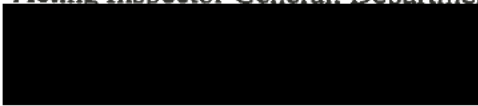




August 26, 2016

VIA OVERNIGHT DELIVERY SERVICE

The Honorable Glenn A. Fine
Acting Inspector General, Department of Defense



RE: MRFF Demand Letter re Air Force Officer's Passive Display of a Bible on His Desk

Dear Mr. Fine:

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.¹

We are once again writing to you to lay out the applicable law in situations like the one most recently complained of by Mr. Michael L. "Mikey" Weinstein and to encourage you not to permit Mr. Weinstein and his organization to turn the DOD IG office into an unwitting tool to implement Mr. Weinstein's agenda of eviscerating religious freedom in the Armed Forces of the United States.

INTRODUCTION

As you have doubtless become aware, Mr. Michael L. "Mikey" Weinstein and his organization, the Military Religious Freedom Foundation (MRFF), frequently take issue with the public expression of religious sentiments by persons serving in uniform. Their recent demand letter to you (dated August 24, 2016) is just such an example. This time around, Mr. Weinstein complains that Air Force Major Steve Lewis "displayed a highlighted Christian

¹See, e.g., *Pleasant Grove City v. Sumnum*, 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 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).



Bible on his work desk, in blatant violation of the Establishment Clause of the First Amendment, Clause 3, Article VI of the Constitution, and controlling Federal case law, as well as Air Force Instruction 1-1, Sections 2.11 and 2.12.” He later describes the presence of a Bible on Major Lewis’s desk as an “unconstitutional religious display.”

The language he used in corresponding with Colonel Damon Feltman was considerably more colorful than the language he used in his letter to you. In Mr. Weinstein’s August 17, 2016, email to Colonel Feltman (copy attached hereto as ATCH A), Mr. Weinstein described the passive placement of the Bible on the officer’s desk as “a truly abhorrent example of First Amendment civil rights violations,” as an “open, notorious, and hostile violation” of required separation of church and state, as “a brazen display of sectarian Christian triumphalism and exceptionalism,” as well as an “outrageous display of callous and bold Christian primacy.” He then alleged that the mere presence of the Bible results in “all-too-credible fears of reprisal and retribution.” He further described “the disgusting illegality of Major Lewis’ actions” as an example of “Christian religious intolerance.” He concluded by describing the passive presence of the Bible as creating “Christian religious oppression.”

As a preliminary matter, before we evaluate the problematic legal bases of Mr. Weinstein’s claims, it should be noted—despite Mr. Weinstein’s apparent beliefs to the contrary—that the various persons to whom Mr. Weinstein and the MRFF send their frequent demands are under no obligation whatsoever to respond to his demands. When Mr. Weinstein complains that Colonel Feltman “failed to respond to that [i.e., Mr. Weinstein’s] demand,” it appears as if he actually believes they are somehow obligated to do so. They are not. And neither is the DOD IG obligated to investigate every contrived Constitutional violation Mr. Weinstein alleges.

Below we will discuss the various legal bases Mr. Weinstein cites and why they do not establish his allegations of wrongdoing.

I. EVALUATING THE ALLEGED LEGAL BASES IN MR. WEINSTEIN’S DEMAND LETTER

Establishment Clause

The First Amendment to the U.S. Constitution reads, in pertinent part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”² In 1892, the Supreme Court stated that “this is a religious nation.”³ More recently, Supreme Court Justice Douglas, writing in *Zorach v. Clauson*, clearly and succinctly summarized the place religion holds in our history and the role the government plays in protecting religious expression and freedom:

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a

²U.S. CONST. amend. I.

³*Holy Trinity v. United States*, 143 U.S. 457, 470 (1892).

variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that *lets each flourish according to the zeal of its adherents and the appeal of its dogma.*⁴

Thus, “[i]n the relationship between man and religion, the State is firmly committed to a position of neutrality.”⁵ The Court has consistently noted the importance the role of neutrality plays, emphasizing that neutrality prohibits hostile treatment of religion. In *Board of Education v. Mergens*, Justice O’Connor aptly noted that “[t]he Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore *subject to unique disabilities.*”⁶ Justice Brennan, in his concurrence in *Schempp*, also recognized that the Religion Clauses required the government to be neutral, not hostile, towards religion: “The State must be steadfastly neutral in all matters of faith, and neither favor *nor inhibit* religion.”⁷

Further, the Supreme Court has noted a clear distinction in the context of religious expression between government speech and private speech: “[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause *forbids*, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses *protect.*”⁸ The decision by Major Lewis to place a Bible on his private workspace was his personal decision, not a government decision. Hence, his action was protected expression. The Supreme Court also aptly noted that it is not a difficult concept to understand that the Government “does not endorse or support . . . speech that it merely permits on a nondiscriminatory basis.”⁹

When discussing the right to free exercise of religion, it must be clearly understood that free exercise of religion means what it says—*free* exercise. Free exercise may not be legitimately limited to what some government official or civilian advocacy group (like the MRFF) or civilian attorney (like Mr. Weinstein) may think it should mean—*or is willing to tolerate.* After all, “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.”¹⁰

Mr. Weinstein does not allege that Major Lewis placed the Bible on his desk at the behest of a Government agent. Instead, he infers that any action Major Lewis takes as a member of the chain of command is attributable to the Government and, thus, either constitutes Government expression or could reasonably be understood by someone to constitute Government expression. That is absolute nonsense. Major Lewis’ expression was private expression. As he frequently does, Mr. Weinstein has alleged a Constitutional violation where none exists. The internal investigation was correct.

⁴343 U.S. 306, 313–14 (1952) (emphasis added).

⁵*Sch. Dist. v. Schempp*, 374 U.S. 203, 226 (1963).

⁶496 U.S. 226, 248 (1990) (emphasis added).

⁷*Schempp*, 374 U.S. at 299 (emphasis added).

⁸*Mergens*, 496 U.S. at 250 (emphasis added).

⁹*Id.*

¹⁰*Thomas v. Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 714 (1981).

No Religious Test Clause

Mr. Weinstein frequently cites Clause 3, Article VI, of the Constitution in his complaints. That portion of the Constitution reads as follows: “[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” It is difficult to fathom how the passive presence of a Bible—even “*a highlighted Christian Bible*,” to use Mr. Weinstein’s own words—qualifies in any way, shape or form as a religious test for office. The mere passive presence of a religious item or symbol does not constitute a “test,” much less a religious test for office. Mr. Weinstein does not allege that Major Lewis ever pressured anyone to do anything vis-à-vis any religion, much less Major Lewis’ personal religion, or that he somehow limited anyone’s employment opportunities based on their having to accede to his beliefs or pay homage to the Bible. The mere passive placement of a Bible on a desk, without more, cannot violate the “no-religious-test” clause. Mr. Weinstein has alleged a second Constitutional violation where none exists. The internal investigation was correct.

Controlling Federal Case Law

Although Mr. Weinstein alleged that the passive presence of the Bible violated “controlling Federal case law,” he cited no cases in his August 24, 2016, letter to you. Nonetheless, in his August 17, 2016, email to Colonel Feltman (ATCH A), he mentioned the following cases: *Parker v. Levy*¹¹ and *United States v. Sterling*.¹² Hence, we will review those two cases.

Regarding the *Parker* case, Mr. Weinstein stated that, because the military is a “specialized society,” the Supreme Court noted that “First Amendment rights” “may be severely limited and curtailed as required to ensure the compelling governmental interest of maximizing military good order, morale, discipline, and unit cohesion.”¹³ One must begin by considering two points. First, even as Mr. Weinstein noted, a service member’s First Amendment rights “*may be . . . limited*” (emphasis added). Such rights are not automatically limited. That will necessarily depend on the second point.

Second, when discussing whether First Amendment expression negatively impacts good order, morale, discipline, and so on, there must be actual, not hypothetical, impact. That is a fact-based determination. Restricting one’s First Amendment rights—including in the military—cannot be based on the *perceptions* of the most hypersensitive or hostile amongst us. In *Parker*, Captain Levy was an Army doctor serving during the Vietnam War at Fort Jackson, SC.¹⁴ Captain Levy was court-martialed for a number of offenses, among which was his telling Black soldiers that they should refuse to go to Vietnam and fight.¹⁵ He was

¹¹417 U.S. 733 (1974).

¹²No. 15-0510 & 16-0223 (C.A.A.F. Aug. 10, 2016).

¹³Even here, Mr. Weinstein overstates his case. The Air Force standard as enunciated in the section on Religion in Air Force Instruction (AFI) 1-1, Air Force Standards, encourages Airmen to express their “sincerely held beliefs” “unless those expressions would have an adverse impact on military readiness, unit cohesion, good order, discipline, health and safety, or mission accomplishment.” AFI 1-1, para 2.11.

¹⁴*Parker v. Levy*, 417 U.S. 733, 735 (1974).

¹⁵*Id.* at 736-37.

convicted by General Court-Martial.¹⁶ He lost his appeals until he reached the U.S. Court of Appeals for the Third Circuit. The Appeals Court ruled in Captain Levy's favor, finding that the UCMJ articles under which he was convicted were challengeable based on vagueness.¹⁷ The Supreme Court granted *certiorari* and reversed. The Court aptly noted that "members of the military are not excluded from the protection granted by the First Amendment," although "the military mission requires a different application of those protections."¹⁸ In the case of Captain Levy, there was no doubt that his speech negatively impacted good order and discipline, as he was actively encouraging Black soldiers to disobey lawful orders in time of war. In the matter raised by Mr. Weinstein, the facts are fundamentally different. The passive presence of a Bible on an officer's unique workspace hardly rises to the level being dealt with by the *Parker* case. Even Mr. Weinstein did not allege that Major Lewis ever said a word about the Bible to any of his colleagues or subordinates. It appears that those who were offended were offended by the mere presence of the Bible and fall into the category of the religiously hypersensitive or hostile.¹⁹

Regarding the *Sterling* case, Mr. Weinstein noted that the U.S. Court of Appeals for the Armed Forces "affirmed the Bad Conduct Discharge of [the accused] for, inter alia, refusing the orders of her superiors to remove the posting of alleged biblical citations in her personal USMC cubicle workspace." A significant issue for the *Sterling* court was the fact that LCpl Sterling "did not inform the person who ordered her to remove the signs that they had any religious significance"²⁰ The court contrasted the facts in *Sterling* to situations where the practice at issue was either "patently religious" or "where a government actor somehow knew the practice was religious."²¹ Such would doubtless be the case with the placement of a Bible on one's desk. Regarding the ordered removal of Biblical verses from her workspace, the crux of the *Sterling* court's argument was that Sterling failed in her burden to make a prima facie case under the Religious Freedom Restoration Act (RFRA) to justify that RFRA applied.²² That's a far cry from Mr. Weinstein's insinuation that the *Sterling* case stands for the principle that placing a Bible on a desk is *ipso facto* unlawful. One must also note that Major Lewis removed the Bible from his desk without complaint during the investigation initiated by Colonel Feltman. Hence, he disobeyed no orders from his superiors. Only when the investigation found no valid legal basis for Mr. Weinstein's complaint did Major Lewis put his Bible back where it had been prior to the investigation. Hence, in addition to alleging non-existent Constitutional violations, Mr. Weinstein has also alleged non-existent violations of case law. The internal investigation was correct.

¹⁶*Id.* at 736.

¹⁷*Id.* at 756.

¹⁸*Id.* at 758.

¹⁹See, e.g., *Americans United for Separation of Church & State v. City of Grand Rapids*, 980 F.2d 1538, 1553 (6th Cir. 1992) (noting 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").

²⁰*Sterling*, No. 15-0510 & 16-0223 at *3.

²¹*Id.*

²²*Id.* at *12-20.

Air Force Instruction 1-1

Mr. Weinstein's citing to Air Force Instruction 1-1 is also misplaced. The portion of AFI 1-1 that Mr. Weinstein emphasized in his letter to you stresses that a leader must ensure that his words "cannot *reasonably be construed to be officially endorsing*" a faith, belief or absence thereof (emphasis added). The key portion is "reasonably construed" and "official" endorsement (explained further below). Yet, Mr. Weinstein fails to acknowledge that AFI 1-1 explicitly encourages every Airman to "confidently practice your own beliefs . . ." and to exercise his/her "right to individual expressions of sincerely held beliefs . . ." Major Lewis is one of the Airman who enjoys such rights and is encouraged to exercise them. Such rights *may be limited* if they have "an adverse impact on military readiness, unit cohesion, good order, discipline" and so on, all of which must be determined by factual analysis and all of which must be based on the "reasonable observer" standard, not on the most hypersensitive or hostile observer standard. As indicated by Colonel Feltman's response to Mr. Weinstein, the factual analysis conducted during the investigation indicated that Major Lewis had not violated any of the provisions of AFI 1-1.

A major concern regarding when to limit free exercise of religion in uniform deals with how commanders determine when unit cohesion, good order and discipline, and the like are adversely affected since "adverse impact" on "unit cohesion" is a very vague standard. To protect religious expression to the extent required by the Constitution, commanders must not curtail accommodation based on hypersensitive or hostile reaction, merely because one or a few Service Members dislike the religious message. As noted in *Lee v. Weisman*, the Supreme Court did "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."²³ Where the offending expression is *private expression* made by one or more individuals (i.e., not "state action"), the commander must be even more careful in fulfilling his responsibility to protect and defend the Constitutional rights of Service Members under his command, since First Amendment rights were intended to protect the individual from his own Government.

In other words, threats to unit cohesion must be real, not illusory. Accordingly, commanders must studiously avoid blindly reacting to complaints (such as the frequent, erroneous complaints lodged by the MRFF and similar groups), especially when any reasonable, minimally informed, person knows that no *official* endorsement of religion is intended. 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."²⁴ The court characterized such a hypersensitive response as a form of heckler's veto, to which the court aptly applied the label, "'ignoramus' veto."²⁵

²³505 U.S. 577, 597 (1992) (emphasis added).

²⁴980 F.2d 1538, 1553 (6th Cir. 1992).

²⁵*Id.*

Mr. Weinstein and the MRFF have seriously misconstrued—and continue to misconstrue—the Constitutional requirements regarding religious exercise and expression in the U.S. Armed Forces. Mr. Weinstein seeks to convince the Armed Forces that virtually all religious expression—including the passive presence of a Bible on a desk—must be excised from the daily life of Service Members in order to avoid violating the Establishment Clause. Yet, Justice O’Connor aptly noted the following regarding a “reasonable observer”:

There 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 [or hearer of remarks] might feel uncomfortable. *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.*²⁶

Service Members are deemed to be “reasonable observers.” As such, they are deemed to know that many different faith groups are represented in the military, that adherents of different faith groups express themselves in different ways, that it is common to encounter the expression of religious sentiments, and that the military does not endorse one religious sentiment over another merely because it permits such sentiments to be expressed.

The MRFF and its allies want to remove all semblance of religious expression from the public sphere in the military—even passive, symbolic expression. Such a policy singles out religion and its adherents for special detriment, thereby violating the very Establishment Clause the MRFF and its allies claim to be protecting. The Armed Forces have an obligation to protect the free exercise and free speech rights of all Service Members—believers and non-believers alike. Restricting religious expression to avoid offending the non-religious would require military officials to determine which religious expression to allow and which to disallow, in effect, preferring certain types of religious expression over others, in itself something Government officials are precluded from doing by our Constitution.

In this matter, since all Airmen are considered to be aware of the fact that the First Amendment protects an individual Airman’s right to private religious expression, the passive presence of a Bible in an Air Force officer’s private workspace, without more, would not be understood to violate AFI 1-1. Mr. Weinstein has alleged a violation of AFI 1-1 where none exists. The internal investigation was correct.

²⁶*Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 779-80 (1995) (emphasis added). See also *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828-29 (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. . . .”).

II. MR. WEINSTEIN AND HIS AGENDA

Although Mr. Weinstein and his organization have every right to espouse the views they do, in our view, it is imperative that the DOD IG office be aware of who Mr. Weinstein is and what his agenda entails. It is important that you not accept Mr. Weinstein's charges at face value.

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."²⁷ Moreover, how Mr. Weinstein describes his organization, the Military Religious Freedom Foundation (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."²⁸

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 . . .*"²⁹ The tone of Mr. Weinstein's recent letter to you reflects that view.

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."³⁰ Mr. Weinstein continues: "[W]e've lost the Marine

²⁷Although 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#.T0QKSIcgdcl>. By seeking to attack the Catholic Church as well, Mr. Weinstein demonstrated a broad-based hostility to Christianity, in general, which no U.S. Government official should tolerate.

²⁸Brian Kresge, *An Interview with Mikey Weinstein*, JEWS IN GREEN (Aug. 24, 2007), <http://www.jevingreen.com/2007/08/an-interview-with-mikey-weinstein/>.

²⁹MICHAEL L. WEINSTEIN & DAVIN SEAY, WITH GOD ON OUR SIDE 129 (2006) (emphasis added).

³⁰MIL. RELIGIOUS FREEDOM FOUND., http://www.militaryreligiousfreedom.org/Media_video/festival-of-books/index.html (last visited Apr. 28, 2016).

Corps, we've lost the Army, we've lost the Navy and the Air Force."³¹ He appears incapable of seeing the differences between the widespread violence perpetrated on unbelievers by radical Muslims with the actions of committed Bible-believing Christians. To Mr. Weinstein, the mere presence of a personal Bible on an Air Force officer's personal workspace constitutes "Christian religious oppression" (see ATCH A). That is absolute nonsense.

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."³² He even asserts: "I know that they will stop at literally nothing to achieve their ends. *That includes mass murder.*"³³ Mr. Weinstein claims that "fundamentalist dominionist Christians are willing to kill to achieve their twisted agenda."³⁴ 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,"³⁵ Mr. Weinstein nonetheless expects all of us 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 instructs them *to eradicate all nonbelievers* as a prerequisite for the Second Coming of Christ."³⁶ 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."³⁷ Such outlandish assertions are commonplace in Mr. Weinstein's writings and speeches. He sees religious intrigue wherever he looks. He has found it again on an Air Force major's desk in Colorado.

CONCLUSION

In light of the foregoing, we urge you *once again* to disregard Mr. Weinstein's numerous specious calls to investigate alleged Constitutional and other legal violations, including his most recent call to investigate the presence of a Bible on an officer's private workspace. Other than expressing general offense at the mere presence of a religious book on an officer's individual desk, Mr. Weinstein has alleged no legally cognizable injury. Accordingly, Mr. Weinstein's allegations are baseless, and they must be treated as such by you.

³¹Mikey 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/>).

³²MICHAEL L. WEINSTEIN & DAVIN SEAY, *NO SNOWFLAKE IN AN AVALANCHE* 119 (2012) (emphasis added).

³³*Id.* at 178 (emphasis added).

³⁴*Id.* at 179.

³⁵*Id.* at 31.

³⁶*Id.* at 197 (emphasis added).

³⁷*Id.* at 12.

Should the DOD IG office desire ACLJ assistance in dealing with such a 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



Robert W. Ash
Senior Counsel

Cc: The Honorable Ashton Carter, Secretary of Defense
The Honorable Deborah Lee James, Secretary of the Air Force

ATCH A

Unconstitutional Violation of AFI 1-1, 2.11, 2.12

– August 17, 2016

From: Mikey Weinstein

Subject: Unconstitutional Violation of AFI 1-1, 2.11, 2.12

Date: August 14, 2016 at 10:12:04 PM MDT

Hello, Colonel Feltman,

My name is Mikey Weinstein and I am the Founder and President of the Military Religious Freedom Foundation (MRFF). MRFF is a civil rights nonprofit advocacy organization which currently represents well over 47,000 United States sailors, soldiers, marines and airmen as well as national guard, reservists and veterans in matters regarding unconstitutional church/state violations tragically occurring in the U.S. military.

Sir, it is my unhappy duty to inform you that the unit you now command, the 310th Space Wing, is currently harboring and encouraging a truly abhorrent example of First Amendment civil rights violations as described in the complaint letter received by MRFF this evening by the military spokesperson for 33 USAF officers, enlisted personnel, civilians and contractors stationed at Peterson AFB and Schriever AFB. Twenty-one of these 33 USAF personnel, who are now also MRFF clients, are directly under your command at the 310th Space Wing.

So, what is the issue? Let me be brief please, sir.

You see, Colonel Feltman, there is a Major Steve Lewis, who is a supervisor at the Reserve National Security Space Institute (RNSSI) located in the Space Education and Training Center Building at Peterson AFB, who is currently in open, notorious and hostile violation of the Constitutionally-mandated separation of church and state as outlined in the First Amendment of the Bill of Rights of the U.S. Constitution, Clause 3, Article VI of the Constitution (No Religious Test”), its construing Federal caselaw and, quite specifically sir, Air Force Instruction (AFI) 1-1, Sections 2.11 and 2.12.

What is he doing wrong, sir, you may ask? For years he has kept an open, yellow-highlighted Christian bible displayed front and center, quite prominently, on his official USAF work desk in an open office work environment (see photos below). The egregious Constitutional and DoD regulatory violations of such a brazen display of sectarian Christian triumphalism and exceptionalism have been noted by many USAF members through the years but they have not sought to officially seek redress and remediation from this outrageous display of callous and bold Christian primacy from their respective USAF chains of command due to all-too-credible fears of reprisal and retribution from same. Notwithstanding this well justified fear, earlier this year this sordid matter of Major Lewis’ unconstitutional, Christian bible display was, in point of fact, directly raised by USAF personnel in an official “Climate Survey” under the auspices of the RNSSI’s Commander, Col. Lisa Johnson. Sadly, no mention whatsoever of this critical concern was EVER mentioned by Colonel Johnson or any of her staff in discussing the results of this “Climate Survey” which had been designed to measure the unit’s relative good order, morale, discipline and unit cohesion.

Colonel Feltman, sir, I will not belabor the point. On behalf of its 33 USAF member clients, MRFF now demands that you order this Major Steve Lewis to immediately take down his Christian biblical display from his official USAF desktop. It is fine, of course, if he wishes to

keep his Christian bible, replete with yellow-highlighted verses, in a desk or office drawer or even in a handy, nearby office bookcase but NOT open, yellow-highlighted and at the very epicenter of his USAF work desk for all of his helpless subordinates and many others to view continuously on a daily basis.

Sir, let me fairly ask you something which may help buttress and illuminate the disgusting illegality of Major Lewis' actions of Christian religious intolerance as obviously validated and endorsed by his USAF boss, Colonel Lisa Johnson. To wit, Colonel Feltman, can you even IMAGINE the limitless, overflowing blood in the streets which would immediately occur if, say, another USAF official chose to similarly display, just as Major Steve Lewis presently exhibits his open and yellow-highlighted Christian bible in the very center of his official USAF desk, other sectarian, theological texts such as The Satanic Bible, the Islamic Quran, the Hindu Shruti, the Sikh Adi Granth and the Atheist movement's leading texts such as Richards Dawkins' "The God Delusion", the late Christopher Hitchens' "God is Not Great" or Sam Harris' "The End of Faith"? Can you seriously not see MRFF's crystal clear, rational and reasonable point here, Colonel Feltman?

Colonel Feltman, please carefully read the e-mail which will follow below from a MRFF client and USAF member directly under your command, sir. By separate e-mails, which will immediately follow the transmission of this instant e-mail, I will send you AFI 1-1, Sections 2.11 and 2.12 both of which are currently being flagrantly violated by Major Lewis with the clear, complicit support of Colonel Johnson, his direct supervisor.

I will also send you one of the most important holdings of the seminal, 1974 U.S. Supreme Court case, Parker v. Levy, 417 U.S. 733, authored by none other than the late Chief Justice William Rehnquist, one of the most conservative Chief Justices in the entire history of the U.S. Supreme Court. That case makes it clear that the First Amendment rights (to include religious expression rights) of those in the U.S. military, such as Major Steve Lewis, may be severely limited and curtailed as required to ensure the compelling governmental interest of maximizing military good order, morale, discipline and unit cohesion. The civilian counterparts to military members face no such constitutionally allowable restrictions due to the fact that the armed forces is a "specialized society", as opined by Chief Justice Rehnquist.

Lastly, sir, I will also send you something else quite significantly important. It is the momentous and most recent holding by the United States Court of Appeals for the Armed Forces in the watershed case of United States v. Monifa J. Sterling, Lance Corporal, Crim App. No. 201400150, which was released scarcely more than 100 hours ago on Wednesday, August 10, 2016. In this impactful decision which is incredibly applicable to the instant, illicit actions of Major Steve Lewis and his Christian biblical desk "static display", the Court of Appeals affirmed the Bad Conduct Discharge of former USMC Lance Corporal Monifa Sterling for, inter alia, refusing the orders of her superiors to remove the posting of alleged biblical citations in her personal USMC cubicle workspace.

Colonel Feltman, sir, in reiteration and on behalf of its clients, MRFF demands that you take immediate, official action to thoroughly investigate the grievances of Christian religious oppression of MRFF's 33 clients as a result of Major Steve Lewis' Christian biblical display. MRFF demands that you order Major Steve Lewis to remove his Christian bible display forthwith from his official USAF desktop workspace and that, pending the results of the investigation, both he and his direct supervisor, Colonel Lisa Johnson, be swiftly, visibly and aggressively punished for allowing this long-running, repulsive violation of USAF regulations

and bedrock Constitutional law to fatally poison the Command Climate in the RNSSI, an Air Force unit directly under your command, sir.

Thank you in advance for your kind cooperation to expeditiously right this glaringly unlawful wrong, Colonel.

Sincerely,

Michael L. "Mikey" Weinstein, Esq.

Founder and President, Military Religious Freedom Foundation

505-250-7727