488 (1961) (ruling that the government could not require a declaration of a belief in the existence of God as a prerequisite for holding a governmental office). Furthermore, Article VI of the Constitution, which requires certain federal officers to take an “Oath or Affirmation, to support this Constitution,” then proceeds to make very clear that “no religious test shall ever be required as a qualification to any office or public trust under the United States.”

Naturally, the Constitution trumps any statutory or regulatory language or requirements to the contrary. The fact that 5 U.S.C. 3331 includes the surplus phrase “so help me God” does not mean that the Air Force must require officer candidates to state those words. To the contrary, as applied to an objector, that portion of the statute is unconstitutional and therefore without effect.<sup>3</sup> The right to omit these words is not only recognized by the courts, but by the Air Force itself. See, for example, AFI 36-2606 (“5.6. Active Duty Oath of Enlistment”) which provides that “[a]irmen may omit the words —So help me God, if desired for personal reasons.”

If OT Bise is not administered a secular oath, all of those involved in violating his constitutional rights are subject to suit in federal court. The court not only has the power to order your compliance with the law but, in addition, because the law in this area is well established, you also may be sued in your *individual* capacities and be found personally liable for damages for your illegal actions.

In order to avoid the necessity of such litigation to compel you to honor your oaths to protect and defend the Constitution, we ask that you immediately contact us in writing to confirm that you

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<sup>2</sup> See also Ferguson v. Commissioner, 921 F.2d 588, 590-91 (5th Cir. 1991) (holding that requiring a witness to swear or affirm when doing so is against that person’s sincerely held beliefs violates the Free Exercise Clause); Gordon v. Idaho, 778 F.2d 1397, 1401 (9th Cir. 1985) (holding that an oath or affirmation burdens free exercise); United States v. Loper, 419 F.2d 1405, 1407 (4th Cir. 1969) (holding that an oath or affirmation with a reference to God burdens free exercise). See also Nicholson v. Board of Comm’rs, 338 F. Supp. 48, 56-58 (M.D. Ala. 1972) (required oath containing words “so help me God” violates Free Exercise Clause); Silverman v. Campbell, 486 S.E.2d 1, 2 (S.C. 1997) (holding that a state statute requiring “so help me God” at the conclusion of an oath of office for public notary violated the No Religious Test Clause). These cases recognize that “free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the . . . government may not compel affirmation of religious belief.” Employment Div. v. Smith, 494 U.S. 872, 876-877 (U.S. 1990) (citing Torcaso). See also Sherbert v. Verner, 374 U.S. 398, 402, (1963) (citing Torcaso) (Free Exercise Clause does not allow government to “compel affirmation of a repugnant [religious] belief”). The Supreme Court has recognized that the First Amendment “forestalls compulsion by law of the acceptance of any creed . . . [f]reedom of conscience . . . cannot be restricted by law.” Cantwell v. Conn., 310 U.S. 296, 303-04 (1940). See also Thomas v. Review Bd. of Ind. Employment Sec. Div., 450 U.S. 707, 717-18 (1981) (stating that the state cannot “condition[] receipt of an important benefit” upon a citizen’s religious beliefs or “put[] substantial pressure on . . . [those] beliefs,” because “[w]hile the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial”).

<sup>3</sup> See Article VI, cl. 2, of the Constitution, which makes the “Constitution . . . the supreme Law of the Land.”

will permit OT Bise to take a secular version of the oath and will establish a clear policy that others may do so as well.

Sincerely,

Monica Miller  
William Burgess