



August 7, 2017

**VIA OVERNIGHT DELIVERY SERVICE &
FACSIMILE TO SJA OFFICE ([REDACTED])**

Colonel Bradley McDonald
Commander, 88th Air Base Wing
[REDACTED]

RE: MRFF Demand Letter re Invitation to Willow Creek Global Leadership Summit

Dear Colonel McDonald:

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

We are 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 you and your staff into unwitting tools to implement Mr. Weinstein’s agenda of eviscerating religious freedom in the Armed Forces of the United States.

INTRODUCTION

As you may already know, Mr. Weinstein and his organization, the Military Religious Freedom Foundation (MRFF), frequently take issue with the public expression of religious

¹See, 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 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).



sentiments by and to persons serving in uniform. Mr. Weinstein's recent demand letter to you (dated August 3, 2017) is just such an example. This time around, Mr. Weinstein complains that the Wright-Patterson Chaplains Office sent a base-wide email message notifying base personnel of an upcoming event, the Global Leadership Summit, and inviting interested personnel to attend. Mr. Weinstein admitted that the message described the event as "a 2-day live simulcast, *faith-based event*, hosted at the base chapel's Religious Education Facility . . . and sponsored by the 88 ABW / IIC" (emphasis added).

Because the Wright-Patterson religious community is diverse and includes individuals from a broad array of religious as well as non-religious backgrounds, Mr. Weinstein believes that the email message should have been tailored to certain religious believers only (to wit, to those "representing (protestant [sic]) contemporary, gospel, and community worshiping groups; *as these groups most closely value and practice the style of worship and fundamentalist evangelical theological perspective of the Willow Creek Community Church*" (emphasis added)). It must be pointed out that the above conclusion is Mr. Weinstein's conclusion. It is not required by the AFI he relies upon (as discussed more fully below). Yet, based on his interpretation of the AFI, he then accuses you and your staff of a whole host of violations of Air Force regulations.

As is common with Mr. Weinstein's frequent demand letters, he is prone to describe those he opposes using pejorative terms. For example, in his letter to you, Mr. Weinstein describes the beliefs of the Willow Creek Church as falling "within mercantile oriented, fundamentalist evangelical Christian traditions" (a description of a subset of Christianity I can find nowhere else except in Mr. Weinstein's writings). He further labels such beliefs as a "narrow religious viewpoint." His conclusion establishes his biased view of this group:

Like many evangelical fundamentalist Christian, large-scale, open-invitation productions, which seek a base-wide audience, this patently sectarian religious event masquerades as something it clearly is NOT, in order to present a radically conservative, Dominionist Christian perspective as socially normative, institutionally empowering and coextensive with official Air Force leadership policy.

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 demands that you investigate the matter, take corrective action, and punish "those who have allowed these dangerous violations of Air Force regulations to ensue," it appears as if he actually believes you are somehow obligated to do so. You are not. And neither are you obligated to investigate every contrived violation of Air Force regulations that 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. THE WRIGHT-PATTERSON CHAPLAINS OFFICE VIOLATED NO AIR FORCE REGULATIONS BY SENDING THE EMAIL MESSAGE ABOUT WHICH MR. WEINSTEIN COMPLAINS.

Mr. Weinstein takes issue with the fact that the email message “d[id] not specify a targeted religious audience, stating instead that, ‘[t]he event . . . is for everyone interested in growing their leadership skills.’” Mr. Weinstein claims that such a message “create[d] confusion and expressly violate[d] Air Force Directives regarding the purpose of the event and disregard[ed] AF regulations addressing the appropriate targeting of advertising for religious education and worship.” Yet, the message simply informed base personnel about the upcoming conference and encouraged those so interested to attend. There was no command influence to attend, and the conference was freely advertised as being faith-based, to include the incorporation of Biblical leadership principles. No one was deceived. Each recipient of the email could make an informed decision about whether to attend or not.

Mr. Weinstein argues that, because of the nature of the sponsoring group (Willow Creek Association), the message should have been targeted at “(protestant [sic]) contemporary, gospel, and community worshiping groups.” He cites as his authority AFI 52-101.4. Yet, the specific language to which Mr. Weinstein cites is in paragraph 4.2.2.2., which deals with “Protestant *Worship*” (emphasis added). Nowhere else in AFI 52-101 is such “worshiping groups” language used. Mr. Weinstein simply disregards the context of the applicable subparagraph (i.e., Protestant *Worship*) and extrapolates use of such language to a non-worship context. Further, he simply assumes that style of worship is somehow applicable to a conference on leadership. *Mr. Weinstein’s assertion is simply absurd on its face and does not deserve a serious response.*

Next, he seems to make a concession by suggesting that an email to all Protestants “might be used,” although he quickly withdraws the concession by claiming “advertising this event to all protestants [sic] offensively over-targets the advertisement as the theological perspectives of Protestant liturgical and traditional worshipers . . . is profoundly distinct from, and in many cases, opposes the overtly mercantile approach and fundamentalist perspective of Christian Evangelicals.” Interestingly, Mr. Weinstein attempts to buttress this argument by citing to a Wikipedia source on “Dominion Theology.” Yet, Mr. Weinstein’s source appears to undercut his argument in significant ways. It points out that adherents of dominion theology are “theologically diverse” and include groups from both Calvinist and Roman Catholic traditions, both of which could be considered as either liturgical or traditional (labels he intentionally omitted). Mr. Weinstein apparently believes he has the right to determine who should and should not be invited to such a conference on leadership based on his understanding of individuals’ theological beliefs as well as to force his choice on you and your staff. *Once again, that is utter nonsense.*

Next, Mr. Weinstein claims that attending the leadership conference would require a religious accommodation and then asks, “What religious practices are being accommodated at the Global Leadership Summit?” Mr. Weinstein espouses a very narrow view of religious practices here (especially since his own Wikipedia source notes that dominion theology has

broad appeal across religious traditions). He implies that, unless one shares the theological views of the Willow Creek Association, one could not honestly claim that attending the conference merits religious accommodation. Mr. Weinstein fails to recognize that there are all sorts of “religious practices” in the panoply of bodies that claim to be Christian. Retreats, conferences, Bible studies, prayer breakfasts, and so on legitimately fall within the category of “religious practices.” Just because Mr. Weinstein and those who support his organization cannot understand that does not mean that their views govern what the Air Force must do. Further, if Mr. Weinstein is correct that many of those who received the message will not agree with what he characterizes as the conference’s “narrow religious viewpoint,” they can simply refrain from attending. No harm, no foul. As the Supreme Court has aptly noted, “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.”²

II. CONSTITUTIONAL PROTECTIONS.

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”³ In 1892, the Supreme Court stated that “this is a religious nation.”⁴ 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 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.*⁵

Thus, “[i]n the relationship between man and religion, the State is firmly committed to a position of neutrality.”⁶ The Court has consistently noted the important role neutrality plays, emphasizing that neutrality prohibits hostile treatment of religion by the Government. 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.*”⁷ 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.”⁸

²*Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 714 (1981).

³U.S. CONST. amend. 1.

⁴*Holy Trinity v. United States*, 143 U.S. 457, 470 (1892).

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

⁶*Sch. Dist. v. Schempp*, 374 U.S. 203, 226 (1963).

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

⁸*Schempp*, 374 U.S. at 299 (emphasis added).

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*.”⁹ 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.”¹⁰ Sending out a base-wide email inviting interested personnel to attend a leadership summit does not violate these rules. Instead, it complies with the law by not singling out religious speech for disparate treatment.

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, it is worth noting again, “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.”¹¹ The private decisions by individual Airmen to attend the leadership conference reflects their right to free exercise of religion. In this instance, the email simply made known an opportunity to attend a conference on leadership. Each individual recipient could decide for him or herself whether to attend.

Mr. Weinstein also alleges that, unless you take the drastic actions he demands, what has occurred at Wright-Patterson will “evidence[] favoritism of one faith over another or no faith . . . and, consequently, eviscerate[] good order, morale, discipline, unit cohesion, health and safety and military readiness of those military and civilian members of the 88th Air Base Wing under your command.” I must confess that, if the mere sending of an email message inviting interested persons to attend a leadership conference which may cite Biblical principles can do all that Mr. Weinstein claims (to include eviscerating health and safety of your command), then there must be significantly more serious problems in the chain of command than could be caused simply by sending the email in question.

Moreover, 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 the matter raised by Mr. Weinstein, it appears that those who were offended by the email were offended by the fact that the conference was to be faith-based from a faith

⁹*Mergens*, 496 U.S. at 250 (emphasis added).

¹⁰*Id.*

¹¹*Thomas v. Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 714 (1981).

viewpoint with which they disagreed. Such persons would appear to fall into the category of the religiously hypersensitive or hostile.¹²

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.”¹³ 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 (of which the Air Force is a constituent part).

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.”¹⁴ The court characterized such a hypersensitive response as a form of heckler’s veto, to which the court aptly applied the label, “‘ignoramus’ veto.”¹⁵

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 must be excised from the daily life of Service Members in order to avoid violating the Establishment Clause. Yet, as Justice O’Connor aptly noted the following regarding a “reasonable observer,”

[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

¹²See, 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”).

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

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

¹⁵*Id.*

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.*¹⁶

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. 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 adherents of other religions and 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, the Chaplains Office treated all persons at Wright-Patterson AFB as reasonable observers who are capable on their own of deciding whether to attend or not attend the leadership conference. Mr. Weinstein has attempted to arrogate such decisions to himself and to those who believe as he does, thereby treating other recipients of the email as children incapable of making such decisions for themselves. *Such arrogance need not and should not be entertained by Air Force officials.*

III. 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 you and your staff 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.”¹⁷ Moreover, how Mr. Weinstein

¹⁶*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. . . .”).

¹⁷Although 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

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.”¹⁸

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 . . .*”¹⁹ 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.”²⁰ Mr. Weinstein continues: “[W]e’ve lost the Marine Corps, we’ve lost the Army, we’ve lost the Navy and the Air Force.”²¹ 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, not adhering to his view of what AFI 52-101.4 requires constitutes “dangerous violations” that will “eviscerate[] good order, morale, discipline, unit cohesion, health and safety and military readiness of those military and civilian members of the 88th Air Base Wing under your command.” That is, of course, absolute nonsense, as you already know.

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

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#.T0QKS1egdcI>. 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.

¹⁸Brian Kresge, *An Interview with Mikey Weinstein*, JEWS IN GREEN (Aug. 24, 2007), <http://www.jewsingreen.com/2007/08/an-interview-with-mikey-weinstein/>.

¹⁹MICHAEL L. WEINSTEIN & DAVIN SEAY, WITH GOD ON OUR SIDE 129 (2006) (emphasis added).

²⁰MIL. RELIGIOUS FREEDOM FOUND., http://www.militaryreligiousfreedom.org/Media_video/festival-of-books/index.html (last visited Apr. 28, 2016).

²¹Mikey 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/>).

praying to the wrong god.”²² He even asserts: “I know that they will stop at literally nothing to achieve their ends. *That includes mass murder.*”²³ Mr. Weinstein claims that “fundamentalist dominionist Christians are willing to kill to achieve their twisted agenda.”²⁴ Such assertions are not only outrageous—they are absolutely delusional.

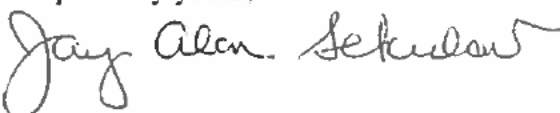
Further, despite admitting that he has “doubts over the actual existence of God and an even more abiding skepticism about the claims of organized religion.”²⁵ Mr. Weinstein nonetheless expects all of us to simply accept that *he* can speak *with authority* about what certain *Christians* believe. For 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.”²⁶ 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.”²⁷ Such outlandish assertions are commonplace in Mr. Weinstein’s writings and speeches. He sees religious intrigue wherever he looks. He has found it again in the 88th Air Base Wing at Wright-Patterson AFB in the form of an email sent by the Chaplains Office.

CONCLUSION

In light of the foregoing, we respectfully and strongly urge you to disregard Mr. Weinstein’s specious call to investigate alleged violations of Air Force regulations in this matter. Mr. Weinstein’s allegations are baseless, and they must be treated as such by you.

Should you or your staff 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: SJA Office, Wright-Patterson AFB

²²MICHAEL L. WEINSTEIN & DAVIN SEAY, NO SNOWFLAKE IN AN AVALANCHE 119 (2012) (emphasis added).

²³*Id.* at 178 (emphasis added).

²⁴*Id.* at 179.

²⁵*Id.* at 31.

²⁶*Id.* at 197 (emphasis added).

²⁷*Id.* at 12.