



October 25, 2021

**VIA EMAIL**

Captain Roberto C. Dumlao, USN  
Commanding Officer, NOSC Alameda

Dear Captain Dumlao:

By way of introduction, the American Center for Law and Justice (“ACLJ”) is a non-profit organization dedicated to defending constitutional liberties secured by law. ACLJ attorneys have successfully argued numerous free speech and religious freedom cases before the Supreme Court of the United States.<sup>1</sup>

The purpose of this letter is to provide you with legal information in response to a recent complaint emailed to you by Mr. Michael L. “Mikey” Weinstein, Founder and President of the Military Religious Freedom Foundation (“MRFF”) on behalf of an unknown number of sailors assigned to Naval Operational Support Center (“NOSC”) Alameda.<sup>2</sup> The complaint is written in the bombastic, disrespectful tone common to Mr. Weinstein’s demand letters. The complaint alleges that you are tolerating a POW/MIA display that openly violates the First Amendment prohibition on the establishment of religion by allowing a Bible to be part of the display. The implication is that you are violating your oath of office by permitting a Bible to be included in the display. As shown below, nothing could be further from the truth. Including a Bible in the POW/MIA display violates no law, and Mr. Weinstein’s allegation of an Establishment Clause violation is legally specious.

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<sup>1</sup>See, e.g., *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept other monuments merely because it has a Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8–1 vote that allowing a student Bible club to meet on a public school’s campus did not violate the Establishment Clause); *Bd. of Airport Comm’rs v. Jews for Jesus*, 482 U.S. 569 (1987) (unanimously striking down a public airport’s ban on First Amendment activities).

<sup>2</sup>Email from Michael L. Weinstein, Founder and President, MRFF, to Captain Roberto C. Dumlao, Commander of Navy Operational Support Center (NOSC) Alameda, California (Oct. 21, 2021, 10:04 MDT), *available at* <https://myemail.constantcontact.com/Navy-Installation-Puts-Bible-on-POW-MIA-Table---Makes-it-Even-More-Egregious-by-Using-Bible-that-MRFF-Got-Banned-by-the-Navy-in-.html?soid=1101766362531&aid=4JTssYMhzmQ>.

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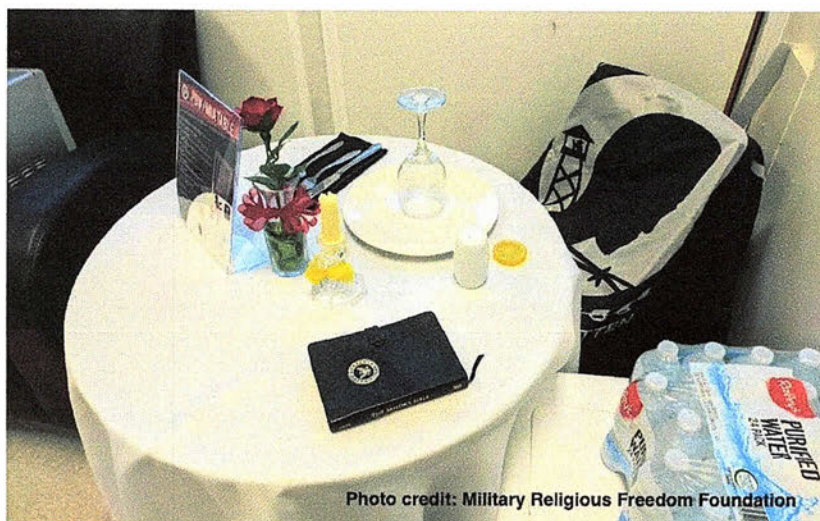


Mr. Weinstein also takes issue with the particular Bible used, the so-called “sailor’s Bible,” arguing that the presence of the Navy emblem on the cover violates DOD Trademark and Licensing regulations.<sup>3</sup> Assuming for sake of argument that he is correct about a trademark/licensing violation, he and his clients have no standing to pursue the issue since he/they have suffered no legally cognizable injury and hence lack standing. Further, again assuming for sake of argument that he is correct, the remedy would be to simply replace the current Bible with a Bible without the offending emblem on its cover. Hence, the real issue to Mr. Weinstein is the presence of a Bible, any Bible.

Before we explain in detail why Mr. Weinstein’s arguments are legally flawed, we would remind you that DOD and the various Services have procedures for dealing with complaints from the public, which are intended to free persons like yourself from having to deal with such complaints directly. We would also bring to your attention that the MRFF and its founder, Mr. Michael L. “Mikey” Weinstein, are well-known for frequently lodging similar complaints throughout DOD for what they consider to be serious violations of the so-called “church-state separation.” We strongly urge you to avoid responding to Mr. Weinstein directly and, instead, to forward Mr. Weinstein’s complaint to the appropriate authorities in the Navy whose responsibility it is to deal with such issues.

### ***POW/MIA Displays***

Below is the photo of the POW/MIA display referred to by Mr. Weinstein.



NOSC Alameda, like many other military installations around the world, has erected a POW/MIA memorial in remembrance of military service members who are either POWs or MIAs. Although memorials may differ slightly from one another, a memorial generally consists of the following: A round table with a white cloth, a red rose, a vase, a slice of lemon, a pinch of salt, a Bible, an

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<sup>3</sup>*Id.*



inverted glass, and an empty chair.<sup>4</sup> The white cloth symbolizes “the purity of the[] motives” of those “answering the call to serve.”<sup>5</sup> The rose is a reminder of the lives of the missing Americans, “and their loved ones and friends who keep the faith, while seeking answers.”<sup>6</sup> The lemon slice is a reminder of “their bitter fate, captured and missing in a foreign land.”<sup>7</sup> The “pinch of salt symbolizes the tears of our missing and their families.”<sup>8</sup> The Bible represents “the strength gained through faith to sustain us and those lost from our country, founded as one nation under God.”<sup>9</sup> The inverted glass represents the missing person’s “inability to share a toast,”<sup>10</sup> and the empty chair reminds us “they are missing.”<sup>11</sup> Note that the Bible is simply one of a number of objects used to convey the message of the display. All other objects in the display have no direct religious significance. That is significant as we point out below.

### ***Determining the Meaning & Reach of the Religion Clauses of the First Amendment***

One of the methods used by the Supreme Court of the United States for interpreting the meaning and legal reach of the First Amendment is to examine how those who drafted and ratified the Amendment acted in light of its express terms. One can begin to understand what the Establishment Clause allows (and disallows) by examining what transpired in the earliest years of our Nation during the period when the First Amendment was being drafted and subsequently ratified.<sup>12</sup> For example, “the First Congress, as one of its early items of business, adopted the policy of selecting a chaplain to open each session with prayer,”<sup>13</sup> and a “statute providing for the payment of these chaplains was enacted into law on September 22, 1789.”<sup>14</sup> Within days of legislating to pay Congressional chaplains from the federal treasury, “final agreement was reached on the language of the Bill of Rights.”<sup>15</sup> As former Chief Justice Burger explained, it “can hardly be thought that in the same week Members of the First Congress voted to appoint and to pay a Chaplain for each House and also voted to approve the draft of the First Amendment for submission to the States, they intended the Establishment Clause to forbid what they had just declared acceptable.”<sup>16</sup> If the Establishment Clause is not violated when the government pays for legislative chaplains, certainly,

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<sup>4</sup>*Missing Man Table and Honors Ceremony*, THE NAT’L LEAGUE OF POW/MIA FAMILIES (Oct. 9, 2015), <http://www.pow-miafamilies.org/missing-man-table-and-honors-ceremony.html>.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>Most agree that, at a minimum, the Establishment Clause was intended to prohibit the creation of a national church for the U.S., such as existed in England. Nevertheless, one must keep in mind that the First Amendment did not preclude individual states from adopting a state church or a state religion. See CARL ZOLLMAN, *AMERICAN CHURCH LAW* 2–4 (2d ed. 1933). In fact, Massachusetts was the last state to disestablish its state church, and it did so of its own accord in 1833, more than forty years after the ratification of the First Amendment. Kelly Olds, *Privatizing the Church: Disestablishment in Connecticut and Massachusetts*, 102 J. POL. ECON. 277, 281–82 (1994).

<sup>13</sup>*Marsh v. Chambers*, 463 U.S. 783, 787–88 (1983).

<sup>14</sup>*Id.* at 788.

<sup>15</sup>*Id.* (citation omitted). The First Amendment is part of the Bill of Rights.

<sup>16</sup>*Id.* at 790.

then, the placement of an inanimate object (i.e., a Bible symbolizing strength gained through faith) in the context of a passive display does not violate the Establishment Clause either.

Early national leaders also acted in ways that some today—like Mr. Weinstein and the MRFF—argue expressly violate the Establishment Clause. For example, President George Washington issued proclamations of thanksgiving to Almighty God during his presidency,<sup>17</sup> and President John Adams called for a national day of fasting and prayer.<sup>18</sup> President Thomas Jefferson—a man often described as a strong defender of strict church-state separation—signed multiple Congressional acts to support Christian missionary activity among the Indians.<sup>19</sup> Further, during his presidency, President Jefferson also approved a curriculum for schools in the District of Columbia which used the Bible and a Christian hymnal as the primary texts to teach reading,<sup>20</sup> and he signed the Articles of War which “[e]arnestly recommended to all officers and soldiers, diligently to attend divine services.”<sup>21</sup> Also, once the U.S. Navy was formed, Congress enacted legislation directing the holding of, and attendance at, divine services aboard U.S. Navy ships.<sup>22</sup>

As one honestly examines Governmental acts contemporaneous with the adoption of the First Amendment, it is difficult to deny that, in the early days of our Republic, church and state existed relatively comfortably (and closely) together, with contemporaries of the drafters of the First Amendment showing little concern that such acts violated the Establishment Clause. As the Supreme Court in *Marsh v. Chambers* aptly recognized, actions of the First Congress are “contemporaneous and weighty evidence” of the Constitution’s “true meaning.”<sup>23</sup> Despite such evidence, however, the MRFF and its members seem utterly unwilling to tolerably acknowledge our nation’s rich religious history.

More recently, the Supreme Court has noted that strict separation between church and state could lead to absurd results. In *Zorach v. Clauson*,<sup>24</sup> for example, the Court stated that the First Amendment

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<sup>17</sup>*E.g.*, CATHERINE MILLARD, *THE REWRITING OF AMERICA’S HISTORY* 61–62 (1991).

<sup>18</sup>Proclamation of President John Adams (Mar. 6, 1799), in 1 JAMES D. RICHARDSON, *A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 1789-1897* 284–86 (1899).

<sup>19</sup>See DANIEL L. DRIESBACH, *REAL THREAT AND MERE SHADOW: RELIGIOUS LIBERTY AND THE FIRST AMENDMENT* 127 (1987) (noting that the 1803 treaty with the Kaskaskia Indians included federal funds to pay a Catholic missionary priest; noting further treaties made with the Wyandotte and Cherokee tribes involving state-supported missionary activity).

<sup>20</sup>JOHN W. WHITEHEAD, *THE SECOND AMERICAN REVOLUTION* 100 (1982) (citing 1 J. O. WILSON, *PUBLIC SCHOOL OF WASHINGTON* 5 (1897)).

<sup>21</sup>CHARLES E. RICE, *THE SUPREME COURT AND PUBLIC PRAYER: THE NEED FOR RESTRAINT* 63–64 (1964).

<sup>22</sup>Act of March 2, 1799, ch. XXIV, 1 Stat 709 (where Congress enacted legislation requiring commanders of ships with chaplains on board “to take care that divine service be performed twice a day, and the sermon preached on Sundays”); Act of March 23, 1800, ch. XXXIII, 2 Stat. 45 (where Congress directed commanders of ships to require the ship’s crew “to attend at every performance of the worship of God”).

<sup>23</sup>*Marsh*, 463 U.S. at 790 (citation omitted); see also *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 328 (1936) (noting that understanding “placed upon the Constitution . . . by the men who were contemporary with its formation” is “almost conclusive”) (citation omitted).

<sup>24</sup>343 U.S. 306 (1952).



does not say that in every and all respects there shall be a separation of Church and State. . . . Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly. . . . Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. . . . A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: “God save the United States and this Honorable Court.”<sup>25</sup>

As the Supreme Court noted, rather than being a bright-line rule, the so-called “wall” separating church and state “is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship,”<sup>26</sup> and the location of the line separating church and state must be determined on a case-by-case basis.<sup>27</sup> Justice Brennan explained it this way: “[T]he line we must draw between the permissible and the impermissible is one which accords with history and *faithfully reflects the understanding of the Founding Fathers.*”<sup>28</sup> Strict church-state separation has never been required in the United States and is not required now. Mr. Weinstein fails to understand this, and, as such, incorrectly interprets the passive presence of a Bible as part of a larger display with numerous non-religious items as a violation of the First Amendment.

Note further that the Bible in the POW/MIA display is there to represent “the strength gained through faith to sustain us and those lost from our country, founded as one nation under God.”<sup>29</sup> It is not there to propagate the specific teachings it contains. It is there to *symbolize* strength gained through faith, in general, not through any particular faith. No one is compelled—or *even encouraged*—to read what the book says. No one is compelled—or *encouraged*—to believe what the book teaches. No one is compelled—or *encouraged*—to change one’s belief in any way. The mere presence of the Bible neither actively promotes a particular religious belief nor denigrates any other religion, religious belief or non-belief. It is no more a Constitutional violation than is the presence of our national motto, “In God we trust,” on the currency we use to pay each sailor on payday, including those with no religious beliefs. Claiming that use of a symbolic Bible is a constitutional violation is simply untrue.

In *Marsh v. Chambers*, the Supreme Court was dealing with the constitutionality of prayers led by paid legislative chaplains. The Court concluded that chaplain-led prayer opening each day’s legislative session “is not . . . an ‘establishment’ of religion,” but rather “a tolerable acknowledgment of beliefs widely held among the people of this country.”<sup>30</sup> *Marsh* refuted the contention that clergy-led, ceremonial prayer violated the Establishment Clause merely because a particular prayer might reference monotheistic terminology or beliefs. In *Marsh*, the Court rejected the argument that selection by the Nebraska legislature of a Presbyterian clergyman who chose to pray in the “Judeo-Christian” tradition violated the Establishment Clause. The Supreme Court

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<sup>25</sup>*Id.* at 312–13; *see also id.* at 314 (noting “no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence”).

<sup>26</sup>*Lemon v. Kurtzman*, 403 U.S. 602, 614 (1971).

<sup>27</sup>*Id.*

<sup>28</sup>*Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 294 (1963) (Brennan, J., concurring) (emphasis added).

<sup>29</sup>*Missing Man Table and Honors Ceremony*, *supra* note 4.

<sup>30</sup>*Marsh*, 463 U.S. at 792.

declared: “We cannot, any more than Members of the Congresses of this century, perceive any suggestion that choosing a clergy man of one denomination advances the beliefs of a particular church.”<sup>31</sup> The Court noted that “[t]he content of the prayer is not of concern to judges where, *as here*, there is *no indication that the prayer opportunity has been exploited to proselytize* or advance any one, *or disparage* any other, faith or belief.”<sup>32</sup> This is analogous to the use of a Bible in a POW/MIA display. Just as the Court refused to find unconstitutional prayers said in the Judeo-Christian tradition, Mr. Weinstein is mistaken to claim that a Bible, even the Christian Bible containing both the Old and New Testaments, violates the Constitution merely by being present as one of a number of *symbolic* items in a POW/MIA display. Instead, the presence of the Bible easily falls into the category of “tolerable acknowledgment” of widely held beliefs.

The reality is that Mr. Weinstein and the MRFF advocate *strict* separation of church and state. They want to minimize the fact that the United States is a nation with a robust, yet diverse, religious heritage and that this heritage is reflected throughout our society—including *within the armed forces of the United States*. In *Zorach*, the Supreme Court further noted that “[w]e are a religious people whose institutions presuppose a Supreme Being.”<sup>33</sup> Elsewhere, the Supreme Court has held that “[t]he First Amendment’s Religion Clauses mean that religious beliefs *and religious expression* are too precious to be either proscribed or prescribed by the [Government].”<sup>34</sup> With respect to government neutrality, *a concept which the MRFF has taken to an illogical level*, Justice Goldberg pointed out the following:

But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. *Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it.*<sup>35</sup>

As such, when considering whether the government has “endorsed” religion (i.e., violated the Establishment Clause), one must keep in mind that

[t]here is always someone who, with a particular quantum of knowledge, reasonably might perceive a particular action as an endorsement of religion. A State has not made religion relevant to standing . . . simply because a particular viewer of a display might feel uncomfortable.

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<sup>31</sup>*Id.* at 793.

<sup>32</sup>*Id.* at 794–95 (emphasis added).

<sup>33</sup>*Zorach*, 343 U.S. at 313.

<sup>34</sup>*Lee v. Weisman*, 505 U.S. 577, 589 (1992) (emphasis added).

<sup>35</sup>*Sch. Dist. of Abington Twp.*, 374 U.S. at 306 (emphasis added).



*It is for this reason that the reasonable observer in the endorsement inquiry must be deemed aware of the history and context of the community and forum in which the religious [activity] appears.*<sup>36</sup>

The men and women stationed at NOSC Alameda are deemed to be “reasonable observers” who understand that the use of the Bible in the POW/MIA display is symbolic.

To this point, in *Town of Greece*, the Supreme Court opined that our “tradition assumes that adult citizens, firm in their own beliefs, can tolerate and perhaps appreciate a ceremonial prayer delivered by a person of a different faith.”<sup>37</sup> Similarly, men and women in the U.S. armed forces can likewise tolerate a historical religious symbol, a Bible, in the context of other, secular, symbols, whose purpose is to honor POWs and MIAs.<sup>38</sup> Moreover, as in *Marsh*, the inclusion of this symbol was not “exploited to proselytize or advance any one, or to disparage any other, faith or belief,”<sup>39</sup> and, as discussed in *Town of Greece*, mere personal offense, “does not equate to coercion.”<sup>40</sup> With respect to this matter, no one was asked to believe or do anything, no one was questioned about his or her faith (or lack thereof), and no one was required to support the symbol in any way. In other words, no one was forced to do, say, or believe anything. *Moreover, there is simply no constitutional crisis merely because some men and women in the military encounter a religious symbol or text of which they may personally disapprove in a display or ceremony.*

One must keep in mind that there are organizations and individuals in our Nation—like Mr. Weinstein and the MRFF (including, undoubtedly, some members of the U.S. Navy and others currently on active duty)—who are hypersensitive to religion and religious expression. Accordingly, commanders must studiously avoid blindly reacting to complaints, especially when any reasonable, minimally informed, person knows that no endorsement of religion is intended (as with the POW/MIA display). That principle was clearly enunciated in *Americans United for Separation of Church & State v. City of Grand Rapids*, where the court noted that there are persons in our society who see religious endorsements, “even though a reasonable person, and any minimally informed person, knows that no endorsement is intended.”<sup>41</sup> The court characterized such a hypersensitive response as a form of heckler’s veto which the court labeled an “‘Ignoramus’ Veto.”<sup>42</sup> One need not yield to such persons. This is just such an instance.

Yet, the Supreme Court has clearly noted that even government-sponsored displays with religious content are constitutional in situations like the POW/MIA display in question.

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<sup>36</sup>*Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 780 (1995) (emphasis added); see also *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995) (“It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. . . . Discrimination against speech because of its message is presumed to be unconstitutional.”).

<sup>37</sup>*Town of Greece v. Galloway*, 572 U.S. 565, 584 (2014).

<sup>38</sup>See, e.g., *Nat’l POW/MIA Recognition Day Honors Sacrifices of Missing, Imprisoned Soldiers*, MICH. DEP’T OF MIL. & VETERANS AFFAIRS (Sept. 16, 2014), <http://www.michigan.gov/dmva/0,4569,7-126--337558--,00.html>.

<sup>39</sup>*Marsh*, 463 U.S. at 794–95.

<sup>40</sup>*Town of Greece*, 572 U.S. at 589.

<sup>41</sup>980 F.2d 1538, 1553 (6th Cir. 1992).

<sup>42</sup>*Id.*

***Government-Sponsored Displays With Religious Elements are Not Unconstitutional as Long as the Religious Elements of the Display Are Part of a Larger Display of Secular Elements***

The principle that government-sponsored displays may include religious elements and still meet constitutional standards has been well-settled for decades. For example, the Supreme Court has upheld the constitutionality of government holiday displays that include religious components. In *Lynch v. Donnelly*, the Court upheld the constitutionality of a display that included a government erected manger scene because it was a part of a larger holiday display which included a variety of secular symbols.<sup>43</sup> That is exactly like the POW/MIA display at issue here. With respect to the POW/MIA display, the Bible was merely one of the symbols on display. It was the only “religious” symbol; all of the rest were secular symbols.

The *Lynch* Court held that the inclusion of the manger scene as part of a holiday display did not violate the three-prong Lemon Test. Specifically, under the “primary effect” prong, the Court held that “display of the crèche is no more an advancement or endorsement of religion than the Congressional and Executive recognition of the origins of the Holiday itself as ‘Christ’s Mass,’ or the exhibition of literally hundreds of religious paintings in governmentally supported museums.”<sup>44</sup> The same is true of the Bible in the POW/MIA display at NOSC Alameda.

In examining these types of displays, courts generally hold that so long as the religious elements of the display are part of a larger holiday expression—with Christmas trees, Santa Claus, candy canes or the like—such that the *primary effect* of the entire display is secular, the display is constitutional.<sup>45</sup>

Moreover, the passive presence of a Bible in the POW/MIA display is an even easier case to justify legally. The manger scene approved in *Lynch* was present to convey a distinctly *Christian* message—to celebrate the birth of Jesus Christ—whereas the Bible in the POW/MIA display was not there to convey a *Christian* message at all, but to symbolize “the strength gained through faith to sustain us and those lost from our country, founded as one nation under God.”<sup>46</sup> The Supreme Court in *Lynch* found that a distinctly Christian display conveying a distinctly Christian message was constitutional when part of a display with secular items. So is a Bible in a POW/MIA display when it is only one of a number of secular items in the display. Mr. Weinstein’s complaint about displaying the Bible is legally specious.

Moreover, as the Court held in *Lamb’s Chapel v. Center Moriches Union Free School District*, “[t]he principle that has emerged from our cases ‘is that the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of

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<sup>43</sup>465 U.S. 668 (1984).

<sup>44</sup>*Id.* at 683.

<sup>45</sup>*See Salazar v. Buono*, 559 U.S. 700, 715-21 (2010) (plurality opinion) (noting importance of context and purpose of public displays and reiterating that the “goal of avoiding governmental endorsement does not require eradication of all religious symbols in the public realm”); *see also McCreary Cnty. v. ACLU of Kentucky*, 545 U.S. 844 (2005); *Van Orden v. Perry*, 545 U.S. 677 (2005) (conducting similar purpose and effect analysis of entire display in Ten Commandments cases).

<sup>46</sup>*Id.*



others.”<sup>47</sup> That includes favoring secular viewpoints over religious viewpoints—or *vice versa*. ***To single out the only religious item in the display for criticism/removal, as Mr. Weinstein has done, is to favor the secular over the non-secular, thereby violating the very Establishment Clause Mr. Weinstein claims to be upholding.***

Accordingly, Mr. Weinstein’s misreading of the Constitution, no matter how forcefully stated, is incorrect and not binding on you and your staff.

### ***The MRFF and Its Agenda***

Although Mr. Weinstein and the MRFF have every right to believe and espouse the views they do, it is imperative that you and members of your staff be aware of what the MRFF’s agenda entails. It is also imperative that you not accept such charges at face value. Mr. Weinstein and the MRFF espouse a skewed view of the Constitution and its guarantees and requirements. That is why we strongly recommend that you direct your SJA to direct Mr. Weinstein to use the appropriate channels to lodge his complaint.

Mr. Weinstein is a self-described opponent of so-called “Dominionist Christians” in the military. Mr. Weinstein has repeatedly claimed that he is fighting “a subset of Evangelical Christianity that goes by a long technical name . . . Pre-Millennial, Dispensational, Reconstructionist, Dominionist, Fundamentalist, Evangelical Christianity.”<sup>48</sup> His charge that the mere presence of a passive Bible in a POW/MIA display “is an imperious act of fundamentalist Christian supremacy, exclusivity, exceptionalism, and domination”<sup>49</sup> reflects that view.

Moreover, how Mr. Weinstein describes his organization, the MRFF, also says much about his beliefs and how he approaches those with whom he disagrees. He describes the MRFF as follows: “We are a weapon. We’re a militant organization. Our job is to kick ass, take names, lay down a withering field of fire, and leave sucking chest wounds on this unconstitutional heart of darkness, if you will, this imperious fascistic contagion of unconstitutional triumphalism.”<sup>50</sup> He has demonstrated open and continuing hostility to Evangelical Christians and what they believe and admits that he is willing to do whatever it takes to achieve his ends: “*I don’t want to be on the*

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<sup>47</sup>508 U.S. at 394 (quoting *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984)).

<sup>48</sup>*An Evangelical Coup in America’s Military*, MRFF (Aug. 3, 2007), available at [https://www.militaryreligiousfreedom.org/press-releases/evangelical\\_coup.html](https://www.militaryreligiousfreedom.org/press-releases/evangelical_coup.html). Although Mr. Weinstein has frequently said that his attacks are aimed solely at a very small slice of Evangelical Christianity (as described in the foregoing text), that claim is belied by a presentation he gave at the United States Air Force Academy in April 2008 where he attempted to show a portion of a virulently anti-Catholic movie entitled *Constantine’s Sword*. Luchina Fisher, ‘Constantine’s Sword’ Cuts into Anti-Semitism, ABC NEWS (Apr. 20, 2008), <http://abcnews.go.com/Entertainment/story?id=4684837&page=1#.T0QKSlcgdcI>. By seeking to attack the Catholic Church in addition to Evangelicals, Mr. Weinstein has demonstrated a broad-based hostility to Christianity, in general, which no U.S. Government official should tolerate. Moreover, in discussions with theologians, we have never met a single theologian who has ever heard of such a group, especially since the labels were intended to distinguish persons holding certain beliefs from those holding contrary beliefs.

<sup>49</sup>Email from Michael L. Weinstein to Captain Roberto C. Dumlao, *supra* note 2.

<sup>50</sup>Brian Kresge, *An Interview with Mikey Weinstein*, JEWS IN GREEN (Aug. 24, 2007), <https://jewsingreen.org/2007/08/an-interview-with-mikey-weinstein/>.

*losing side knowing that I didn't use every last diatribe and embellishment and wild-eyed, hair-on-fire, foaming-at-the-mouth harangue to get my point across . . .*"<sup>51</sup> His recent email to you falls nicely into that category.

Mr. Weinstein and the MRFF find Constitutional violations wherever they look. The POW/MIA display at NOSC Alameda is simply the most recent example. *It is also worth noting that Mr. Weinstein and the MRFF have yet to win a case in court on their skewed view of the Constitution. That alone should be enough to give you pause as you entertain this most recent complaint.*

Mr. Weinstein prides himself on being a constitutional expert, but he has yet to prevail in court. He prevails only when he intimidates commanders whom he contacts, who do not know the law and who fold under his threats. You have no obligation to comply with Mr. Weinstein's pompous, arrogant demands like: "YOU ARE DIRECTED TO PERMANENTLY REMOVE THAT ILLICIT "SAILOR'S Bible" [sic] FROM YOUR POW/MIA DISPLAY . . . FORTHWITH!"

### CONCLUSION

Mr. Weinstein's frequent demands invite extreme caution on the part of all persons who receive his demand letters, lest the recipients become unwitting pawns in the MRFF's strategy to eviscerate religious freedom in the U.S. armed forces. Mr. Weinstein has readily admitted that he values the use of diatribe, embellishment, and harangue as tools to get his way. Mr. Weinstein's specious demands regarding the POW/MIA Memorial Display at NOSC Alameda fit neatly into that mold.

Despite Mr. Weinstein's claims to the contrary, the presence of the Bible in the POW/MIA display at NOSC Alameda is fully constitutional. Men and women in uniform are certainly capable of tolerating, and even acknowledging when appropriate, this nation's rich religious history, and a passive display of a Bible when placed in a grouping of other symbols in remembrance of MIAs and POWs does not violate the Establishment Clause of the First Amendment.

As such, we strongly and respectfully urge you to disregard Mr. Weinstein's specious demands. Moreover, other than espousing general offense on the part of some sailors at NOSC Alameda at the mere presence of the Bible, no legally cognizable injury has been raised. Accordingly, these allegations are baseless, and they must be treated as such by you.

Should you or any member of your staff desire further information or assistance concerning this matter, please do not hesitate to contact our office. We stand ready to assist you in any way we can.

Respectfully yours,



Jay Alan Sekulow  
Chief Counsel



Robert W. Ash  
Senior Counsel

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<sup>51</sup>MICHAEL L. WEINSTEIN & DAVIN SEAY, WITH GOD ON OUR SIDE 129 (2006) (emphasis added).