ACLJ
American Center
for Law & Justice
Jay Alan Sekulow, J.D., Ph.D.
Chief Counsel

August 2, 2016

VIA OVERNIGHT DELIVERY SERVICE

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

RE: MRFF Demand Letter re Military Chaplains Honoring Congressman Randy Forbes in Uniform

Dear Mr. Fine:

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

We are writing to you to lay out the applicable law in situations like the one recently complained of by Mr. Michael L. "Mikey" Weinstein and to encourage you not to permit Mr. Weinstein and his organization to use the DOD IG office as a weapon to implement his agenda of eviscerating religious freedom in the Armed Forces of the United States.

INTRODUCTION

As you may already be aware, Mr. Michael L. "Mikey" Weinstein and his organization, the Military Religious Freedom Foundation (MRFF), take frequent issue with the public expression of religious sentiments by persons serving in uniform. Their recent demand letter to you (dated July 25, 2016) is just such an example. The intemperate, over-the-top language

[1] *See, e.g.*, *Pleasant Grove City v. Summum*, 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]

he used in his letter to you is typical of the letters he sends when he is offended by the actions and religious sentiments of those with whom he disagrees. Mr. Weinstein is especially hostile to Evangelical Christians and frequently alleges widespread violations of the Constitution and laws of the United States by, to use his words, "one particular version of Christianity, fundamentalist Christianity" which he alleges is used "as a weapon to intimidate, menace, harass, subdue, and terrify their otherwise helpless armed forces subordinates." Such language is commonplace in his complaints. Mr. Weinstein further characterized the event honoring Congressman Forbes as "unquestionably a blatantly anti-LGBT, atheist-bashing, fundamentalist Christian supremacy event."

It is clear that Mr. Weinstein and his organization fundamentally disagree with the message he alleges the chaplains delivered at the event, although he cites no specific language to back up his allegations of wrongdoing, to wit, that anyone present was endorsing any entity at all. Further, it is clear that Mr. Weinstein and his organization have the right under our Constitution to believe and advocate the views that they do. Nonetheless, Mr. Weinstein exhibits a very skewed view of the Constitutional rights guaranteed to the people of the United States, including to those whose views Mr. Weinstein vehemently opposes.

Even Mr. Weinstein's citing to Air Force Instruction 1-1, Section 2.12, is misplaced. The portion of AFI 1-1 that Mr. Weinstein highlighted in his letter to you stresses that a leader must ensure that his words "cannot reasonably be construed to be officially endorsing" a faith, belief or absence thereof. The key portion is "reasonably construed" and "official" endorsement (explained further below).

First, military chaplains exist, first and foremost, to meet the free exercise needs of the men and women in the United States armed services.[2] This has been true from the earliest days of our national history. As such, military chaplains are selected precisely because they represent specific faith groups and specific theological beliefs. In that light, it is not at all surprising—and is, in fact, expected—that chaplains often express comments in furtherance of their specific religious beliefs.

Because the Government hires military chaplains because of their membership in a specific faith group and because it is constitutionally inappropriate for the Government to delve into the details of religious belief and clergy qualification within a specific faith group, the Government relies on endorsing agencies to ensure that chaplains seeking to serve in the armed forces meet the religious standards required by their respective faith group. The Government can and does set neutral criteria that all chaplains—irrespective of faith group—must meet, such as education, health, age, and experience requirements, but aside from such neutral criteria, the Government relies on the endorsement of the various faith groups that the chaplain nominee fully meets the religious requirements of his respective faith group. Were a chaplain to lose his denominational endorsement, he would be separated from his respective service. Hence, *denominational affiliation is the irreducible essence of membership in the military chaplaincy, and as such, military chaplains are expected to represent a specific*

[2] *See, e.g., Katcoff v. Marsh*, 755 F.2d 223, 234 (2d Cir. 1985).

denominational view within the military. **Military chaplains are, in the final analysis, members of the clergy of their specific faith groups who conduct their ministry *in uniform*.** Moreover, there is nothing wrong with military officers participating in functions for Members of Congress, especially since it is the responsibility of Congress to make the rules that regulate the armed forces.[3]

Furthermore, Mr. Weinstein was simply wrong when he asserted that the chaplains endorsed a non-federal entity at the Forbes event. They were invited to the event to honor Congressman Forbes. When a Christian chaplain says something favorable about a Christian Congressman at a Christian gathering, no reasonable person can reasonably conclude that it is official government speech because what is said is consistent with the chaplain's personal faith and consistent with his endorsing denomination's beliefs. Christian chaplains are hired to conduct Christian ministry in uniform. Knowing that the Forbes event was essentially a Christian event, no reasonable person would think that the mere presence and participation of Christian chaplains constituted either DOD or Service endorsement of the event or the religious sentiments expressed. It would appear that Mr. Weinstein was seeking to be offended.

Second, military chaplains also exist to assist Service members of other faiths in obtaining the spiritual care that they seek. In that context, military chaplains must be familiar with the beliefs of other faith groups and must do whatever they can to assist the Service member in contacting a chaplain or civilian clergyman of that Service member's faith when faith-specific needs require it.

Third, in addition to their specific faith group and general free exercise responsibilities, military chaplains are special staff officers who assist their respective commanders in carrying out the *commanders'* religious programs.[4] By law, military chaplains are officers without command.[5] As such, the chaplain has no command authority, which means that the chaplain "does not have the authority to order a subordinate unit to execute directives or orders."[6]

In sum, chaplains are a unique type of military officer. They wear the uniform of their respective military Service, but their ability to serve in the military depends on their being members of the clergy in good standing with a specific faith group. By their very nature as members of specific faith groups, they cannot avoid, at least implicitly, affirming and favoring a specific faith group, its beliefs, and its adherents. Naturally, a Muslim chaplain will

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[3]U.S. CONST. art. I, § 8.

[4]*See, e.g.*, Dep't of Def. Directive 1304.19 § 4.1 (June 11, 2004) ("Appointment of Chaplains for the Military Departments") (hereinafter DoDD).

[5]*See* 10 U.S.C. § 3581.

[6]U.S. DEP'T OF ARMY, FIELD MANUEL 1-05, § 3-105 (Apr. 2003) ("Chaplains at brigade and higher levels provide staff supervision of religious support by visiting subordinate units, monitoring the tactical situation, and revising estimates and plans based on changes in METT-TC."); *id.* § 3-106 ("A staff officer does not have the authority to order a subordinate unit to execute directives or orders. Staff officers make recommendations to subordinate commanders. These recommendations may be accepted or rejected. A staff chaplain may contact a subordinate UMT to provide instructions, advice, and recommendations, offer assistance, or exchange information. The commander will establish the nature and degree of the chaplain's actual authority or control in implementing the RSP.").

speak favorably of Islam and Muslims, just as a Christian chaplain will speak favorably of Christianity and its adherents. When doing so, though, no *reasonable observer* would see such affirmation as official DOD endorsement because chaplains are supposed to serve the free exercise needs of the men and women in uniform, because chaplains personally belong to a particular faith group whose beliefs they were hired to represent, and because chaplains are officers without command. Accordingly, *reasonable* observers would not conclude, as Mr. Weinstein and his organization invariably do, that when chaplains express positive religious sentiments about members of their faith group in uniform (which is the fundamental reason they are in the military in the first place), they are in violation of AFI 1-1.

Further, although Mr. Weinstein beats the drum about the wearing of uniforms at the award event, he cites no specific regulation that he claims was violated. Perhaps he was referring to DOD Directive 1334.1, subpara. 3.1.3., which prohibits appearing in uniform "when participating in activities such as unofficial public speeches, interviews, picket lines, marches, rallies or any public demonstration, which may imply Service sanction of the cause for which the demonstration or activity is conducted." This would not appear to apply to the Forbes event for the simple reason that the attending chaplains gave short, solemnizing prayers to honor a Member of Congress who had been a strong supporter of the military chaplaincy, and short solemnizing prayers are commonplace at events like awards ceremonies, promotion ceremonies, and the like. Hence, to conclude as Mr. Weinstein does that giving a solemnizing prayer—or, even, one's physical presence—without more violates the Directive is specious. Your very office, in its investigation of Army LTG William Boykin[7] in 2004, found no such violation despite General Boykin's having appeared in multiple public locations in uniform, giving speeches in churches and similar locations. If LTG Boykin's activities did not violate the Directive, neither can the chaplains' attendance and saying solemnizing prayers at the Forbes event violate the Directive.

Finally, it must also be kept in mind that one simply cannot measure reasonableness based on the perceptions of the most religiously hostile and hypersensitive amongst us. Mr. Weinstein and the MRFF clearly fall into that category. That is confirmed by Mr. Weinstein's allegation, *inter alia*, that the chaplains' participation in the Forbes event in uniform was somehow unconstitutional.[8] Such a charge is difficult to fathom, since the Constitution includes both the Free Exercise and Free Speech clauses of the First Amendment, and a chaplain's religious speech, including prayers, is protected under both the Free Exercise and Free Speech clauses of the First Amendment.

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[7] *See Alleged Improprieties Related to Public Speaking: Lieutenant General William G. Boykin, U.S. Army Deputy Under Sec'y of Def. for Intel*, 2004 DOD Insp. Gen. H03L89967206. Although the OIG investigation noted that "LTG Boykin's speeches before religious groups were generally *open to the public*, locally *advertised and promoted*, and taped or video *recorded for public distribution*," *see id.* at 19 n.7 (emphasis added), the OIG nevertheless found that his speaking events were not "public" "as that term is used in DOD Directive 1334.1 and AR 760-1," *id.* at 19.

[8] *See* Letter from Michael L. "Mikey" Weinstein to Glenn A. Fine (July 25, 2016) ("It is at once unlawful, *unconstitutional* . . . ." (emphasis added)).

I. GENERAL PRINCIPLES CONCERNING RELIGIOUS FREEDOM.

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 . . . ."[9] In 1892, the Supreme Court stated that "this is a religious nation."[10] 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.*[11]

Thus, "[i]n the relationship between man and religion, the State is firmly committed to a position of neutrality."[12] The Court has consistently noted the importance the role of neutrality plays, emphasizing that neutrality prohibits hostile treatment of religion. In *Board of Education v. Mergens*, Justice O'Connor aptly noted that "[t]he Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore *subject to unique disabilities*."[13] 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."[14]

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*."[15] The chaplains' prayers were private speech, not government speech. Hence, their remarks were protected speech. 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."[16]

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[9] U.S. CONST. amend. I.
[10] *Holy Trinity v. United States*, 143 U.S. 457, 470 (1892).
[11] 343 U.S. 306, 313–14 (1952) (emphasis added).
[12] *School District v. Schempp*, 374 U.S. 203, 226 (1963).
[13] 496 U.S. 226, 248 (1990) (emphasis added).
[14] *Schempp*, 374 U.S. at 299 (emphasis added).
[15] *Mergens*, 496 U.S. at 250 (emphasis added).
[16] *Id.*

When discussing the right to free exercise of religion, it must be clearly understood that free exercise of religion means what it says—free exercise. Free exercise may not be legitimately limited to what some government official or civilian advocacy group (like the MRFF) or civilian attorney (like Mr. Weinstein) may think it should mean—or is willing to tolerate. After all, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."[17] Hence, it is clear that the enforcement of a blanket rule prohibiting individuals serving in the military, including chaplains, from discussing their faith or expressing other religious sentiments violates the most basic First Amendment rights of free speech and free exercise of religion. Such Constitutional rights also apply to senior officers like the Air Force Chief of Chaplains. Granted, due to the unique nature of military life and society, there are times when senior officers must limit their religious or philosophical expression—such as situations where there is a captive audience—but those at the Forbes award event where the chaplains gave an invocation and benediction did not constitute a captive audience. No one was required to be in attendance, and no one was required to stay to hear either prayer. Nor was it a required military formation, so the concerns about seniors vis-à-vis subordinates was not present.

II. RELIGIOUS EXPRESSION IN THE MILITARY.

The Department of Defense has correctly recognized its responsibility under the Constitution to provide for the religious free exercise needs of men and women in uniform (which includes chaplains), consistent with the requirement to maintain good order and discipline.

A. Official DOD Policy Protects Religious Expression.

- All military commanders must provide for the free exercise of religion by servicemen under their command:

  - "[C]ommanders [must] discharge their responsibilities to provide for the free exercise of religion in the context of military service as guaranteed by the Constitution."[18]

- All requests to accommodate religious expression *should* be approved when not adversely impacting (1) military readiness, (2) unit cohesion, (3) standards, or (4) discipline:

  - "A basic principle of our nation is free exercise of religion. The Department of Defense places a high value on the rights of members of the Armed Forces to observe the tenets of their respective religions. It is DoD policy that requests for accommodation of religious practices should be approved by commanders

[17] *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 714 (1981).
[18] DoDD 1304.19 § 4.1.

when accommodation will not have an adverse impact on military readiness, unit cohesion, standards, or discipline."[19]

- When resolving *difficult* questions about religious accommodation, commanders should consider the following factors:

  - "The importance of military requirements in terms of individual and unit readiness, health and safety, discipline, morale and cohesion."
  - "The religious importance of the accommodation to the requester."
  - "The cumulative impact of repeated accommodations of a similar nature."
  - "Alternative means available to meet the requested accommodation."
  - "Previous treatment of the same or similar requests, including treatment of similar requests made for other than religious reasons."[20]

B. Limitations on Religious Free Exercise in the Armed Forces May Be Justified Solely by Actual Military Necessity, Not by a "Heckler's Veto" of Those Opposed to Religion.

A major concern regarding free exercise of religion in uniform deals with how commanders determine when unit cohesion is 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."[21] Where the offending expression is a private message 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 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 frequent, erroneous complaints lodged by the MRFF and similar groups), especially when any reasonable, minimally informed, person knows that no 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

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[19]DoDD 1300.17 § 3.1 (Feb. 3. 1988) ("Accommodation of Religious Practices Within the Military Services").
[20]*See* DoDD 1300.17 § 4.1.
[21]505 U.S. 577, 597 (1992) (emphasis added).

that no endorsement is intended."[22] The court characterized such a hypersensitive response as a form of heckler's veto, to which the court aptly applied the label, "'ignoramus' veto."[23]

The religious expression by the chaplains at the Forbes event was private expression—each chaplain who prayed chose, first, whether to accept the invitation to pray, and, second, the very words of his prayer. Accordingly, each chaplain's speech was private speech delivered at a private event honoring a Member of Congress who was a strong supporter of the military chaplaincy.

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. The MRFF 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, Justice O'Connor aptly noted the following regarding a "reasonable observer":

> There is always someone who, with a particular quantum of knowledge, reasonably might perceive a particular action as an endorsement of religion. A State has not made religion relevant to standing . . . simply because a particular viewer of a display [or hearer of remarks] might feel uncomfortable. *It is for this reason that the reasonable observer in the endorsement inquiry must be deemed aware of the history and context of the community and forum in which the religious* [*activity*] *appears.*[24]

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 hear religious sentiments expressed, and that the military does not endorse one religious sentiment over another merely because it permits such sentiments to be expressed. *In this matter, none of Mr. Weinstein's clients was present at the event. Hence, any offense they suffered was merely because they became aware of the fact that a few chaplains wearing uniforms said something at an event somewhere that they would have been offended by had they been there to hear it.* **That is wholly unreasonable, and the DOD IG should not play any part in Mr. Weinstein's game!**

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

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[22] 980 F.2d 1538, 1553 (6th Cir. 1992).
[23] *Id.*
[24] *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 Virginia*, 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. . . .").

speech rights of all Service Members—believers and non-believers alike. Limiting religious expression to avoid offending the non-religious would require military officials to determine which religious expression to allow and which to disallow, in effect, preferring certain types of religious expression over others, in itself something Government officials are precluded from doing by our Constitution.

III. 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 your colleagues at the DOD IG office 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-Millenial, Dispensational, Reconstructionist, Dominionist, Fundamentalist, Evangelical Christianity."[25] 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."[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 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

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[25]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 *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#.T0QKSIcgdcI. 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.

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

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

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."[29] 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. . . ."[30] 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."[31]

Such language and vitriol are the norm in Mr. Weinstein's frequent tirades.

Mr. Weinstein also 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

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[28]*See About Us*, SAMARITAN'S PURSE, http://www.samaritanspurse.org/our-ministry/about-us/ (last visited Apr. 28, 2016) ("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.").

[29]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.").

[30]Kresge, *supra* note 26.

[31]*Id.* Calling a Jew a "kapo" is the ultimate insult. "Kapos" were Jews who assisted the Nazis in controlling fellow Jewish inmates in concentration camps. *See Kapos*, JEWISH VIRTUAL LIBR., http://www.jewish virtuallibrary.org/jsource/Holocaust/kapos.html (last visited Feb. 21, 2012).

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

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]

Thus, Mr. Weinstein is rightly 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, as he did in his recent demand letter to you. 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."[36] Mr. Weinstein continues: "[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 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."[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 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,"[41] 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."[42] Elsewhere, once again without citing any

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[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] MIL. RELIGIOUS FREEDOM FOUND., http://www.militaryreligiousfreedom.org/Media_video/festival-of-books/index.html (last visited Apr. 28, 2016).
[37] 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/).
[38] NO SNOWFLAKE, *supra* note 29 at 119 (emphasis added).
[39] *Id.* at 178 (emphasis added).
[40] *Id.* at 179.
[41] *Id.* at 31.
[42] *Id.* at 197 (emphasis added).

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 outlandish assertions, bordering on paranoia, are commonplace in Mr. Weinstein's writings and speeches. He sees religious intrigue wherever he looks. He has found it again at the Forbes event.

CONCLUSION

In light of the foregoing, we urge you to disregard Mr. Weinstein's call to investigate the chaplains who attended and participated in the Forbes event. It is unreasonable to conclude that anyone at the awards ceremony could conclude that the chaplains were *officially* endorsing anything. Their prayers were clearly personal, and they presented them in a forum where persons were free to come and go as they pleased (i.e., there was no captive military audience). Accordingly, *Mr. Weinstein's allegations are baseless, and they must be treated as such by you.*

Should DOD desire ACLJ assistance in dealing with such a matter or in drafting or reviewing guidelines for subordinate commanders faced with similar or future MRFF demands, we stand ready to assist you.

Respectfully yours,

Jay Alan Sekulow
Chief Counsel

Robert W. Ash
Senior Counsel

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

[43] *Id.* at 12 (emphasis added).