



March 30, 2021

VIA OVERNIGHT DELIVERY SERVICE

The Honorable John E. Whitley
Acting Secretary of the Army
Defense Pentagon 3E945
Washington, DC 20310-1500

RE: Demand Letter From Military Religious Freedom Foundation (MRFF) President Michael L. "Mikey" Weinstein Concerning What He Called "Outrageous Islamophobic 'News' Article on United States Army News Website"

Dear Mr. Secretary:

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 as well as before lower federal and state courts throughout the United States.¹

The purpose of this letter is two-fold: to provide you with relevant legal information and to refute the spurious comments made by Mr. "Mikey" Weinstein in his recent demand letter to you condemning an article entitled, "Soldier Fights for Her Life to Serve in U.S. Army," published on March 18, 2021.

MR. WEINSTEIN, THE MRFF & THEIR AGENDA

At the outset, it behooves us to introduce you to Mr. Weinstein and his agenda. Although Mr. Weinstein and his organization, the Military Religious Freedom Foundation (MRFF), have

¹Regarding Supreme Court cases alone, *see, e.g.*, *Pleasant Grove City v. Summum*, 555 U.S. 460, 464 (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, 232 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); *Lamb's Chapel v. Ctr. Moriches Sch. Dist.*, 508 U.S. 384, 397 (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, 253 (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, 577 (1987) (unanimously striking down a public airport's ban on First Amendment activities).

every right to believe and espouse the views they do, it is imperative that government officials be aware of what their agenda entails and that their understanding of what the Constitution requires does not align with the determinations of various courts of the United States. It is also imperative that government officials not accept such charges at face value. Mr. Weinstein and the MRFF espouse a skewed view of the Constitution and its guarantees and requirements.

The MRFF was founded by Mr. Weinstein.² Mr. Weinstein and the MRFF have demonstrated open and continuing hostility to Evangelical Christians and their message, and he 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.*”³ Mr. Weinstein is true to his word about diatribe, embellishment, and harangue. He liberally employs hyperbole and pejorative words in his arguments, and he finds constitutional violations wherever he looks. The recent article on Zahraa “Katya” Frelund⁴ about which Mr. Weinstein so bitterly complains⁵ is simply the most recent example. In his letter to you, he described the article he is criticizing as “a wretched yet clear example of fundamentalist Christian supremacy, domination, and exclusivism” in addition to being “hideously and blatantly Islamophobic.”⁶ Mr. Weinstein’s complaint is simply another in an ongoing series of attempts by the MRFF to totally purge religious expression—including private expression—from the U.S. military.

Further, 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.”⁷ He exhibits an almost visceral hostility to religious groups and beliefs with which he disagrees.

Despite repeated pious declarations that the MRFF is fighting for religious tolerance, Mr. Weinstein is in reality a serial purveyor of religious intolerance 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.”⁸ He even asserts: “I know that they will stop at literally nothing to achieve their ends. *That includes mass murder.*”⁹ Mr. Weinstein claims that “fundamentalist dominionist Christians are willing to

²Michael L. “Mikey” Weinstein, Esq. – MRFF Founder & President, MIL. RELIGIOUS FREEDOM FOUND., <https://www.militaryreligiousfreedom.org/about/michael-l-mikey-weinstein/> (last visited Mar. 30, 2021).

³MICHAEL L. WEINSTEIN & DAVIN SEAY, WITH GOD ON OUR SIDE 129 (2006) (emphasis added).

⁴Sgt. Liane Hatch, *Soldier Fights for Her Life to Serve in U.S. Army*, U.S. ARMY (Mar. 18, 2021), https://www.army.mil/article/244483/soldier_fights_for_her_life_to_serve_in_us_army.

⁵Letter from Michael Weinstein, Founder & President, Mil. Religious Freedom Found., to the Honorable John Whitley, Acting Sec’y of the Army 1 (Mar. 25, 2021), <https://www.militaryreligiousfreedom.org/wp-content/uploads/2021/03/Whitley-letter-3-25-21.pdf>.

⁶*Id.*

⁷Press Release, Mil. Religious Freedom Found., Jews in Green: An Interview with Mikey Weinstein (Aug. 24, 2007), https://www.militaryreligiousfreedom.org/press-releases/jewsingreen_haleyized.html.

⁸MICHAEL L. WEINSTEIN & DAVIN SEAY, NO SNOWFLAKE IN AN AVALANCHE 119 (2012) (emphasis added).

⁹*Id.* at 178 (emphasis added).

kill to achieve their twisted agenda.”¹⁰ Such assertions are not only outrageous—they are delusional.

Finally, despite admitting that he has “doubts over the actual existence of God and an even more abiding skepticism about the claims of organized religion,”¹¹ Mr. Weinstein expects everyone he addresses to simply believe 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.”¹² 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 in order *to usher in* the dispensational reign of Jesus Christ on earth.”¹³

Mr. Weinstein’s rhetorical attacks, though predominantly aimed at Christians, are not limited solely to Christians. For example, he has readily lambasted Jews with whom he disagrees as well. For example, Mr. Weinstein attacked the Jewish War Veterans (JWV) and the Anti-Defamation League (ADL) as follows when they did not react as he thought they should have regarding an assault on a Jewish recruit at Fort Benning, Georgia: “The JWV has no spine. . . . They haven’t reached out at all; they seem to have no balls whatsoever. Somehow I think they and the ADL, Abe Foxman, have confused circumcision with castration.”¹⁴

Such ludicrous assertions, bordering on paranoia, are commonplace in Mr. Weinstein’s writings and speeches. One such example is his letter to you in which he asserts that, if the story had been about a young Christian woman converting to Islam, “there would have been torrents of blood in there [sic] streets. And, you KNOW it, sir!”¹⁵ That assertion is ludicrous on its face. I do not believe that you would “know” it at all. The evidence shows otherwise. Thousands of innocent Americans were killed on 9/11 at the hands of Islamist fanatics, and there have been other shootings by Islamist fanatics in this country (the most recent being the shooting in Boulder, Colorado, to which Mr. Weinstein refers in his letter), but not one of those incidents led to torrents of blood in the streets. Accordingly, one must take Mr. Weinstein’s claims with a huge grain of salt—the sky is not falling simply because someone utters a religious reference that may offend adherents of other faiths or no faith at all.

¹⁰*Id.* at 179.

¹¹*Id.* at 31.

¹²*Id.* at 197 (emphasis added).

¹³*Id.* at 12 (emphasis added).

¹⁴Press Release, Mil. Religious Freedom Found., Jews in Green: An Interview with Mikey Weinstein (Aug. 24, 2007), https://www.militaryreligiousfreedom.org/press-releases/jewsingreen_haleyized.html.

¹⁵Letter from Michael Weinstein, Founder & President, Mil. Religious Freedom Found., to the Honorable John Whitley, Acting Sec’y of the Army 2 (Mar. 25, 2021), <https://www.militaryreligiousfreedom.org/wp-content/uploads/2021/03/Whitley-letter-3-25-21.pdf> (emphasis in original).

RESPONDING TO MR. WEINSTEIN'S ALLEGATIONS & DEMANDS

We at the ACLJ readily acknowledge up front that military and civilian societies differ and that these differences are necessary in order to attain the level of discipline needed for our military to fight and win our Nation's wars. We fully recognize that the attainment and maintenance of good order and discipline are absolutely necessary within the military¹⁶ and that any conduct or speech—*whether religious or non-religious*—that *actually* interferes with attaining and maintaining good order and discipline can and should be stopped. We must also recognize, however, that there are some in our country who are hypersensitive to religion and the expression of religious sentiments, who see church-state separation violations wherever they look, and who attempt to stop such expression “even though a reasonable person, and any minimally informed person, knows that no endorsement is intended”¹⁷ The Sixth Circuit aptly characterized such a hypersensitive response as a form of heckler's veto which the court labeled the “Ignoramus's Veto.”¹⁸

When considering whether the government has “endorsed” religion (i.e., violated the Establishment Clause), the Supreme Court of the United States has aptly noted 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 [or a social media site] 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.*¹⁹

The men and women in the United States Army are deemed to be “reasonable observers” who understand that we live in a religiously plural society, that such religious pluralism is reflected in the beliefs of service members and civilians with whom they may interact, that they are likely to encounter religious views with which they disagree, and that the very fact that such views may be openly expressed does not mean that the government is endorsing them.

That some people nonetheless object to such expression does not require the government to accommodate their objections. As the Court in *Lee v. Weisman* aptly noted, “[w]e 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

¹⁶Good order and discipline are essential components of an effective military unit. *See, e.g.,* WILLIAM A. COHEN, SECRETS OF SPECIAL OPS LEADERSHIP: DARE THE IMPOSSIBLE, ACHIEVE THE EXTRAORDINARY 98 (2006) (“Nothing is more harmful to the service than the neglect of discipline; for that discipline, more than numbers, gives one army superiority over another.”) (relating a quote from General George Washington).

¹⁷*Ams. United for Separation of Church & State v. City of Grand Rapids*, 980 F.2d 1538, 1553 (6th Cir. 1992).

¹⁸*Id.*

¹⁹*Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 780 (1995) (first emphasis in original); *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.”).

alone does not in every case show a violation.”²⁰ That is the case here. The MRFF clients took offense at the facts shared by an individual soldier in an article about her life and why she seeks to serve in the Army. That does not justify censoring her views. She was not imposing her beliefs on others. Nor was she bashing another faith.

Moreover, in this matter, the Army included a specific disclaimer: “The following story is told from a Soldier’s first-person account. The Soldier’s views do not necessarily reflect the views of the Army.”²¹ Private religious views cannot violate the Establishment Clause in a circumstance like this, and the Army’s inclusion of private expression in an article it publishes does not convert such speech to government speech subject to the Establishment Clause.²² Moreover, private religious expression is protected by both the Free Exercise and Free Speech Clauses of the First Amendment:

[The view that private religious expression can be disallowed in a limited public forum] . . . exiles private religious speech to a realm of less-protected expression heretofore inhabited only by sexually explicit displays and commercial speech. It will be a sad day when this Court casts piety in with pornography, and finds the First Amendment more hospitable to private expletives . . . than to private prayers. **This would be merely bizarre were religious speech simply as protected by the Constitution as other forms of private speech; but it is outright perverse when one considers that private religious expression receives *preferential* treatment under the Free Exercise Clause.** It is no answer to say that the Establishment Clause tempers religious speech. By its terms that Clause applies only to the words and acts of *government*. It was never meant, and has never been read by this Court, to serve as an impediment to purely *private* religious speech connected to the State only through its occurrence in a public forum.²³

In essence, Mr. Weinstein’s complaint boils down to this. He has received “dozens of sincere complaints from furious U.S. military members who are Muslims” in reaction to the article.²⁴ In response, Mr. Weinstein concludes that the article is “both hideously and blatantly Islamophobic”²⁵ and “clearly violative of the No Establishment Clause of the First Amendment”²⁶ as well as a whole host of other legal documents which he fails to identify. It is difficult to refute what unidentified documents say, but the Supreme Court has a lot to say that refutes Mr. Weinstein’s allegations (beginning with the foregoing quote noting that private religious expression receives preferential treatment).

²⁰Lee v. Weisman, 505 U.S. 577, 597 (1992).

²¹Sgt. Liane Hatch, *Soldier Fights for Her Life to Serve in U.S. Army*, U.S. ARMY (Mar. 18, 2021), https://www.army.mil/article/244483/soldier_fights_for_her_life_to_serve_in_us_army (quoting the disclaimer in the Editor’s note).

²²*Capitol Square Review & Advisory Bd.*, 515 U.S. at 765–67.

²³*Id.* at 766–67 (first alteration and emphasis added) (citations omitted).

²⁴Letter from Michael Weinstein, Founder & President, Mil. Religious Freedom Found., to the Honorable John Whitley, Acting Sec’y of the Army 1 (Mar. 25, 2021), <https://www.militaryreligiousfreedom.org/wp-content/uploads/2021/03/Whitley-letter-3-25-21.pdf>.

²⁵*Id.*

²⁶*Id.*

It is interesting to note that Mr. Weinstein disclaims—*on his and his clients' behalf*—“any issues with the female soldier who is the subject of this ‘news’ article.”²⁷ That is utter nonsense. It is the story she told that has offended Mr. Weinstein and the Muslim service members because Islam and Christianity were implicated. It is her religious expression to which they all take exception. Just as he finishes saying he has nothing against the female soldier, he condemns the telling of her story as a “particularly horrid example of anti-Muslim bigotry and prejudice.”²⁸ In essence, he is condemning what she said as anti-Muslim bigotry. At the end of his letter, he characterizes the content of the story as “racist, bigoted filth.”²⁹

Hearing and reading religious sentiments expressed in public is the price one pays for living in a pluralistic society that honors free exercise of religion and free expression of religious sentiments. It is, in fact, a testimony to the religious tolerance that we have been able to achieve in the United States, something that should be recognized and applauded, not criticized and forbidden.

While Mr. Weinstein and his offended clients focus on the religious conversion aspects of the story, they miss what the story was primarily about. Here was a young woman who grew up in harsh circumstances but who persevered and overcame the obstacles she faced with the help of a number of American soldiers who reached out to help a young woman in need. That is a common story about American GIs. Because of their help and kindness, this young woman is succeeding and setting an example for others in the Army. She not only overcame obstacles in the society into which she was born, but she has also overcome obstacles in American society. She has found her niche in the U.S. Army *combat arms* and is blazing a trail for those women coming after her. This is an inspirational success story on so many levels. Each person’s life story is different, and each person must live his or her own life. What Mr. Weinstein seems to take especial exception to is that the Christian faith made a difference in this soldier’s life. That happens. He needs to get over it.

CONCLUSION

The MRFF’s frequent demands invite extreme caution on the part of all persons who receive their 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 article in question fit neatly into that mold.

Accordingly, we strongly and respectfully urge you to disregard Mr. Weinstein’s specious demands. Other than a subjective offense at the words the young female soldier uttered, no legally cognizable injury has been raised. Accordingly, Mr. Weinstein’s allegations are baseless, and they must be treated as such by you.

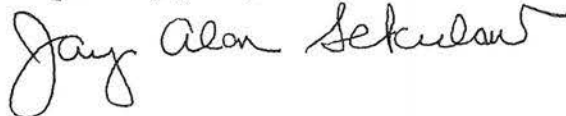
²⁷*Id.*

²⁸*Id.*

²⁹*Id.* at 3.

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

Cc: The Honorable Lloyd J. Austin, Secretary of Defense
GEN Mark A. Milley, Chairman, Joint Chiefs of Staff
GEN James C. McConville, Chief of Staff, United States Army
GEN Joseph M. Martin, Vice Chief of Staff, United States Army
BG Amy E. Hannah, Army Chief of Public Affairs