



November 29, 2017

VIA OVERNIGHT DELIVERY SERVICE & EMAIL

Major General Michael D. Rothstein
Vice Commander
Maxwell-Gunter Air Force Base
One Kelly Street
Maxwell-Gunter AFB, AL 36114

RE: MRFF Demand Letter re Chapel Flag in a Display Honoring Chaplain Assistant Staff Sergeant Merle Strang

Dear Major General Rothstein:

By way of introduction, the American Center for Law and Justice (ACLJ) is a non-profit legal 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.¹

It has come to our attention that Lt. General Steven L. Kwast recently received a demand letter (dated Oct. 27, 2017) from Mr. Michael L. “Mikey” Weinstein from the Military Religious Freedom Foundation (MRFF). In his letter, Mr. Weinstein insists on the immediate removal of ‘what he calls “that “Christian Flag”’ from the Air Force Enlisted Heritage Research Institute (AFEHRI).

Mr. Weinstein’s claims are contrary to law. Further, he would have your staff become complicit in his organization’s campaign to eviscerate religious freedom in the Armed Forces of the United States.

¹ See e.g., *Pleasant Grove City v. Summum*, 55 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. Cir. Moriches 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).

We are writing to inform you that you are under no obligation whatsoever to respond to Mr. Weinstein's unjustifiable and unfounded demands. Moreover, as you may know, Mr. Weinstein has no authority, legal, or otherwise, to insist on punishment or discipline of any airman.

Please find below a brief explanation of the facts, applicable constitutional law, and an explanation of Mr. Weinstein's true intentions.

I. THE FACTS: THE "CHRISTIAN FLAG" IS REALLY A CHAPEL FLAG AND IS PART OF A LARGER MUSEUM DISPLAY HONORING THE HEROISM OF CHAPLAIN ASSISTANT STAFF SERGEANT MERLE STRANG.

As you know, Mr. Weinstein mischaracterizes the AFEHRI's museum display commemorating the Korean War as "nothing more than a pretextual attempt to proselytize the Christian faith to the exclusion of any and all other[s] [...] which overtly flaunts the dominance of Christianity [...]."

He claims this display is an "unequivocally sordid matter of illicit church-state violation" in contravention of the non-existent "No Establishment Clause." To any reasonable observer, this description does not accurately reflect the actual exhibit. In fact, to arrive at his erroneous conclusion, Mr. Weinstein takes great liberties with the facts.

First, Mr. Weinstein simply ignores the larger context of the exhibit. The presentation of the uniform and flag do not stand-alone in a vacuum. Instead, the exhibit at issue is but one small part of a larger display commemorating the enlisted men of the Korean War. The display includes various artifacts and exhibits commemorating, among others, a radio operator, a medic, and a chaplain assistant. The chaplain assistant exhibit at issue has been a part of the display since November 5, 2012.

Second, in his first letter (dated Oct. 26, 2017), he wrongly describes the exhibit as "The A1C Luke Holcomb Exhibit." In doing so, he references the apparently apocryphal story² involving the daring rescue of two flags from the Demilitarized Zone. However, as you know, the exhibit is not about A1C Luke Holcomb. Instead, the exhibit commemorates the heroism and meritorious service of Chaplain Assistant, Staff Sergeant Merle Strang. SSGT Strang helped to spearhead Operation Kiddy Car to rescue Korean orphans caught in the middle of a war zone.³ His efforts helped save the lives of nearly 1,000 children.⁴ He was posthumously awarded a bronze star for his heroism.⁵

² In an Oct. 27, 2017 email response to Chris Rodda, a Senior Research Director for MRFF, CMSgt Emily E. Shade, the Director of AFEHRI admitted that the "story seemed inaccurate" and notified Mr. Rodda that she had removed the story from the exhibit.

³ "Operation Kiddy Car," *National Museum of the U.S. Air Force*, May 12, 2015, www.nationalmuseum.af.mil/Visit/Museum-Exhibits/Fact-Sheets/Display/Article/196362/operation-kiddy-car/.

⁴ *Id.*

⁵ SSGT Julie Weckerlein, "Air Force Posthumously Awards Bronze Star," *Air Force Print News*, Oct. 6, 2005, www.af.mil/News/Article-Display/Article/133182/air-force-posthumously-awards-bronze-star/.

Third, Mr. Weinstein neglects two key facts about the items in the display. First, in his second demand letter (dated Oct. 27, 2017), he characterizes the display as “that ‘Christian flag’ [...] publicly juxtaposed with that mannequin wearing the United States Air Force uniform.” Such a description entirely misses the point. It is not any old “Christian flag” standing next to any old uniform. That is the Christian Faith Chapel Flag issued to all Christian Chaplains as a part of their military field equipment, and that flag stands next to SSTG Strang’s uniform, who served as a chaplain assistant and who was himself a Christian.

Second, while Mr. Weinstein admits that the flag standing next to SSTG Strang’s uniform is not “[t]he ‘Christian Flag,’” and even includes a picture as proof, he regularly refers to the Chapel Flag simply as “that ‘Christian Flag.’” Such a mischaracterization would have the reader believe that the flag held a purely sectarian religious purpose and played no role in the U.S. Armed Forces. Yet, contrary to Mr. Weinstein’s caricature, there are chapel flags for each major religion, including, among others, Christianity, Judaism, Islam, and Buddhism, and these chapel flags serve to inform service men and women of their respective faith where services are being held.⁶

Once Mr. Weinstein’s factual liberties are ironed out, his claims are self-evidently baseless.

There can be no reasonable objection to placing artifacts and symbols regularly in use by the U.S. Armed Forces on display in a military museum that are directly relevant to the subject of that same display. While the media has largely run with Mr. Weinstein’s false narrative,⁷ the law, as laid out below, only underscores the absurdity of his claims.

II. THE LAW: THE GOVERNMENT DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT BY INCLUDING RELIGIOUS OBJECTS IN A MUSEUM DISPLAY.

The Supreme Court of the United States has been unequivocally clear: religious displays in publicly funded museums do not violate the Establishment Clause of the First Amendment.

In *Lynch v. Donnelly*, the Court upheld the constitutionality of a government erected creche display despite its obvious religious relevance.⁸ In justifying its decision, the Court pointed to our nation’s long history of religious symbolism, especially in publicly funded museums:

Art galleries supported by public revenues display religious paintings of the 15th and 16th centuries, predominantly inspired by one religious faith. The National Gallery in Washington, maintained with Government support, for example, has long exhibited masterpieces with religious messages, notably the Last Supper, and

⁶ Even Mr. Weinstein’s own Senior Research Director, Chris Rodda, admits as much. See Chris Rodda, “The Most Unbelievable Story About Korea That You Will Read Today,” *Huffington Post*, Nov. 1, 2017, https://www.huffingtonpost.com/entry/the-most-unbelievable-story-about-korea-that-you-will_us_59f9cac7e4b0412aab840c80.

⁷ *Id.*

⁸ 465 U.S. 668 (1984).

paintings depicting the Birth of Christ, the Crucifixion, and the Resurrection, among many others with explicitly Christian themes and messages.⁹

In fact, the Court found that “whatever benefit to one faith or religion or to all religions” from a government erected creche display is “no more an advancement or endorsement of religions than [...] the exhibition of literally hundreds of religious paintings in governmentally supported museums.”¹⁰ The Court characterized such religious displays as purely “passive” and said that to forbid the use of such a “passive symbol” “would be a stilted over-reaction contrary to our history and to our holdings.”¹¹

Moreover, in her concurrence in *Lynch*, Justice O’Connor found that certain contexts eliminate Establishment Clause concerns even though the object and its message remain fully religious.¹² Specifically, she found that “a typical museum setting, though not neutralizing the religious content of a religious painting, negates any message of establishment of that content.”¹³ Her approach was adopted by the majority in *County of Allegheny v. ACLU*.¹⁴

Thus, museum displays, even if they contain religious symbolism or meaning do not run afoul of the Establishment Clause merely because they are curated by a publicly funded entity and contain a religious message. The very context of such a display negates such concerns.

Furthermore, the government may choose to convey a specific message in lieu of alternatives.

In *National Endowment of the Arts v. Finley*,¹⁵ *Pleasant Gove v. Summum*,¹⁶ and *Walker v. Texas Div. Sons of Confederate Veterans*,¹⁷ the Supreme Court has repeatedly held that “when the government speaks it is entitled to promote a program, to espouse a policy, or to take a position. In doing so, it represents its citizens and it carries out its duties on their behalf.”¹⁸ Thus, the government may “encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program [...]”¹⁹ In fact, to hold otherwise “government would not work.”²⁰

Thus, in the case of museum displays, the government may choose to fund a particular exhibit or piece of art without also funding every other piece or opposition exhibition. Likewise, it follows

⁹ *Id.* at 676.

¹⁰ *Id.* at 683.

¹¹ *Id.* at 686.

¹² *Id.* at 698.

¹³ *Id.*

¹⁴ 492 U.S. 572, 595 (1989). While the Court ultimately found the circumstances of the creche display at issue in that case constitutionally problematic, they endorsed not only J. O’Connor’s approach, but also specifically her analogy to the display of religious paintings in museums.

¹⁵ 524 U.S. 569 (1998).

¹⁶ 555 U.S. 460 (2009).

¹⁷ 135 S.Ct. 2239 (2015).

¹⁸ *Id.* at 2246.

¹⁹ *Finley*, 527 U.S. at 588.

²⁰ *Walker*, 135 S.Ct. at 2246.

that the government may choose to curate its displays to honor an act of faith-inspired heroism without juxtaposing it with every faith or every act of heroism.

Moreover, no one private individual, let alone a heckler,²¹ has a monopoly on the meaning of such displays. In *Pleasant Grove*, the Court reasoned that it is often “not possible to identify a single ‘message’ that is conveyed by an object or structure,” or even a “museum collection.”²² The Court recognized that the “thoughts or sentiments expressed by a government entity that accepts and displays such an object might be quite different from those of either its creator or its donor.”²³ In fact, the Court explicitly addresses the many messages conveyed by displaying religious art in a museum:

Museum collections illustrate this phenomenon. Museums display works of art that express many different sentiments, and the significance of a donated work of art to its creator or donor may differ markedly from a museum’s reasons for accepting and displaying the work. For example, a painting of a religious scene may have been commissioned and painted to express religious thoughts and feelings. Even if the painting is donated to the museum by a patron who shares those thoughts and feelings, it does not follow that the museum, by displaying the painting, intends to convey or is perceived as conveying the same “message.”²⁴

Thus, just because an exhibition may appear to some to convey a religious message, does not mean it in fact does so, and mere offense at this perceived message is not the same as a constitutional violation.²⁵

III. MR. WEINSTIEN’S AGENDA

Although Mr. Weinstein and his organization have every right to espouse the views they do, it is imperative that you be aware of who Mr. Weinstein is and what his agenda entails.

Mr. Weinstein is a self-described opponent of so-called “Dominionist Christians” in the military. He 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.” 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

²¹ See *Lee v. Weisman*, 505 U.S. 577, 597–98 (1992) (“We do not hold that every state action implicating religion is invalid if one or a few citizens find it offensive. People may take offense at all manner of religious as well as nonreligious messages, but offense alone does not in every case show a violation.”).

²² *Pleasant Grove*, 555 U.S. at 476; 476 Fn. 5.

²³ *Id.* at 476–77.

²⁴ *Id.* at 476 Fn. 5.

²⁵ See *supra* Note 21.

unconstitutional heart of darkness, if you will, this imperious fascistic contagion of unconstitutional triumphalism.²⁶

He has demonstrated open and continuing hostility to Evangelical Christians and their message and admits that he is willing to do whatever it takes to achieve his ends: “*I don’t want to be on the 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...*”²⁷ Accordingly, Mr. Weinstein is known for making bombastic, over-the-top statements about persons of whatever religious stripe who disagree with his views and his personal ideas on what constitutes acceptable speech and conduct under the Constitution and laws of the United States.

Mr. Weinstein and the MRFF routinely accuse others of making offensive and bigoted comments. He compares Christian believers with whom he disagrees to al-Qaeda and the Taliban: “We’re fighting al-Qaeda. We’re fighting the Taliban, and we’re turning our own military into that exact same thing.”²⁸ Mr. Weinstein continues: “[W]e’ve lost the Marine Corps. We’ve lost the Army, we’ve lost the Navy and the Air Force.”²⁹ He seems to be incapable of seeing any differences between the widespread violence perpetrated on unbelievers by radical Islamists and the actions of committed Bible-believing Christians.

Moreover, despite repeated pious declarations that he is fighting for religious freedom and tolerance, Mr. Weinstein is in reality - a serial purveyor of religious bigotry who repeatedly propagates the despicable lie that Evangelical and Fundamentalist Christians “would willingly, even eagerly, condemn, ostracize, and *even put to death* their fellow citizens for praying to the wrong god.”³⁰ He even asserts: “I know that they will stop at literally nothing to achieve their ends. That includes mass murder.”³¹ Mr. Weinstein claims that “fundamentalist dominionist Christians are willing to kill to achieve their twisted agenda.”³²

Such assertions are not only outrageous—they are absolutely delusional.

Further, despite admitting that he has “doubts over the actual existence of God and an even more abiding skepticism about the claims of organized religion,”³³ Mr. Weinstein nonetheless expects his readers to simply accept that he can speak with authority about what certain Christians believe. For example, without citing any authoritative source whatsoever, Mr. Weinstein claims that “Christian fundamentalist dominionists...believe that the Bible instruct them to *eradicate all*

²⁶ See Brian Kresge, “An interview with Mikey Weinstein.” Jews in Green, Aug. 24, 2007, <http://www.jewsi ngreen.com/2007/08/an-interview-with-mikey-weinstein/>.

²⁷ See Michael L. Weinstein & David Seay, *With God on Our Side* (2006), 129. (emphasis added).

²⁸ See “Video Archives (2007–2009): Los Angeles Times Festival of Books,” MIL. RELIGIOUS FREEDOM FOUND., http://www.militaryreligiousfreedom.org/Media_video/festival-of-books/index.html (last visited April 28, 2016).

²⁹ See Mikey Weinstein, “‘Champion of the First Amendment’ Award Acceptance Speech at the 29th Annual Convention of the Freedom from Religion Foundation,” (Oct. 7, 2006) (transcript available at <http://www.ffrf.org/publications/freethought-today/articles/The-Christianization-of-the-Military/>).

³⁰ See Michael L. Weinstein & David Seay, *No Snowflake in an Avalanche* (2012), 119. (emphasis added).

³¹ *Id.* at 178.

³² *Id.* at 179.

³³ *Id.* at 31.

nonbelievers as a prerequisite for the Second Coming of Christ.”³⁴ Elsewhere, once again, without citing any authority to back up his statement, he claims that “hardcore fundamentalist Christian elements within every branch of the military [are] intent on creating nothing less than an army of zombie zealots prepared to fight and die to usher in the dispensational reign of Jesus Christ on earth.”³⁵

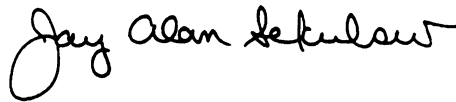
Such outlandish assertions are commonplace in Mr. Weinstein’s writings and speeches. He sees religious intrigue wherever he looks. He has found it once again in the presence of a single military museum display honoring the service and heroism of one SSGT Strang who saved the lives of hundreds of children.

CONCLUSION

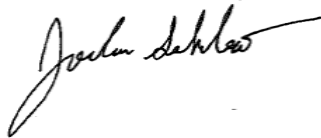
In light of the foregoing, we respectfully and strongly urge you to disregard Mr. Weinstein’s specious demands that you remove the Chapel Flag from the Staff Sergeant Strang exhibit at the AFEHRI or punish or discipline anyone for this wholly imagined violation of Air Force regulations and the Constitution of the United States. Mr. Weinstein’s allegations are baseless, and they must be treated as such.

Should your staff desire ACLJ assistance in dealing with this matter or in drafting or reviewing guidelines for subordinate commanders faced with similar or future MRFF demands, we stand ready to assist you.

Respectfully yours,



Jay Alan Sekulow,
Chief Counsel
AMERICAN CENTER FOR LAW & JUSTICE



Jordan Sekulow,
Executive Director
AMERICAN CENTER FOR LAW & JUSTICE

CC: SJA Office, Maxwell-Gunter AFB, Col. Eric Mejia, Lt. Col. Larissa Lanigar; Air Force Enlisted Heritage Research Institute, Maxwell-Gunter AFB, CMSgt Emily E. Shade

³⁴ *Id.* at 197 (emphasis added).

³⁵ *Id.* at 12.