

Compulsory Pronouns in the Military (One-Pager)

What's the issue? Under current military policy, service members can be court-martialed and even sentenced to lengthy terms of confinement for refusing to use another person's self-identified pronouns, even when their refusal stems from principled religious conviction. This law applies to service members at all times and in all locations, even when they're off duty and in the privacy of their off-post residences.

While no military law *explicitly* outlaws "misgendering," under current interpretive guidance, using pronouns disfavored by another violates Military Equal Opportunity regulations (e.g., AR 600-20's prohibition on sex-based harassment and discrimination), which are enforced under the criminal law (i.e., the Uniform Code of Military Justice).

What should Congress do about it? Preventative legislation is the best way to protect service members' First Amendment rights. To that end, Congress should take the following actions:

(1) Develop the public record on threats to religious freedom in the Armed Forces and discuss ways to further protect freedom of conscience in the Armed Forces; and

(2) Amend the National Defense Authorization Act (NDAA) to:

- Establish service members' unqualified legal right to refuse to use another's preferred pronouns for any reason and use pronouns consistent with their personal convictions;

- Decriminalize violations of Military Equal Opportunity and narrow the scope of Military Equal Opportunity to apply only to activities performed in furtherance of an official military mission, during periods of normal duty hours;

- Direct the Service Secretaries of each of the branches of the Armed Forces to regard repeated demands for a service member to speak in violation of his or her religious beliefs as a *prima facie* case of harassment on the basis of religion; and

- Direct the Service Secretaries of each of the branches of the Armed Forces to conduct periodic training that instills respect for religious freedom throughout Armed Forces, study and report on ways to strengthen protections for and advance religious liberty in the Armed Forces, and publish biennial surveys that assess service members' confidence in their ability to freely practice their religion and live in accordance with their faith while serving in the Armed Forces.

Where can I get more information on this? Captain Thomas Wheatley, an Army lawyer and assistant professor at West Point, has analyzed this issue specifically and has authored an in-depth law review article about it in the *Texas Review of Law and Politics*. Captain Wheatley has concluded the Armed Forces may not lawfully compel service members to use another person's preferred gender pronouns, as doing so would violate the First Amendment. *See also, Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021); *Vlaming v. West Point School Board*, 895 S.E.2d 705 (Va. 2023).