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June 27, 2010: The Fight Over Jesus' Name

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6/27/2010—In April, two years after Democratic Governor Tim Kaine ordered Virginia State Trooper chaplains to engage only in nonsectarian prayer, current Republican Governor Bob McDonnell reinstated their right to pray in Jesus' name. (story here). At the same time, U.S. Rep. Michelle Bachman (R.-Minn.) introduced an amendment to the Defense Authorization Bill that would allow U. S. military chaplains to pray according to their conscience rather than engage only in nonsectarian prayer outside actual religious services, as Pentagon regulations generally require (story here). All this comes after the dismissal of a navy chaplain in 2007 and a congressional response (story here). What is going on? I don't know the details of the current Pentagon rules, but I can describe the legal issues generally. First, there is no Establishment Clause issue in having chaplains as government employees. As long as soldiers are not forced to attend religious services—there is some question about that—the position of chaplain is just a way of accommodating the desire of many soldiers for spiritual help while in the military. On the other hand, the ban on the use of Jesus' name is basically neither a free speech nor a free exercise issue, despite what supporters of the use of Jesus' name suggest. As long as the military is not censoring chaplains in actual worship services nor restricting their religious speech while off duty, there is no individual right involved. The speech of chaplains at military events is government speech. If you doubt it, ask what happens if a chaplain decides to wear a swastika for religious reasons. The reason for all the confusion is the incoherence of Establishment Clause jurisprudence. If all religious speech is unconstitutional, then nonsectarian prayer is no better than invocations of Jesus. But if generic references to God are ok, then one can challenge references to Jesus in the name of religious pluralism. This, as I understand it, is basically the position of the military. No one thinks a Christian chaplain should be permitted, upon coming upon a wounded or dying Jewish or Muslim soldier, to say, "let me tell you about Jesus."