



August 14, 2013

**VIA FACSIMILE AND OVERNIGHT  
DELIVERY SERVICE**

General James F. Amos  
Commandant of the Marine Corps  
Headquarters, US Marine Corps (USMC)  
3000 Marine Corps Pentagon  
Washington, DC 20350-3000

Dear General Amos:

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

The purpose of this letter is to respond to and correct the numerous, erroneous, legal and factual arguments made by Mr. Michael L. “Mikey” Weinstein in his demand letter to you, dated August 12, 2013.<sup>2</sup> Putting aside for the moment the arrogant, condescending, and disrespectful tone of Mr. Weinstein’s letter (e.g., “Regardless of whatever anemic argument you may try to use to justify this wretched inclusion . . .”). Mr. Weinstein simply fails to get the facts and corresponding law right. What Mr. Weinstein has, in fact, done is to allege a Constitutional violation where none exists.

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<sup>1</sup>See, e.g., *Pleasant Grove City v. Sumnum*, 129 S. Ct. 1125 (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. Center 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).

<sup>2</sup>Letter from Michael L. “Mikey” Weinstein, Esq., to General James F. Amos, Commandant of the Marine Corps (Aug. 12, 2013) (ATCH A) [hereinafter Demand Letter].

## *Review of the Facts*

Regarding the facts, Mr. Weinstein asserts that you, as Marine Corps Commandant, and the Marine Training and Education Command (TECOM) are somehow religiously “testing” United States Marines by means of TECOM Order 5100.1.<sup>3</sup> Mr. Weinstein specifically takes issue with the six-word phrase, “Lack or loss of spiritual faith,” found on page 13 of the 24-page order. Both Mr. Weinstein’s “legal” analysis and his conclusion are specious.

The TECOM Order’s mission is as follows:

Improve unit and personnel readiness by providing a formal mechanism for the Commanding Officer to integrate existing safety and leadership information into a risk assessment for each service member with subsequent risk mitigation plans as needed. [The purpose is] to better develop our service members, combine resources, enhance unit cohesion, identify individuals and areas needing additional support or assistance, and instill Marine leaders with the necessary skills to maintain a resilient, healthy, and proactive force. . . .<sup>4</sup>

The underlying purpose of the order is to “minimize catastrophic events like suicides, accidental deaths or injuries[,] and preserve the force for continued service.”<sup>5</sup> What Mr. Weinstein fails to acknowledge is that the potential risk indicators were “derived from scientific studies on risky behavior”<sup>6</sup> and were not included to impose religious obligations of any sort on members of the Marine Corps. Moreover, there are many other indicators in the order including those related to relationship questions, family history, legal or disciplinary problems, performance problems, and financial problems, among others.<sup>7</sup>

Mr. Weinstein asserts that one, six-word factor out of over fifty such factors listed in the 24-page order, constitutes “a blatant and toxic violation of Clause 3, Article VI of our United States Constitution which incontrovertibly asserts that *no religious test* can be applied to any office or public trust of the United States Government.”<sup>8</sup> Yet, no matter how many pejoratives Mr. Weinstein strings together to create the illusion of a Constitutional violation, there is no such violation.

Nothing in TECOM Order 5100.1 compels anyone to believe anything or change one’s belief, and nothing in that order affects whether one does or does not qualify for

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<sup>3</sup>United States Marine Corps Training and Education Command Order 5100.1 [hereinafter TECOM Order].

<sup>4</sup>*Id.* at 13.

<sup>5</sup>*Id.* at 1, para. 1.

<sup>6</sup>*Id.* at 11.

<sup>7</sup>*Id.* at 11–14.

<sup>8</sup>Demand Letter, *supra* note 2.

any office or position of public trust. Moreover, other than through unsubstantiated inference, Mr. Weinstein provides no evidence whatsoever to the contrary. Hence, the next question to answer is whether the order is, in and of itself, the “wretched . . . blatant and toxic [Constitutional] violation” that Mr. Weinstein claims.

### *Review of the Law*

Mr. Weinstein alleges that mere inclusion of the six-word phrase, “Lack or loss of spiritual faith,” in the 24-page TECOM Order constitutes a direct violation of Clause 3, Article 6 of the United States Constitution. The Constitutional provision to which Mr. Weinstein refers reads as follows: “but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”<sup>9</sup>

Having accused you and TECOM of instituting an unconstitutional “religious test,” the most obvious response to Mr. Weinstein’s allegations—something that he apparently fails to grasp—is that the TECOM Order which lays out possible risk indicators is not a “test,” *much less a religious test for office*. Moreover, he utterly fails to show that any Marine subject to the TECOM Order has been (or will be) denied any office or public trust based on the indicator he condemns. Despite his insinuation to the contrary, a Marine’s spiritual faith (or lack or loss thereof) simply does not (and will not) affect in any way whether he/she qualifies for “any Office or public Trust under the United States.” Historically, the religious test prohibition in the U.S. Constitution was to counter at the federal level provisions in state constitutions, a number of which required, for example, that one believe in Jesus Christ to be qualified to serve in public office.<sup>10</sup> There is no evidence of that or anything similar here—simply because no such test is applied in the Marine Corps or at TECOM. No Marine will be disallowed to serve in the Marine Corps because of his/her religious beliefs or lack thereof, much less because of one possible criterion listed in TECOM Order 5100.1.

In short, without any supporting evidence whatsoever for his charge, Mr. Weinstein has implied that (by including this six-word, risk indicator) you and the TECOM staff are violating your oaths of office to support and defend the Constitution of the United States. That is a serious charge and one which Mr. Weinstein makes all too frequently. From the foregoing, there is no evidence that you and your staff have acted unlawfully pursuant to the TECOM Order. Moreover, taking appropriate measures to protect the health and welfare of the Marines you command is indeed a legitimate role for the Commandant of the Marine Corps as well as for every other member of the Marine Corps chain of command. As such, Mr. Weinstein’s allegations are specious and should be rejected outright.

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<sup>9</sup>U.S. CONST. art. VI, cl. 3.

<sup>10</sup>*See, e.g.,* FRAME OF GOVERNMENT OF PENNSYLVANIA, Laws Agreed Upon in England, art. XXXIV (1682); DEL. CONST. of 1776, art. XXII (1776).

## *Mr. Weinstein and His Agenda*

Although Mr. Weinstein and his organization have every right to espouse the views they do, it is imperative that you and members of the Marine Corps be aware of who Mr. Weinstein is and what his agenda entails. It is also imperative 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."<sup>11</sup> 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."<sup>12</sup> 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 . . .*"<sup>13</sup> The tone of Mr. Weinstein's recent letter to you reflects that view.

A few examples should suffice to demonstrate the nature of Mr. Weinstein's beliefs and the approach he takes to those with whom he disagrees. Mr. Weinstein frequently singles out those whose views he dislikes and demands that such persons be "disinvited" from activities sponsored by the military. For example, in April 2010, Mr. Weinstein demanded that Reverend Franklin Graham be disinvited from being the keynote speaker at the Pentagon National Day of Prayer prayer breakfast. Reverend Graham, son of Evangelist Billy Graham, is a well-known Evangelical religious figure whose ministry, Samaritan's Purse, provides aid to needy persons around the globe. *irrespective of their religious faith.*<sup>14</sup> Mr. Weinstein accused Reverend Graham of being

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<sup>11</sup>Although Mr. Weinstein has frequently said that his attacks are aimed solely at a very small slice of Evangelical Christianity (as described in the foregoing text), that claim is belied by a presentation he gave at the United States Air Force Academy in April 2008 where he attempted to show a portion of a virulently anti-Catholic movie entitled *The Sword of Constantine*. 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.

<sup>12</sup>Brian Kresge, *An Interview with Mikey Weinstein*, JEWS IN GREEN (Aug. 24, 2007), <http://www.jewsingreen.com/2007/08/an-interview-with-mikey-weinstein/>.

<sup>13</sup>MICHAEL L. WEINSTEIN & DAVIN SEAY, WITH GOD ON OUR SIDE 129 (2006) (emphasis added).

<sup>14</sup>See *About Us*, SAMARITAN'S PURSE, <http://www.samaritanspurse.org/our-ministry/about-us/> (last visited Feb. 21, 2012) ("The story of the Good Samaritan . . . gives a clear picture of God's desire for us to help those in desperate need wherever we find them. After describing how the Samaritan rescued a hurting man whom others had passed by, Jesus told His hearers. 'Go and do likewise.' . . . For over 40 years.

“an Islamophobe, an anti-Muslim bigot, and an international representative of the scourge of fundamentalist Christian supremacy and exceptionalism.”<sup>15</sup> Mr. Weinstein’s complaint was not based on what Reverend Graham planned to say at the prayer breakfast, but instead on comments Reverend Graham had made concerning Islam shortly after 9/11—to wit, that he found Islam to be a “very violent religion”—of which Mr. Weinstein disapproved. Claims about other’s bigotry are commonplace with Mr. Weinstein and the MRFF.

Mr. Weinstein’s rhetorical attacks, though predominantly aimed at Christians, are not limited solely to Christians. For example, he has readily attacked 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. . . .”<sup>16</sup> Similarly, in reaction to the advice given by a civilian rabbi to a Jewish chaplain at Hunter Army Airfield with which he disagreed, Mr. Weinstein opined as follows concerning the civilian rabbi: “Here’s my response to Rabbi Lapp. First of all, that isn’t his name. I’m changing his name officially to Rabbi Lapp-dog. He’s a disgrace as an American citizen. He’s a disgrace as a Jew. If I saw him, I’d spit in his face. The only thing I know that he can do is reflect light, circulate blood and breathe. . . . What he did with Rabbi Goldman, as far as I’m concerned, makes him like a *kapo* in Auschwitz.”<sup>17</sup> Such language and vitriol are the norm in Mr. Weinstein’s frequent tirades.

Recently, Mr. Weinstein publicly mocked retiring Air Force Chief of Staff, General Norton A. Schwartz, for failing to accomplish during his tenure in that office everything that Mr. Weinstein had demanded.<sup>18</sup> Referring to him derisively as “Norty,” Mr. Weinstein accused General Schwartz of “unconscionable malfeasance and misfeasance” in office. He also accused General Schwartz of “pitiful acts of betrayal.”<sup>19</sup> He characterized General Schwartz’s accomplishments as Air Force Chief of Staff as a

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Samaritan’s Purse has done our utmost to follow Christ’s command by going to the aid of the world’s poor, sick, and suffering.”)

<sup>15</sup>MICHAEL L. WEINSTEIN & DAVIN SEAY, *NO SNOWFLAKE IN AN AVALANCHE* 169 (2012) (internal citation omitted) [hereinafter *NO SNOWFLAKE*]. See also *id.* at 165 (quoting Franklin Graham as saying “[T]here are millions of wonderful Muslim people. And I love them. I have friends that are Muslims and I work in those countries. But I don’t agree with the teachings of Islam and I find it to be a very violent religion.”).

<sup>16</sup>Kresge, *supra* note 12.

<sup>17</sup>*Id.* Calling a Jew a “kapo” is the ultimate insult. “Kapos” were Jews who assisted the Nazis in controlling fellow inmates in concentration camps. See *Kapos*, JEWISH VIRTUAL LIBR., <http://www.jewishvirtuallibrary.org/jsource/Holocaust/kapos.html> (last visited Feb. 21, 2012).

<sup>18</sup>Mikey Weinstein, *Good Riddance to the Air Force’s Religious Intolerance Enabler in Chief*, TRUTH-OUT (Aug. 1, 2012), available at <http://truth-out.org/opinion/item/10636-good-riddance-to-the-air-forces-religious-intolerance-enabler-in-chief>.

<sup>19</sup>*Id.*

“gutless legacy.”<sup>20</sup> Mr. Weinstein continued in like vein throughout his editorial. Near the end, he concluded by saying: “Norty, you’re not just a liar. You’re a damned liar.”<sup>21</sup>

Thus, Mr. Weinstein is rightly known for making bombastic, over-the-top statements about those—*Christians and non-Christians alike*—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.”<sup>22</sup> Mr. Weinstein continues: “[W]e’ve lost the Marine Corps, we’ve lost the Army, we’ve lost the Navy and the Air Force.”<sup>23</sup> Assuming Mr. Weinstein’s claims to be even remotely true, one wonders where all the forced conversions are that such a view implies.

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.”<sup>24</sup> He even asserts: “I know that they will stop at literally nothing to achieve their ends. *That includes mass murder.*”<sup>25</sup> Mr. Weinstein claims that “fundamentalist dominionist Christians are willing to kill to achieve their twisted agenda.”<sup>26</sup> Such assertions are not only outrageous—they are absolutely delusional. Moreover, despite admitting that he has “doubts over the actual existence of God and an even more abiding skepticism about the claims of organized religion,”<sup>27</sup> 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.”<sup>28</sup> 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

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<sup>20</sup>*Id.*

<sup>21</sup>*Id.*

<sup>22</sup>MIL. RELIGIOUS FREEDOM FOUND., [http://www.militaryreligiousfreedom.org/Media\\_video/festival-of-books/index.html](http://www.militaryreligiousfreedom.org/Media_video/festival-of-books/index.html) (last visited Feb. 27, 2012).

<sup>23</sup>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/>).

<sup>24</sup>NO SNOWFLAKE, *supra* note 15, at 119 (emphasis added).

<sup>25</sup>*Id.* at 178 (emphasis added).

<sup>26</sup>*Id.* at 179.

<sup>27</sup>*Id.* at 31.

<sup>28</sup>*Id.* at 197 (emphasis added).

prepared to fight and die *to usher in* the dispensational reign of Jesus Christ on earth.”<sup>29</sup> Such outlandish assertions, bordering on paranoia, are commonplace in Mr. Weinstein’s writings and speeches. He sees religious intrigue wherever he looks.

### CONCLUSION

Mr. Weinstein’s demands invite extreme caution on the part of every person. like yourself, who becomes a target of his periodic tirades and who receives his periodic letters, lest the recipient become an unwitting pawn in Mr. Weinstein’s strategy to eviscerate religious freedom in the Armed Forces. Mr. Weinstein has readily admitted that he values the use of diatribe and embellishment and harangue as tools to get his way, as his recent letter to you amply demonstrates.

In this matter, you must absolutely reject Mr. Weinstein’s imagined Constitutional violation vis-à-vis TECOM Order 5100.1. No such violation exists. Yet, be prepared. Once you reject the truth as Mr. Weinstein defines it, you, too, may become an active target of his frequent invective.

Sincerely yours,



Jay Alan Sekulow  
Chief Counsel



Robert W. Ash  
Senior Counsel

Attachment

cc: The Honorable Chuck Hagel, Secretary of Defense  
The Honorable Ray Mabus, Secretary of the Navy  
General Martin E. Dempsey, Chairman, Joints Chiefs of Staff

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<sup>29</sup>*Id.* at 12 (emphasis added).

**ATCH A**



## MILITARY RELIGIOUS FREEDOM

Monday, August 12, 2013

General James F. Amos  
Commandant of the United States Marine Corps  
Headquarters, US Marine Corps (USMC)  
3000 Marine Corps Pentagon  
Washington, DC 20350-3000

Transmitted via email and UPS

**SUBJECT: Military Religious Freedom Foundation Demands Revision of USMC Training and Education Command Order 5100.1**

Dear General Amos,

Over the past several weeks, numerous United States Marines have come to the Military Religious Freedom Foundation (MRFF: <http://www.militaryreligiousfreedom.org>) to solicit and plead for our direct intervention and assistance in the immediate remediation of a currently completely noxious, unconstitutional USMC policy (TECOM 5100.1).

MRFF is a non-profit, charitable, civil rights organization that is dedicated to ensuring that all members of the United States Armed Forces fully receive the Constitutional guarantees of religious freedom to which they and all Americans are entitled. MRFF currently represents more than 34,000 clients from all branches of military service, with 24% presently serving in the Marine Corps. Approximately 96% of our armed forces clients are practicing Protestants and Roman Catholics. It is our unconditional position that absolutely no member of the United States Armed Forces may ever be compelled in any way to accept, demonstrate, witness, or engage in any religious philosophy. Further, MRFF believes that the full exercise of religious freedom includes the right NOT to subscribe to any particular religion or religious philosophy. This bedrock prohibition is also quite clearly supported by a veritable legion of formidable U.S. Supreme Court decisions and a literal plethora of associated federal and state case law. Look, General Amos, the so-called "unchurched" in the Marine Corps you command cede ABSOLUTELY no Constitutional rights by want of their separation from any particular organized faith.

Currently, "Lack or loss of spiritual faith" is specifically listed as a "Guidance/moral compass issue" on page 13 of Training and Education Command (TECOM) Order 5100.1. This document has the expressed purpose of establishing Force Preservation policies with the venerable goal of preventing suicide or other harmful behavior by U.S. Marines. However, it totally fails to pass any scintilla of permissible Constitutional muster when asserting by act of policy, which is effectively law, that those marines who simply lack spiritual faith should be considered at higher risk than those with spiritual faith. Regardless of whatever anemic argument you may try to use to justify this wretched inclusion, it nonetheless remains a blatant and toxic violation of Clause 3, Article VI of our United States Constitution which incontrovertibly asserts that no religious test can be applied to any office or public trust of the United States Government.

13170-B CENTRAL AVENUE SE, SUITE 255, ALBUQUERQUE, NM 87123 800-736-5109  
[WWW.MILITARYRELIGIOUSFREEDOM.ORG](http://WWW.MILITARYRELIGIOUSFREEDOM.ORG)

Putting lipstick on a pig, General, does not hide the pig. Even if your claimed goals for this misguided (at best) and despicable (at worst) "religious testing" are claimed by the USMC to be honorable and in good faith, any sufficiently advanced unconstitutional incompetence is completely indistinguishable from unconstitutional malice.

General Amos, you and your vast staff of both civilian lawyers and USMC judge advocates know all too well that MRFF is comprehensively correct here. You will doubtlessly lose and lose badly in federal litigation. Both you and your attorneys KNOW damn well how pathetically indefensible your current "lack of religious faith testing" will be ignobly branded in a proper federal court of law.

We have recently reached out to Mr. Jeffery Bearor, the Executive Director of TECOM, on this precise matter and, all too predictably, he has failed to timely respond in any meaningful form. If you choose to do the same we will accelerate an aggressive legal resolution to this insidious, insulting and wholly unconstitutional USMC regulation. All litigation options will be profoundly pursued, and we will never stop on behalf of our numerous active duty USMC clients until the Marine Corps has aligned its policies with the supreme law of this country.

MRFF has already engaged in frank, productive, face-to-face discussions with senior United States Army leaders at Army Staff Headquarters in Washington D.C. on these precise matters and has reached mutual agreement on same. MRFF demands that the United States Marine Corps likewise swiftly comply with the U.S. Constitution and expeditiously amend its currently abhorrent "religious testing" requirements, practices, and demands.

Please just do the obviously right thing here, General, just as U.S. Army leaders did after seeking critical input from MRFF in direct meetings in our nation's capitol.

The singular objective for the USMC (and American taxpayers) ought to be to avoid a very public, losing, costly, legal showdown that never should have been necessary in the first place. Please consider our reasonable and rational demand on behalf of MRFF's many USMC clients. Please do not force us to initiate suit against the Marine Corps.

Sincerely,



Michael L. "Mikey" Weinstein, Esq.  
Founder and President  
Military Religious Freedom Foundation

CC:

The Honorable Chuck Hagel, Secretary of Defense, United States Armed Forces  
General Martin E. Dempsey, Chairman of the Joint Chiefs of Staff  
Ray Mabus, Secretary of the Navy  
Admiral Jonathan W. Greenert, Chief of Naval Operations