



July 29, 2013

**VIA FACSIMILE AND OVERNIGHT
DELIVERY SERVICE**

Colonel Brian Duffy
Commanding Officer

[REDACTED]
[REDACTED]
[REDACTED]

Dear Colonel Duffy:

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 argued numerous free speech and religious freedom cases before the Supreme Court of the United States.¹

It has come to our attention that you recently received a demand letter from Mr. Blake Page of the Military Religious Freedom Foundation (MRFF), which castigated Ch, Lt.Col., Kenneth Reyes for an article he wrote in “Chaplain’s Corner” with whose viewpoint the MRFF disagrees. The first purpose of this letter is to respond to and correct the numerous legal and factual errors made by the MRFF against Ch Reyes. Disregarding the snarky and presumptuous tone of the letter (e.g., accusing Ch Reyes, *inter alia*, of “cho[osing] to publicly denigrate those without religion,” of engaging in an “anti-secular diatribe,” of using “bigoted, religious supremacist” language, of expressing “condescending bile,” and of propagating “[f]aith based hate”), the MRFF simply fails to get the facts and corresponding law right and severely overstates the issue. What the MRFF has, in fact, done is to allege a constitutional violation where none exists.

¹See, 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).

[REDACTED]

In light of the MRFF's factual and legal errors, the second purpose of this letter is to caution you and your staff from over-reacting in the future to periodic bullying by groups like the MRFF which frequently allege constitutional violations "even though a reasonable person, and any minimally informed person, knows that no endorsement is intended."² The decision to immediately pull Ch Reyes' article, based on the MRFF's erroneous allegations of wrongdoing, has likely resulted in the commission by you and/or your staff of *actual* violations of Ch Reyes' constitutional rights to freedom of speech, free exercise of religion, and equal protection under the law. As such, military commanders and their staffs must proceed cautiously when confronted with allegations of wrongdoing by groups like the MRFF.

Review of the Facts

According to the MRFF's demand letter, Ch Kenneth Reyes, JBER installation chaplain, recently wrote an article entitled, "No Atheists in Foxholes: Chaplains Gave All in World War II."³ In that article, Ch Reyes referred to a phrase often attributed to President Dwight D. Eisenhower: "I am delighted that our veterans are sponsoring a movement to increase our awareness of God in our daily lives. In battle, they learned a great truth that there are no atheists in the foxholes."⁴ The MRFF took grave exception to the inclusion of that sentiment in Ch Reyes' article, accused Ch Reyes of intentionally denigrating persons without faith, and penned the letter to you, demanding that Ch Reyes' article be withdrawn and that Ch Reyes be punished.

The MRFF cited AFI 1-1, Section 2.11 (i.e., Government Neutrality Regarding Religion)⁵ as the basis for its demand that Ch Reyes' article not only be removed from the website (which it was), but that Ch Reyes "be appropriately reprimanded."⁶ The MRFF letter further demanded that "punitive measures and negative counseling be produced [sic] for all those involved in the production, approval and dissemination of Lt. Col. Reyes' message of religious supremacy and disrespect towards the non-religious."⁷

Allegations like this are frequently made by persons associated with the MRFF. As we have set forth in prior responses to the erroneous and legally flawed arguments of the MRFF, the following accurately explains the interplay between the Religion Clauses

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

³Todd Starnes, *Chaplain Ordered to Remove Religious Essay*, FOX NEWS, <http://radio.foxnews.com/toddstarnes/top-stories/chaplain-ordered-to-remove-religious-essay-from-military-website.html> (last visited July 29, 2013).

⁴*Id.*

⁵Air Force Instruction 1-1, Section 2.11, DEPARTMENT OF THE AIR FORCE (Aug. 7, 2012), *available at* <http://static.e-publishing.af.mil/production/1/af/publication/afi1-1/afi1-1.pdf>.

⁶Blake Page, *Blake Page Demand Letter Re: Joint Base Elmendorf-Richardson*, MILITARY RELIGIOUS FREEDOM FOUNDATION (July 24, 2013), *available at* <http://www.militaryreligiousfreedom.org/2013/07/blake-page-demand-letter-re-joint-base-elmendorf-richardson-jber/>

⁷*Id.*

of the First Amendment and the role of military chaplains. As will be shown once again, what the Constitution and U.S. law require is quite different from what the MRFF claims.

I. FIRST AMENDMENT PROTECTIONS.

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 legitimately be limited to what some Government official or civilian advocacy group or attorney may think it should mean—or is willing to tolerate.⁸

In the instant matter, Ch Reyes wrote an article from his perspective as a Christian chaplain that reflected a religious viewpoint; of special note in this regard, “[d]iscrimination against speech because of its message is presumed to be unconstitutional.”⁹ Unlike the MRFF, which attacked Ch Reyes’ article with pejoratives like “anti-secular diatribe,” “bigoted,” “defil[ing] the dignity of [unbelieving] service members,” etc., Ch Reyes did not denigrate the faith (or lack thereof) of anyone. Even a cursory review of his article indicates that he used no pejoratives directed at others. Though the MRFF certainly has the right to take issue with Ch Reyes’ article and his views, military commanders have no obligation to censor Ch Reyes’ views and remove his article from the website merely because the MRFF and some service members may be offended by the sentiments expressed. The First Amendment protects free speech from Government interference and censorship; it was never intended to protect potential hearers from speech that offends them. Moreover, every commander, staff officer, and service member in the Armed Forces of the United States has taken an oath to protect and defend the Constitution of the United States, and that includes the First Amendment’s free speech and free exercise provisions.

The MRFF frequently makes arguments alleging Establishment Clause violations. Yet, with respect to the Establishment Clause, the Supreme Court has consistently ruled that it does not require a state entity to exclude private religious speech from a public forum. It is, in fact,

peculiar to say that government “promotes” or “favors” a religious display [or religious speech] by giving it the same access to a public forum that all other displays [or expression] enjoy. And as a matter of Establishment Clause jurisprudence, we have consistently held that it is no violation for government to enact neutral policies that happen to benefit religion.¹⁰

⁸See, e.g., *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 714 (1981) (“[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.”).

⁹*Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995) (citing *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641–43 (1994)).

¹⁰*Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 763–64 (1995).

Hence, allowing a chaplain to express his or her unique, religious views in a place like “Chaplain’s Corner” does not violate the Constitution.

In one of its most powerful proclamations upholding the rights of private religious speakers in a public forum, the Supreme Court stated:

The contrary view [i.e., limiting religious expression] . . . 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.¹¹

Moreover, in *Board of Education v. Mergens*,¹² the Supreme Court noted a key distinction in this regard: “[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.”¹³ In fact, the Supreme Court has stated that a policy of excluding private religious speakers from public places where other speakers are permitted is unconstitutional:

Indeed, the message is one of neutrality rather than endorsement; if a State refused to let religious groups use facilities open to others, then it would demonstrate not neutrality but hostility toward religion. “The 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.”¹⁴

In short, the free speech clause does not protect us from being offended by another’s comments. The MRFF’s charge that Ch Reyes’ article wrongly denigrates persons of no faith is absurd on its face.

¹¹*Id.* at 766–67 (internal citations omitted) (emphasis added).

¹²496 U.S. 226 (1990).

¹³*Id.* at 250.

¹⁴*Id.* at 248 (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978)).

Nevertheless, the MRFF has sought to have JBER personnel unlawfully censor Ch Reyes' article merely because the organization disagrees with his religious viewpoint. Demanding that you censor Ch Reyes' article and punish him for his views indicates that the MRFF misunderstands and misstates First Amendment jurisprudence. This is further explained in the following section.

II. RELIGIOUS EXPRESSION IN THE MILITARY.

A. History of the Military Chaplaincy, Including Chaplains' Constitutional Rights.

The MRFF demand letter to you quoted AFI 1-1, Section 2.11, as follows: "Leaders at all levels must . . . avoid the actual or apparent use of their position to promote their personal religious beliefs to their subordinates . . ." The use of this citation demonstrates a fundamental misunderstanding by Mr. Page and the MRFF of chaplains and their roles in the military.

Military chaplains are unique members of the United States Armed Forces. By law, they are commissioned officers *without command*.¹⁵ As such, the chaplain has no command authority, meaning that the chaplain lacks lawful authority "to order a subordinate unit to execute directives or orders."¹⁶ *Further, each chaplain is a member of the clergy of a specific faith group and serves in uniform to represent and propagate the specific teachings of that faith group.*¹⁷ This is critical! Chaplains are brought into the military to propagate the specific religious teachings of their respective faith group—to military peers, superiors, and subordinates who wish to avail themselves of such teachings. Hence, when Ch Reyes writes an article that mirrors the beliefs of his faith group, he is doing the very thing that he was hired to do. There is no violation here—*except perhaps by persons at JBER intimidated by a demand letter from the MRFF.*

Further, persons who read Ch Reyes' article and were offended are persons seeking to be offended: The article was in the section called "Chaplain's Corner"; chaplains are members of religious groups serving in uniform; chaplains represent and routinely express religious views. Hence, all readers of the article in "Chaplain's Corner" were on notice that the article likely contained religious sentiments. Accordingly, persons of no faith read the article knowing it was written by a person representing a wholly

¹⁵See 10 U.S.C. § 3581 (2006).

¹⁶Field Manual 1-05: Religious Support, supra note 54, § 3-106.

¹⁷See, e.g., Dep't of the Navy, United States Navy Regulations: 1990, ch. 8, § 1, art. 0817(2) (1990) ("Chaplains shall be permitted to conduct public worship according to the manner and forms of the church of which they are members." (emphasis added)). Legislative chaplains are not so. Legislative chaplains exist, first and foremost, to seek Divine blessings on, and to solemnize the proceedings of, legislators in enacting the statutes that govern us all, not to ensure free exercise of religion by legislators. In the legislative milieu, the chaplain is not hired to represent a specific denomination and, in fact, is not expected to do so. See Andy G. Olree, *James Madison and Legislative Chaplains*, 102 NW. U. L. REV. 145, 151 (2008).

different worldview than theirs and that it could contain language and sentiments that disagreed with their worldview. No one was required to read the article or agree with its sentiments. That some were offended was a self-inflicted wound.

Any person who has served in uniform knows that chaplains represent the broad spectrum of religious beliefs found in the United States. As such, one will often hear (or read) statements made by chaplains with which one may disagree. Yet, that does not sanction censoring such sentiments as the MRFF has demanded—and which, regrettably, persons at JBER have done (by removing the article).

In truth, *denominational affiliation is the irreducible essence of membership in the chaplaincy of the United States Armed Forces, and as such, military chaplains are intentionally hired, and hence expected, to represent a specific denominational view within the military.* Military chaplains are, in the final analysis, members of the clergy of their specific faith groups who conduct their ministries in uniform.

Moreover, neither being paid a salary by the military nor wearing a uniform while performing chaplain duties converts a chaplain's religious message into Government speech which must be squelched to avoid violating the Establishment Clause. As the court in *Rigdon v. Perry*¹⁸ aptly noted, “[w]hile military chaplains may be employed by the military to perform religious duties, it does not follow that every word they utter bears the imprimatur of official military authority; if anything, the content of their services and counseling bears the imprimatur of the religious ministries to which they belong.”¹⁹ On that basis, the *Rigdon* court concluded that there was “no need for heavy-handed censorship, and any attempt to impinge on the [chaplain’s] constitutional and legal rights [wa]s not acceptable.”²⁰ Accordingly, JBER officials erred as a matter of law when they complied with the MRFF demand.

Again, as is evident from the cited case law, the MRFF's position and demands are legally baseless. Ch Reyes' article is a product of his religious background—something that is totally permissible. The MRFF's allegation that such speech must be censored is an intolerable misstatement of the law. That JBER officials acted as they did compounded the injustice.

B. Limitations on Religious Expression in the Armed Services Are Justified Solely by Actual Military Necessity, Not By a “Heckler’s Veto.”

No one disputes that military society is different from civilian society or that it needs to remain different. Because of the need to maintain good order and discipline in its ranks, men and women in uniform have fewer rights than their civilian counterparts. A

¹⁸962 F. Supp. 150 (D.D.C. 1997).

¹⁹*Id.* at 159.

²⁰*Id.* at 165.

major concern, however, deals with how commanders determine when unit cohesion and good order and discipline are adversely affected because “adverse impact” on “unit cohesion” and “good order and discipline” 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*,²¹ 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.”²² Merely because Ch Reyes’ article offended some does not entitle them to demand that the comments be censored.

Where, as here,²³ the offending message is a private message (i.e., not “state action”), the commander must be even more careful in fulfilling his responsibility to protect and defend the Constitutional rights of the 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 numerous MRFF complaints), especially when any reasonable, minimally informed, person knows that no endorsement of religion is intended.²⁴

Moreover, in a case like this, where it is a chaplain making the comments, there is no danger that any reasonable person could conclude that the Government is endorsing the message, since, as noted before, chaplains utterly lack any lawful authority to make such endorsements.

III. THE MRFF, MR. “MIKEY” WEINSTEIN, AND THEIR AGENDA.

Mr. Michael L. “Mikey” Weinstein is the founder of the MRFF. Although Mr. Weinstein and the MRFF have every right to espouse the views they do, it is imperative that you become aware of who Mr. Weinstein is and what his agenda entails. His beliefs and views are discussed more fully below.

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,

²¹505 U.S. 577 (1992)

²²*Id.* at 597 (emphasis added).

²³See *Rigdon*, 962 F. Supp. at 159 (noting that chaplains’ religious comments not attributable to the Government).

²⁴See, e.g., *Americans United for Separation of Church & State v. City of Grand Rapids*, 980 F.2d 1538, 1553 (6th Cir. 1992) (noting the existence of those who see religious endorsement, “even though a reasonable person, and any minimally informed person, knows that no endorsement is intended”, and further characterizing such a hypersensitive response as an “ignoramus’ veto”).

Reconstructionist, Dominionist, Fundamentalist, Evangelical Christianity.”²⁵ Moreover, how Mr. Weinstein describes 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.”²⁶ He has demonstrated open and continuing hostility to Evangelical Christians and their message and admits that he is willing to do whatever it takes to achieve his ends: “*I don’t want to be on the losing side knowing that I didn’t use every last diatribe and embellishment and wild-eyed, hair-on-fire, foaming-at-the-mouth harangue to get my point across . . .*”²⁷ The language Mr. Page used in his demand letter to you mirrors the pejorative, over-the-top language common to Mr. Weinstein’s frequent allegations of religious wrongdoing in the military.

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*.²⁸ Mr. Weinstein accused Reverend Graham of being “an Islamophobe, an anti-Muslim bigot, and an international representative of the scourge of fundamentalist Christian supremacy and exceptionalism,” primarily because Reverend Graham said, post-9/11, that he believed Islam “to be a very violent religion.”²⁹ Mr. Weinstein’s complaint was not based on what Reverend Graham planned to say at the

²⁵Although 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#.T0QKSlcgdcl>. 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.

²⁶Brian Kesge, *An Interview with Mikey Weinstein*, JEWS IN GREEN (Aug. 24, 2007), <http://www.jewsingreen.com/2007/08/an-interview-with-mikey-weinstein/>.

²⁷MICHAEL WEINSTEIN & DAVIN SEAY, WITH GOD ON OUR SIDE 129 (2006) (emphasis added).

²⁸See *About Us*, SAMARITAN’S PURSE, http://www.samaritanspurse.org/index.php/Who_We_Are/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, 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.”).

²⁹MICHAEL 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.”).

prayer breakfast, but instead on previous comments Reverend Graham had made concerning Islam of which Mr. Weinstein disapproved. Claims about other's bigotry are commonplace with Mr. Weinstein and the MRFF.

Mr. Weinstein's rhetorical attacks are not limited solely to Christians; 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 reacted 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. . . ." ³⁰ Similarly, in reaction to 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 rabbi who gave the advice: "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." ³¹ 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. ³² 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." ³³ He characterized General Schwartz's accomplishments as Air Force Chief of Staff as a "gutless legacy." ³⁴ 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." ³⁵

As one can see from the foregoing, Mr. Weinstein is rightly known for making bombastic, over-the-top statements about those 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.

³⁰Kesge, *supra* note 26.

³¹*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).

³²Mikey Weinstein, *Good Riddance to the Air Force's Religious Intolerance Enabler in Chief*, Aug. 1, 2012, available at <http://truth-out.org/opinion/item/10636-good-riddance-to-the-air-forces-religious-intolerance-enabler-in-chief>.

³³*Id.*

³⁴*Id.*

³⁵*Id.*

Mr. Weinstein and the MRFF routinely accuse others of making offensive and bigoted comments (as Mr. Page's demand letter to you reflects). Mr. Weinstein, for example has compared 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."³⁶ Mr. Weinstein continued: "[W]e've lost the Marine Corps, we've lost the Army, we've lost the Navy and the Air Force."³⁷ 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 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."³⁸ He even asserts: "I know that they will stop at literally nothing to achieve their ends. *That includes mass murder.*"³⁹ Mr. Weinstein claims that "fundamentalist dominionist Christians are willing to kill to achieve their twisted agenda."⁴⁰ 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,"⁴¹ Mr. Weinstein expects all of us 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."⁴² 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."⁴³ Such ludicrous assertions, bordering on paranoia, are commonplace in Mr. Weinstein's writings and speeches.

CONCLUSION

Demands by Mr. Weinstein and others in the MRFF invite extreme caution on the part of all those who are targets of their periodic tirades and who receive their periodic demand letters, lest the recipients become unwitting pawns (as certain JBER officials

³⁶MIL. RELIGIOUS FREEDOM FOUND., http://www.militaryreligiousfreedom.org/Media_video/festival-of-books/index.html (last visited Feb. 27, 2012).

³⁷Mikey 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/>).

³⁸*Id.* at 119 (emphasis added).

³⁹*Id.* at 178 (emphasis added).

⁴⁰*Id.* at 179.

⁴¹*Id.* at 31.

⁴²*Id.* at 197 (emphasis added).

⁴³*Id.* at 12 (emphasis added).

recently became) in the MRFF's strategy to eviscerate religious freedom in the Armed Forces.

In this matter, JBER officials should not have succumbed to the MRFF's baseless threats and bullying. As such, you must henceforth reject Mr. Weinstein's imagined constitutional violations. You should also right the wrong done to Ch Reyes for simply doing what he had the constitutional right to do.

The MRFF wants to remove all semblance of religious speech from the public sphere in the U.S. 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. Military officials have an obligation to protect the free exercise rights of all service members—believers and non-believers alike. Trying to limit religious speech to avoid offending the non-religious would require military officials to determine which religious speech to allow and which to disallow, in effect, preferring certain types of religious speech over others, in itself something Government officials are precluded from doing by our Constitution.

In light of the foregoing, JBER officials must utterly reject all MRFF demands to discipline Ch Reyes. JBER officials must also develop policies that preclude reacting to similar baseless demands by organizations like the MRFF in the future. The ACLJ stands ready to assist you in any way we can to ensure that the rights of persons like Ch Reyes are not violated in the future.

Sincerely yours,



Jay Alan Sekulow
Chief Counsel



Robert W. Ash
Senior Counsel

cc: The Honorable Chuck Hagel **VIA FACSIMILE**
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

The Honorable Eric Fanning **VIA FACSIMILE**
Secretary of the Air Force
1670 Air Force Pentagon
Washington, DC 20330-1670