

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS AND AUTHORITIES ...	i
INTEREST OF AMICI.....	1
ARGUMENT .....	
<b>I. The lower courts erred in holding that the military identity and character of VMI is irrelevant to the application of the First Amendment Establishment Clause to its military training practices.</b> .....	
A. VMI was founded as a Military Institute, not a College. ....	
B. According to Law, the Cadets Are Officially a Military Corps of the Virginia Military. .	
C. VMI Has a Unique Military History with Corps Fighting as a Unit in Combat Where Leader-Led Prayer Was Essential to Victory. ....	
D. Cadets Live a Highly Disciplined Life at All Times. ....	
<b>II. The Supreme Court should hear and overturn any judicial infringement upon traditional cadet-led prayer at mealtime which reflects centuries of well-considered battle-field proven military judgment, particularly in this time of war and national peril. The judicial deference doctrine of Military Necessity has been ignored by the lower courts, and is the standard for evaluating VMI's military leadership training practice of cadet-led mealtime prayer.</b> .....	
A. What is at stake in this case? The decision below would eliminate military unit prayer from the U.S. Armed Forces. ....	
B. Official and public prayer, particularly during war and national crisis, historically has defined the American way of life. ....	

- C. Unit-led prayers in America’s military history have been used to foster courage and confidence during training and combat. ....
- D. Courts have historically deferred to the judgments of our senior uniformed military leaders. ....
- E. The U.S. Supreme Court clearly reaffirmed the judicial deference doctrine of “military necessity” in the case of Goldman v. Weinberger, 476 U.S. 503 (1986).
- F. In reviewing military decisions, civilian courts “must accommodate the demands of individual rights and the social order in a context which is far removed from” those encountered in civil litigation. Noyd v. Bond, 395 U.S. 683, 694 (1969).....
- G. A serviceman’s religious freedoms must be subject to reasonable limitation when military necessity requires. H. Social science during WWII confirms the judgment of Military authorities regarding the necessity of prayer to sustain our combat
- I. From 1774 to the present more than 67 Armed Forces prayer books have been widely distributed to our fighting forces....

**III. VMI is America’s first state military institute; thus Military Necessity should govern any judicial consideration of its military practices such as daily unit prayer at meals. Battle-tested military standards and practices should govern the training of cadets who will fight and lead the “War on Terrorism.” .....**

**CONCLUSION .....**

**TABLE OF AUTHORITIES**

---

PAGE

**Cases:**

<i>Able v. United States</i> , 88 F.3d 1280 (2d Cir. 1996)	
<i>Anderson v. Laird</i> , 316 F.Supp. 1081 (D.D.C. 1970)	
<i>Beller v. Middendorf</i> , 632 F.2d 788 (9 <sup>th</sup> Cir. 1980)	
<i>Brown v. Glines</i> , 444 U.S. 348 (1980) .....	
<i>Burns v. Wilson</i> , 346 U.S. 137 (1953) .....	
<i>Chappell v. Wallace</i> , 462 U.S. 296 (1983) .....	
<i>Dash v. Commanding General</i> , 307 F. Supp. 849 (D.S.C. 1970) .....	
<i>Dept. of Navy v. Egan</i> 484 U.S. 518 (1988) .....	
<i>Goldman v. Weinberger</i> , 476 U.S. 503 (1986) .....	
<i>Grutter v. Bollinger</i> , 539 U.S. ___, 123 S. CT. 2325 (2003) .....	
<i>Kahn v. Anderson</i> 255 U.S. 1 (1921) .....	
<i>Khalsa v. Weinberger</i> , 769 F.2d 1411 (9 <sup>th</sup> Cir. 1985) .....	
<i>Noyd v. Bond</i> , 395 U.S. 683 (1969). .....	
<i>Noyd v. McNamara</i> , 378 F.2d 538 (10 <sup>th</sup> Cir. 1967) .....	
<i>Orloff v. Willoughby</i> , 345 U.S. 83 (1953) .....	
<i>Parker v. Levy</i> , 417 U.S. 733 (1974) .....	
<i>Perpich v. Dept. of Defense</i> , 496 U.S. 334 (1990).	
<i>Rostker v. Goldberg</i> , 453 U.S. 57 (1981) .....	
<i>United States v. Cupp</i> , 24 C.M.R. 565 .....	
<i>United States v. Morgan</i> , 17 C.M.R. 584 .....	
<i>United States v. Burry</i> , 36 C.M.R. 829 .....	
<i>West Virginia State Board of Education v. Barnette</i> , 319 U.S. 624 (1942) .....	
<i>Yahr v. Resor</i> , 431 F.2d 690 (4 <sup>th</sup> Cir. 1970) .....	

**Statutes**

Virginia Code §23-92 .....	
Virginia Code §23-109 .....	
Virginia Code §44-117 .....	
Virginia Constitution Art. I §13 .....	

**Other Authorities**

The Bullet: The Rat Bible for the Rat Mass of the Virginia Military Institute, Produced by the Class of 2002. ....	
--------------------------------------------------------------------------------------------------------------------------	--

**Other Authorities** (continued)

- Vice Admiral James F. Calvert, *Silent Running, My Years on a World War II Attack Submarine* (1995) .....
- Thomas W. Davis, (Ed.), *A Crowd of Honorable Youths: Historical Essays On The First 150 Years of the Virginia Military Institute.* (1988) .....
- George Esper, *The Eyewitness History of the Vietnam War 1961-75.* (1983) .....
- Alexander Hamilton, *The Federalist No. 78* .....
- David McCullough in a speech at the Library of Congress, October 12, 2002 .....
- Admiral Thomas H. Moorer, *Professional Military Judgment Concerning Crucial Importanace of Official Prayer to American Military's Morale and Well-Being.* (Visited December 19, 2003)  
<[www.firstprinciplespress.org](http://www.firstprinciplespress.org)> .....
- Gerald Mygatt and Chaplain (Lt. Col.) Henry Darlington (Eds.) *Soldiers' and Sailors' Prayer Book* (1944) .....
- Emerson, *Toward a General Theory of the First Amendment*, 72 Yale L. J. 877 (1963) .....
- Thomas Jefferson, *Notes on the State of Virginia*, (1781) .....
- Herbert Hoover, *The Challenge to Liberty*, (1934) .....
- Joint Pub 1-05. *Religious Ministry Support for Joint Operations.* Joint Chiefs of Staff. (26 August 1996). .....
- Chaplain James H. O'Neill. *The True Story of the Patton Prayer.* *The Military Chaplain.* Vol. 19, No. 2. (1948) .....
- Daniel A. Poling, *The Armed Forces Prayer Book* (1951) .....
- Social Science Research Council. *The American Soldier, Combat and Its Aftermath.* Princeton University Press, (1949) .....
- Major-General Francis H. Smith, LL.D. *The Virginia Military Institute: Its Building and Rebuilding* (1912). 14

**Other Authorities** (continued)

- Col. William Winthrop, *Military Law and Precedents*. Govt. Printing Off., 2d ed. (1920)
- Henry A. Wise. *Drawing Out the Man. The VMI Story* (1978) .....
- Jennings C. Wise. *The Military History of the Virginia Military Institute From 1839 to 1865* (1915) .....

