



August 21, 2018

VIA OVERNIGHT DELIVERY SERVICE

The Honorable James Mattis
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

RE: Letter Addressed to You from Donald G. Rehkopf, Jr., dated 12 August 2018, Regarding BrigGen E. John Teichert, USAF, Current Commander at Edwards AFB, California

Dear Mr. Secretary:

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

The purpose of this letter is to provide you with relevant legal information in response to a recent complaint filed by Attorney Donald G. Rehkopf, Jr. and the Military Religious Freedom Foundation (“MRFF”) on behalf of 41 “U.S. military and DoD civilian clients at Edwards Air Force Base, California.”² In his letter to you, Mr. Rehkopf made a series of allegations of serious

¹Regarding Supreme Court cases alone, *see, e.g., Pleasant Grove City v. Summum*, 555 U.S. 460, 464 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept other monuments merely because it has a Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93, 232 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); *Lamb’s Chapel v. Ctr. Moriches Sch. Dist.*, 508 U.S. 384, 397 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226, 253 (1990) (holding by an 8–1 vote that allowing a student Bible club to meet on a public school’s campus did not violate the Establishment Clause); *Bd. of Airport Comm’rs v. Jews for Jesus*, 482 U.S. 569, 577 (1987) (unanimously striking down a public airport’s ban on First Amendment activities).

²Letter from Donald G. Rehkopf, Jr., to the Hon. James N. Mattis, (Aug. 12, 2018), at 1 [hereinafter Rehkopf Letter]. Available at http://militaryreligiousfreedom.org/docs/Mattis_Letter_Final_12_AUG_18_Rehkopf.pdf (last visited Aug. 21, 2018).

wrongdoing on the part of BrigGen E. John Teichert, USAF, the current commander of Edwards AFB.

INTRODUCTION

At the outset, we must admit that it is difficult to know exactly where to start to refute the many false allegations and legal misstatements contained in Mr. Rehkopf's letter. As we will show below, Mr. Rehkopf imputes impure motives to General Teichert and alleges harm based on his and MRFF's hypersensitivity to religious expression by persons in uniform. When Mr. Rehkopf encounters a religious view expressed by General Teichert, he automatically assumes that such a view translates into policies and actions that denigrate and discriminate against the service members and DoD civilian employees under General Teichert's command who hold contrary views. Mr. Rehkopf cited no actual policy or action on General Teichert's part that has harmed any service member or civilian at Edwards AFB or elsewhere. Instead, he extrapolated from certain statements General Teichert has made in a forum outside of exercising his command authority, improperly stretched the language of the regulations and policy letters he cited to allege that they forbid what General Teichert said, and then alleged that persons at Edwards AFB have been harmed thereby. If you wish a preview of what motivates Mr. Rehkopf and the MRFF to make the claims that they do, you may wish to refer to the section entitled, "The MRFF and Its Agenda," beginning on page 18, *infra*.

In essence, Mr. Rehkopf's complaint boils down to this. Forty-one MRFF clients at Edwards AFB, "many of whom are in mortal fear of retaliation should they be personally identified in this matter," are offended by the beliefs General Teichert has expressed in contexts wholly outside the exercise of his military authority (with the one cited exception of thanking his Lord and Savior at the change of command ceremony at Edwards AFB). Note that Mr. Rehkopf begins his argument with obvious hyperbole, to wit, that the clients are in "mortal fear," which means that they are in fear for their lives by what he alleges General Teichert has said on his personal social media site. He further alleged that at least one of the MRFF clients "is in actual fear of *physical* violence . . . should his/her identity as a complainant be exposed."³

Note also that throughout his letter Mr. Rehkopf routinely uses language that demeans General Teichert's faith. For example, Mr. Rehkopf asserts that General Teichert promotes "fundamentalist, dominionist 'Christian' beliefs."⁴ By placing the word Christian within quotation marks, Mr. Rehkopf openly questions whether such beliefs can be described as Christian at all. Further, he uses the terms fundamentalist and dominionist to imply that General Teichert's beliefs are out of the mainstream and hence dangerous. Mr. Rehkopf also describes General Teichert's faith as a "particular brand of *politico-religion*."⁵ Elsewhere he describes it as "extremist, dominionistic 'Christianity.'"⁶ Note, once again, the use of quotation marks around the word Christianity. This shows deep-seated animus on Mr. Rehkopf's part regarding General

³*Id.* at 16.

⁴*Id.* at 5.

⁵*Id.* at 8.

⁶*Id.* at 13 n.29.

Teichert's religious beliefs. Accordingly, one must bear in mind two points: (1) That Mr. Rehkopf's open hostility to General Teichert and his beliefs clearly affects his judgment and analysis, and (2) That Mr. Rehkopf's characterization of General Teichert's beliefs doubtless does not reflect how General Teichert would describe his beliefs.

Although we will probably not be able to answer each and every allegation in Mr. Rehkopf's letter, we will attempt to refute the majority of his allegations by citing what the appropriate law says as opposed to what Mr. Rehkopf would like it to say and by showing that what Mr. Rehkopf claims to be wrongdoing is based on his misunderstanding and/or mischaracterization of the law and regulations he cites.

ISSUE OF GOOD ORDER AND DISCIPLINE

We readily acknowledge up front that military and civilian societies are different and that they need to be different in order to attain the level of discipline needed for our military to fight and win our Nation's wars. We fully recognize that the attainment and maintenance of good order and discipline are absolutely necessary within the military⁷ and that any conduct or speech *whether religious or non-religious*—that *actually* interferes with attaining and maintaining good order and discipline can and should be stopped. We must also recognize, however, that there are some in our country who are hypersensitive to religion and the expression of religious sentiments, who see church-state separation violations wherever they look, and who attempt to stop such expression “even though a reasonable person, and any minimally informed person, knows that no endorsement is intended.”⁸ The Sixth Circuit aptly characterized such a hypersensitive response as a form of heckler's veto which the court labeled the “‘ignoramus’ veto.”⁹ As we proceed, we believe that you will concur that that moniker appears to apply to Mr. Rehkopf's complaint.

The United States Armed Forces are composed of persons from every race, creed, and religion in our Nation. The military cannot accommodate the most religiously sensitive among us by clamping down on virtually all religious expression by persons in uniform without sooner or later affecting the morale of religious believers in uniform (who, incidentally, make up the majority of its members¹⁰). Hence, leaders in uniform must act to stop actual, *not hypothetical*, church-state violations, to wit, those that actually denigrate good order and discipline, rather than those that despite forceful argument to the contrary do not. In this matter, the expressed fears of 41 persons out of over 11,000 *without any evidence of actual wrongdoing* is hardly a credible indication of the breakdown of good order and discipline at Edwards AFB that should

⁷Good order and discipline are essential components of an effective military unit. *See, e.g.*, Quotation of General George Washington, in William A. Cohen, *Secrets of Special Ops Leadership: Dare the Impossible, Achieve the Extraordinary* 98 (2006) (“Nothing is more harmful to the service than the neglect of discipline; for that discipline, more than numbers, gives one army superiority over another.”).

⁸*Americans United for Separation of Church & State v. City of Grand Rapids*, 980 F.2d 1538, 1553 (6th Cir. 1992).

⁹*Id.*

¹⁰*See, e.g.*, David R. Segal & Mady Wechsler Segal, *America's Military Population*, 59 PRB 3, 25 (Dec. 2004) (reporting the combined percentage of Protestants, Catholics, and “Other Christians” alone at 68% as of 2001; Hindus, Muslims, Buddhists, and Jews were also reported but comprised less than 0.5% each of the total number).

result in drastic action against an officer who has obviously served his country well for over 24 years¹¹ and who, according to Mr. Rehkopf's own letter, has only been in command for one month.¹²

In the following pages, we will show that Mr. Rehkopf's allegations and arguments stem from a hypersensitive view of General Teichert's religious beliefs, a skewed understanding of the impact of General Teichert's beliefs on his subordinates, and a misunderstanding of what the Constitution, laws, regulations, and policies require in response.

DOD & AIR FORCE SOURCES CITED

Air Force Instruction (AFI) 1-1, para 2:11:

Let's begin by discussing Air Force Instruction (AFI) 1-1, para 2.11, which reads:

Every Airman is free to practice the religion of their choice or subscribe to no religious belief at all. You should confidently practice your own beliefs while respecting others whose viewpoints differ from your own.

Mr. Rehkopf cites the above language and then concludes: "Brig Gen Teichert apparently cannot (or will not) accept this mandate."¹³ Mr. Rehkopf provides no evidence whatsoever that General Teichert cannot or will not accept that mandate. He simply states it as a given.

Mr. Rehkopf clearly fails to appreciate the following based on para 2:11's explicit language: (1) That, as an Airman himself, General Teichert is free to practice the religion of his choice; (2) That he is able *-even encouraged-* to "confidently practice" those beliefs; and (3) That the Air Force, by its choice of words in the second sentence, sees no contradiction in one's being able to confidently practice one's own beliefs (religious or otherwise) and respect differing viewpoints simultaneously.

In Footnote 6, Mr. Rehkopf asserts: "Brig Gen Teichert is quite clear and emphatic that only *his* brand of Christianity is acceptable in the United States and thus, ignores specific DoD and AF policies, directives and instructions pertaining to diversity, equal opportunity, and religious tolerance (to include those with no religious beliefs)" (emphasis in original). That statement drips with irony. Even as Mr. Rehkopf is self-righteously condemning *his characterization* of General Teichert's beliefs as intolerant, he himself is simultaneously demonstrating religious intolerance of beliefs with which he disagrees. Tolerance is a two-way street or there is no tolerance. Further, nowhere does Mr. Rehkopf provide any evidence whatsoever that General Teichert has asserted "that only *his* brand of Christianity is acceptable in the United States" (emphasis in original) or anything similar.

¹¹Rehkopf Letter, *supra* note 2, at 5 (screenshot text says that General Teichert entered the USAF in 1994). Further, one does not attain the rank of Brigadier General without having been an outstanding leader in every post he has previously held.

¹²*Id.* at 16.

¹³*Id.* at 3.

We contend that the actual language of AFI 1-1, para 2:11, gets it right. One can both confidently practice one's own beliefs *and* respect opposing beliefs and viewpoints. They are not mutually exclusive as Mr. Rehkopf apparently believes.

AFI 1-1, para 2:12:

Paragraph 2:12 warns Air Force leaders against actions that could violate "the constitutional prohibition against governmental establishment of religion." The paragraph continues:

[Leaders] must ensure their words and actions *cannot reasonably be construed* to be officially endorsing or disproving of, or extending preferential treatment for any faith, belief, or absence of belief (emphasis added).

The key here is what constitutes "reasonableness." When considering whether the government has "endorsed" religion (i.e., violated the Establishment Clause), the Supreme Court of the United States has aptly noted that

[t]here is always *someone* who, with a particular quantum of knowledge, reasonably *might perceive* a particular action as an endorsement of religion. A State has not made religion relevant to standing . . . simply because a particular viewer of a display [or a social media site] might feel uncomfortable.

*It is for this reason that the reasonable observer in the endorsement inquiry must be deemed aware of the history and context of the community and forum in which the religious [activity] appears.*¹⁴

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

That some people nonetheless object to such expression does not require the government to accommodate their objections. As the Court in *Lee v. Weisman* aptly noted: "We do not hold that every state action implicating religion is invalid if one or a few citizens find it offensive. People may take offense at all manner of religious as well as nonreligious messages, but offense

¹⁴*Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 780 (1995) (emphasis added in part); *see also Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995) ("It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. . . . Discrimination against speech because of its message is presumed to be unconstitutional.").

alone does not in every case show a violation.”¹⁵ That is the case here. The MRFF clients took offense at General Teichert’s religious views expressed outside of the work context on a private social media site. That does not justify censoring his views, especially since his views were specifically aimed at fellow Christians. He was not imposing his beliefs on others.

Mr. Rehkopf also cites the “complete absence of any valid disclaimer” as “giv[ing] the appearance of an official statement.”¹⁶ Although a disclaimer might have been helpful to disabuse Mr. Rehkopf and the MRFF clients from concluding that General Teichert was making an official endorsement. Mr. Rehkopf cites no regulation or other source which *requires* a disclaimer. Once again, though, it is the reasonableness standard that applies here no reasonable Airman would conclude that a religious viewpoint expressed on a private social media site could constitute an official government endorsement of such viewpoint.

Mr. Rehkopf failed to note how General Teichert himself describes what he is doing on his home page (under the heading “Motivation”), which constitutes a disclaimer of sorts:

This is not a political group or an advocacy group it is a group united by a common concern regarding the way our nation has drifted away from the Lord. It is a call *for Christians* to exercise their citizenship responsibilities to pray for our nation and its leaders, and to pray that the Lord will change our national heart so that He can change our national direction.¹⁷

By his own words, General Teichert is reaching out to fellow *Christians* and encouraging them to pray for their country. He is not attempting to convert others to his faith or impose his beliefs on anyone. There is no coercion whatsoever. Even the web address of his home page <http://prayatlunch.us/>—omits his name. Hence, it is difficult to understand how one can imply that General Teichert was imposing his religious views on anyone, much less his subordinates.

AFI 1-1, para 2.15.5:

Paragraph 2.15.5 reads in relevant part:

When you are expressing personal opinions on social media sites and can be identified as an Airman, you should make it clear that you are speaking for yourself and not on behalf of the Air Force. While service members may generally use their rank and service even when acting in their personal capacity, they should not do so in situations where the context may imply official sanction or endorsement of their personal opinions.

As in the preceding discussion, the reasonableness standard applies here. General Teichert expressed his personal views on his personal social media site aimed at fellow believers.

¹⁵*Lee v. Weisman*, 505 U.S. 577, 597 (1992).

¹⁶Rehkopf Letter, *supra* note 2, at 4.

¹⁷PTUS, <http://prayatlunch.us> testimony (last visited on Aug. 17, 2018) (emphasis added).

No reasonable Airman would conclude that a religious viewpoint expressed on a private social media site could constitute an official government endorsement of such viewpoint. Further, on the screenshot shown at the top of page 6 of Mr. Rehkopf's letter, in the section captioned "About John," the text identifies who General Teichert is and cannot reasonably be construed to be a statement by the Air Force.

Neither can the interview text included in Mr. Rehkopf's letter on pages 6-8 be construed as such. Although General Teichert "got saved" while serving as an Air Force officer, nowhere in the text of the interview does he imply in any way, shape or form that he is speaking for the Air Force. He speaks primarily about himself. His religious comments are aimed at fellow Christians and have no tie whatsoever to the Air Force. Mr. Rehkopf is tilting at a windmill of his own making.

There is simply no way that a reasonable person with or without Mr. Rehkopf's proverbial "crystal ball"¹⁸ -- could conclude that General Teichert's actions here constitute an improper endorsement *by the government* of General Teichert's beliefs, much less an attempt to "aggressively promote *his* brand of religion."¹⁹ Such claims reflect Mr. Rehkopf's and the MRFF clients' hypersensitivity to all religious expression to which we referred earlier. To them, religious expression by leaders in the military is *per se* impermissible. But that is not the Constitutional standard. *Mr. Rehkopf does not advocate religious tolerance; he advocates silence.*

AFI 1-2, para 3.2:

Mr. Rehkopf included the following portion of para 3.2 in his letter:

At all times, commanders must lead by personal example and pay judicious attention to the welfare and morale of their subordinates. Commanders will enforce the Air Force cultural standards on conduct ... outlined in AFI 1-1, *Air Force Standards*.

Mr. Rehkopf cites the above paragraph apparently to imply that General Teichert has somehow failed to lead by personal example and pay judicious attention to the welfare and morale of his subordinates because his "religious proclamations as a *commander* affects [sic] MRFF's clients at EAFB [Edwards AFB] . . ." ²⁰ Yet, other than their disagreement with and distaste for General Teichert's religious views expressed on a personal social media site (and one cited instance of his thanking "my Lord and Savior" at his change of command ceremony²¹), Mr. Rehkopf provides not one iota of *objective* evidence that General Teichert's beliefs have negatively impacted the actual welfare of any Airman or civilian at Edwards AFB.

¹⁸Rehkopf Letter, *supra* note 2, at 8.

¹⁹*Id.* at 8.

²⁰*Id.* at 5.

²¹*Id.* at 10.

The *subjective* reaction of 41 persons, hypersensitive to religious expression, cannot be the standard to limit or forbid the expression of viewpoints with which such persons disagree or Pandora's box will be opened. If the standard to exclude certain expression is *subjective* offense at what is said, *then all speech is at risk*. It is worth noting what the U.S. Supreme Court has said regarding subjective offense: "We do not hold that every state action implicating religion is invalid if one or a few citizens find it offensive. People may take offense at all manner of religious as well as nonreligious messages, but offense alone does not in every case show a violation."²²

AFI 36-7001, para 1.6:

AFI 36-7001 deals with the topic of diversity. Paragraph 1.6 states:

Implementation of the Air Force diversity policy is the responsibility of every Air Force Leader.

Mr. Rehkopf apparently cites AFI 36-7001 to imply that General Teichert is not in compliance with Air Force policy. Once again, Mr. Rehkopf cites to no specific act as proof that General Teichert has violated this provision—making personal statements on a personal social media site about one's personal religious beliefs does not prove the allegation. Further, General Teichert expresses beliefs consistent with his faith *without denigrating any other faith or unbelief*. Other than citing to subjective fear on the part of 41 persons at Edwards AFB that some harm may befall them at some point, Mr. Rehkopf points to no specific harm that has befallen anyone under General Teichert's command. *Had he been able to point to an actual incident where actual harm had occurred, he doubtless would have done so*. He also utterly fails to appreciate that General Teichert's religious beliefs are themselves protected as a legitimate reflection of "demographic diversity" permitted within the Air Force, defined in AFI 36-7001, para 1.3.2.1, as "inherent or socially defined personal characteristics," which Mr. Rehkopf admits includes religion.

Admittedly, when General Teichert identifies himself as a Christian, he is implicitly saying that he is not a Muslim, a Jew, a Hindu, a Buddhist, an atheist, etc., just as when a person says he is an atheist, he is implicitly saying that he is not a Christian, a Muslim, a Jew, a Hindu, and so on. That is the essence of affirming one's religious faith or other beliefs. None of these expressions by itself can even remotely be construed as violating the Air Force's policy on diversity, as implied by Mr. Rehkopf.

MR. REHKOPF'S ARGUMENTS

Beginning on page 5 of his letter, Mr. Rehkopf begins to argue his case against General Teichert. He begins by describing General Teichert's beliefs as "fundamentalist, dominionist 'Christian' beliefs,"²³ and mentioning that "[h]e created an acronym for this [his faith] he called

²²Lee, 505 U.S. at 597.

²³See *supra* note 4 and accompanying text.

‘PLUS’ which stands for Prayer at Lunchtime for the United States.”²⁴ He cites no source to confirm that General Teichert actually adheres to any beliefs *as characterized by* Mr. Rehkopf. *Such allegations lack the objectivity, respect, and fairness that should be shown when discussing another person’s religious beliefs*— that person should be permitted to describe them himself and not be subject to a characterization of his beliefs made by a person openly hostile to such beliefs, especially since the terms “fundamentalist” and “dominionist” are often used as pejoratives by persons hostile to Bible-believing Christians. Mr. Rehkopf’s use of pejorative terms in conjunction with “PLUS” is meant to suggest that General Teichert’s views are somehow subversive and dangerous. That is the height of arrogance and intolerance and, as we will see, totally without foundation.

On page 6, Mr. Rehkopf shows a screenshot of General Teichert’s homepage showing a view of a portion entitled, “About John.” That is simply a five-line description of who the General is. One will search in vain for anything subversive to good order and discipline or the welfare of General Teichert’s subordinates there.

At the bottom of page 6 begins an introduction to an interview of General Teichert by Pastor Paul Chappell. The interview continues to page 8 of the Rehkopf letter. Note that this interview took place when General Teichert was a Colonel “approaching twenty years of service.”²⁵ The majority of the interview could have been about almost any highly successful Air Force officer who ultimately attains General Officer rank. It is not until the second page of the interview that General Teichert mentioned something religious. And, even then, he merely noted that he “got saved,” that he attended a Baptist Church where he experienced a “balance of grace and truth,” and that he hoped that PLUS would help turn the tide from what he viewed as “our country . . . slip[ing] away from its founding Christian principles”²⁶ a common view held by many Bible-believing Christians.

Yet, it was at this point, that Mr. Rehkopf asserts that

Brig Gen Teichert is using both his military rank as well as his position and status as an Air Force officer to aggressively promote *his* brand of religion— clearly giving the appearance if not outright impression that he, in his *official* status, is endorsing if not outright proselytizing his particular brand of *politico-religion*.²⁷

It is difficult to respond to such a lathered claim. Believing that the current state of the country is not what it should be, that Christians are partly to blame for that condition, and that Christians should act to try to change that state does not— in our wildest imagination— rise to the level of “aggressive[] promot[ion of] his brand of religion” or “outright proselytiz[ation of] his particular brand of politico-religion.” That is such a stretch that it cannot be taken seriously. General Teichert was being interviewed by a Christian pastor for a Christian audience. In other

²⁴Rehkopf Letter, *supra* note 2, at 5 (citing to General Teichert’s homepage).

²⁵*Id.* at 7 (meaning that the interview took place approximately four years before he assumed command of Edwards AFB).

²⁶*Id.* at 8.

²⁷*Id.*

words, he was preaching to the proverbial choir there was no need to proselytize the proselytized. To conclude as Mr. Rehkopf does is both outlandish and ludicrous.

On page 9 of his letter, Mr. Rehkopf shows a screenshot of a page showing a shoulder on which is placed the single star of an Air Force Brigadier General. The text on the screenshot page speaks of humility and thankfulness for attaining the star. It gives the glory and credit to God. It points out General Teichert's view that our sufficiency in life comes from God. Admittedly, those are not beliefs held by everyone, but they are the beliefs of millions and millions of Christians. General Teichert's seeming temerity in simply stating his beliefs in humble and thankful terms has Mr. Rehkopf in an uproar. Rather than see General Teichert's comments as an expression of thankfulness to God for the gift of his promotion to Brigadier General, Mr. Rehkopf sees the use of the photo of the star as an expression of General Teichert's pride and, apparently, an indication about how he can use his new rank to somehow oppress his subordinates. Not only is there no evidence of this, General Teichert's past outstanding performance belies it--if the General had been mistreating his subordinates, it is highly unlikely that he would now be a Brigadier General.

Mr. Rehkopf continues on page 10. His arguments become more and more unhinged. For example, after mentioning that General Teichert "invoked his personal religious beliefs by stating *'I first want to thank my Lord and Savior'*" at his change of command ceremony, he accuses the General of being intolerant towards "those who do not believe in *his* 'Lord and Savior,'" which Mr. Rehkopf claims to be in violation of AFI 1-1, paras 2.11 & 2.12²⁸ (both of which we dealt with earlier).

When Mr. Rehkopf asserts that merely hearing someone say "I first want to thank my Lord and Savior" implies intolerance in violation of AFI 1-1, he advocates giving religious speech less protection than non-religious speech. In fact, he supports silencing religious expression altogether. That itself violates the Constitution. The Supreme Court has said this about such an attitude:

[U]ntutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. *Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it.*²⁹

The First Amendment [] does not say that in every and all respects there shall be a separation of Church and State. . . . Otherwise the state and religion would be aliens to each other-- hostile, suspicious, and even unfriendly. . . . Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the

²⁸*Id.* at 10.

²⁹*Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 306 (1936) (emphasis added).

Constitution. . . . A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: "God save the United States and this Honorable Court."³⁰

We are a religious people whose institutions presuppose a Supreme Being.³¹

The First Amendment's Religion Clauses mean that religious beliefs *and religious expression* are too precious to be either proscribed or prescribed by the [Government].³²

[The view that private religious expression can be disallowed in a limited public form] . . . 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.³³

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.³⁴

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

Notably, the First Congress *the same Congress that drafted the First Amendment* established the tradition of including religious expression at presidential inaugurations (which, in truth, constitute military change of command ceremonies, where the Nation's new Commander

³⁰*Zorach v. Clauson*, 343 U.S. 306, 312-13 (1952); see also *id.* at 314 (noting "no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence").

³¹*Id.* at 313.

³²*Lee*, 505 U.S. at 589 (emphasis added).

³³*Capitol Square Review & Advisory Bd.*, 515 U.S. at 766-67 (emphasis added) (citation omitted).

³⁴*Mergens*, 496 U.S. at 248 (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978)).

in Chief assumes office from his predecessor).³⁵ These practices have continued to this very day. If clergy-led prayer is constitutionally permissible, so is a personal one-sentence statement acknowledging thankfulness to one's Lord and Savior. Note again that "[d]iscrimination against speech *because of its message* is presumed to be unconstitutional."³⁶

Mr. Rehkopf takes considerable, *personal* umbrage at the very idea that America was founded as a Christian nation. He accuses General Teichert of "openly (but falsely) advocat[ing] that America was founded as a 'Christian nation.'"³⁷ In Footnote 21, Mr. Rehkopf refers to a statement made by General Teichert which cited to a book entitled "Sacred Fire" as the source for his assertion.³⁸ In that very same footnote, Mr. Rehkopf argues that the book the General cited has been "severely criticized by other historians."³⁹ which only establishes that historians can disagree as to what historical evidence actually demonstrates. *Having established that historians often disagree with each other*, Mr. Rehkopf then proceeds to attempt to prove that the General's view about the Nation's founding was wrong. Mr. Rehkopf has apparently taken on this issue as a personal cause.

One of the interesting statements Mr. Rehkopf makes to buttress his argument concerns the grant of Pennsylvania to William Penn. He says "that almost a century prior to the Revolutionary War, William Penn was given a land charter by the King in what is now essentially Pennsylvania whereupon Penn and fellow Quakers emigrated to that colony."⁴⁰ We are not sure how this supports his argument, since Penn and the Quakers were seeking religious freedom in North America which suggests a Christian religious motivation for the colonists who settled Pennsylvania. Mr. Rehkopf omits any mention of the Pilgrims or the Mayflower Compact, which included the following language:

Having undertaken, *for the Glory of God and advancement of the Christian Faith* and Honour of our King and Country, a Voyage to plant the First Colony in the Northern Parts of Virginia, do by these present solemnly and mutually in the presence of God and one of another, Covenant and Combine ourselves together into a Civil Body Politic, for our better ordering and preservation and *furtherance of the ends aforesaid*⁴¹

Mr. Rehkopf also neglects to mention what U.S. Courts have said on the issue. In 1892, for example, the Supreme Court of the United States, in *Church of the Holy Trinity v. United States*, declared the United States to be a "Christian Nation."⁴² Since then, the Supreme Court

³⁵See *Newdow v. Bush*, 355 F. Supp. 2d 265, 270 n.5, 286-87 (D.D.C. 2005) (noting that clergy-led prayer did not violate the First Amendment).

³⁶*Rosenberger*, 515 U.S. at 828 (citing *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641-43 (1994)) (emphasis added).

³⁷Rehkopf Letter, *supra* note 2, at 10.

³⁸*Id.* at 10 n.21.

³⁹*Id.*

⁴⁰*Id.* at 10-11.

⁴¹Martin Kelly, *The Mayflower Compact of 1620*, THOUGHTCO (Feb. 5, 2018), <https://www.thoughtco.com/mayflower-compact-104577> (emphasis added).

⁴²*Church of the Holy Trinity*, 143 U.S. at 471.

has recognized our country's Christian religious heritage in other cases.¹³ For example, the Supreme Court has identified the citizens of our country as a "Christian people" and has "acknowledged a duty to obey God's will."¹⁴ Concerning the influence of religion in general, the Court in *School District of Abington Township, v. Schempp* concluded that "religion has been closely identified with our history and government."¹⁵ Moreover, the *Zorach* Court noted that "[w]e are a religious people whose institutions presuppose a Supreme Being."¹⁶

We could go on and on, but suffice it to say that persons of good will can disagree on this issue. Just because General Teichert holds a view contrary to that of Mr. Rehkopf does not prove that the General is either wrong or dangerous. *The key question once again must be decided on the fact that Mr. Rehkopf gives no evidence whatsoever that General Teichert has actually harmed anyone under his command at Edwards AFB because he holds a different view on the founding of the country from the view held by Mr. Rehkopf and others.* It seems to us that there is absolutely no legitimate basis to Mr. Rehkopf's accusation. Believing and stating on a personal social media site that America was founded as a Christian nation does not mean that one is unfit for command. If, however, Mr. Rehkopf is seriously suggesting that General Teichert is unfit for his office because of his religious beliefs, the accusation becomes quite serious because it would violate the No Religious Test for Office Clause of the U.S. Constitution.¹⁷ Mr. Rehkopf is grasping at straws.

The issue raised about George Washington and the issue of chaplains is commonly misunderstood by persons associated with the MRFF and is, in fact, a red herring. George Washington was a strong advocate of Christians serving in the ranks.¹⁸ He also recognized the importance of chaplains. He advocated that each *regiment* should have its own chaplain. Since a brigade was a headquarters that usually commanded between three to six regiments, that would translate to having four to seven chaplains (one chaplain per regiment plus one at brigade). The issue to which General Washington was responding in the quotation used by Mr. Rehkopf was a proposal that having one chaplain at Brigade would suffice. Given the many Christian denominations represented in the Continental Army and the fact that most regiments were composed of persons from the same locality, General Washington considered it more likely to *reduce* religious tensions by allowing each regiment to choose a chaplain conducive to the beliefs of the men in that regiment (the "old Establishment" General Washington was referring to) as opposed to having only one clergyman to meet the needs of all the various religious traditions throughout the brigade.¹⁹

¹³See *Mahoney v. United States*, 77 U.S. 62, 67 (1869) (using the phrase "Christian nations" in reference to the United States), *Sch. Dist. of Abington Twp.*, 374 U.S. at 212-13 (1963), *United States v. Macintosh*, 283 U.S. 605, 625 (1931).

¹⁴*Macintosh*, 283 U.S. at 625.

¹⁵*Schempp*, 374 U.S. at 212.

¹⁶*Zorach*, 343 U.S. at 313.

¹⁷U.S. CONST. art. VI, cl. 3.

¹⁸See Order No. 50 of George Washington to the Continental Army at Valley Forge (May 2, 1778), in *Revolutionary Orders of General Washington* 75 (Henry Whiting ed., 1844) ("While we are duly performing the duty of good soldiers, we certainly ought not to be inattentive to the higher duties of religion. To the distinguished character of a Patriot, it should be our highest glory to add the more distinguished character of a Christian.").

¹⁹Rehkopf Letter, *supra* note 2, at 11-12. See George Washington quote:

On page 12, Mr. Rehkopf attacks General Teichert's "Prayer List." He cites DoDD 1350.2, para 4.2, as his mode of attack. He quotes the Directive as follows: "it is DoD policy" that

Unlawful discrimination against persons or groups based on . . . religion, [and] sex . . . is contrary to good order and discipline and is counterproductive to combat readiness and mission accomplishment. Unlawful discrimination *shall not be condoned*.⁵⁰

Mr. Rehkopf then alleges various types of "unlawful discrimination" because General Teichert lists the following as things for *fellow Christians* to pray for: "Christian leaders to find favor among men" (alleged religious and gender discrimination); "A return to our Biblical foundation" (religious discrimination); Recognition of God's preeminence in our lives and in our land" (religious discrimination); "Key leaders accept Christ as their Savior" (advocating an unconstitutional theocracy as well as religious discrimination); "Appreciation for our national Christian heritage" (a historical falsehood and religious discrimination); and "Appreciation for a nation formed, blessed and prospered by God's power" (for agnostics, atheists and other non-believers, religious discrimination). To Mr. Rehkopf, simply encouraging fellow Christians to pray for what many Christians believe amounts to "unlawful discrimination" against everyone who does not hold such beliefs. That is ludicrous on its face.

At this point, it should be crystal clear to anyone that what Mr. Rehkopf and the MRFF clients are really demanding is that General Teichert (and any other Christian leader in uniform) be forbidden henceforth to express his religious views in any forum remotely accessible to those who disagree with him. Keep in mind that General Teichert's home page does not include his name, so he is not soliciting his subordinates to follow what he is saying. He is speaking to fellow adherents of the Christian faith.

Next, Mr. Rehkopf notes that the DoD "places a high value on the rights of members of the Military Services to *observe* || the tenets of their *respective religions* or to observe no

It has been suggested, that *it has a tendency to introduce religious disputes into the Army, which above all things should be avoided, and in many instances would compel men to a mode of Worship which they do not profess*. The old Establishment gives every Regiment an Opportunity of having a Chaplain of their own religious Sentiments, it is founded on a plan of a more generous toleration, and the choice of the Chaplain to officiate, has been generally in the Regiments. Supposing one Chaplain could do the duties of a Brigade, (which supposition However is inadmissible, when we view this in practice) that being composed of four or five, perhaps in some instances, Six Regiments, there might be so many different modes of Worship. I have mentioned the Opinion of the Officers and these hints to Congress upon this Subject: from a principle of duty and because I am well assured, *it is foreign to their wishes or intention to excite by any act, the smallest uneasiness and jealousy among the Troops*.

⁵⁰Rehkopf Letter, *supra* note 2, at 12 (quoting DoDD 1350.2, *Department of Defense Military Equal Opportunity (MEO) Program*, para 4.2).

religion at all.”⁵¹ The DoD language clearly includes General Teichert’s right to observe his “respective religion” as well. In Footnote 28, Mr. Rehkopf highlights the fact “that the word used is ‘observe’ [the tenets of one’s faith] and not public practice or proselytizing.” Mr. Rehkopf does not explain what the term “observe” means but clearly suggests that, *in his view*, it prohibits “public practice” of religion. One of the easily found definitions of “observe” on the web is the following: “fulfill or comply with (a social, legal, ethical, or religious obligation).”⁵² The definition is open-ended and leaves it to the religious adherent to determine what his religious obligations are and how to fulfill or comply with them. Nowhere does it prohibit public practice *per se*. Mr. Rehkopf is attempting to impose his desires and his views on General Teichert and the military, not what the law allows.

In Footnote 29, Mr. Rehkopf notes that “DoD acknowledges that there are multiple religions or ‘no religion at all,’ not just Brig Gen Teichert’s extremist, dominionistic ‘Christianity.’” Despite Mr. Rehkopf’s repeated use of disrespectful, pejorative language to describe General Teichert’s alleged beliefs, the statement is true—DoD does recognize multiple religions and no religion, and DoD does not acknowledge any specific individual’s faith, including General Teichert’s. What is questionable—*once again*—is where is the concrete proof that General Teichert’s beliefs and statements have resulted in unlawful discrimination against anyone at Edwards AFB? For example, has anyone been denied a position, a promotion or anything similar because of the person’s faith (or lack thereof), the person’s gender, the person’s sexual orientation, the person’s disagreement with General Teichert’s religious beliefs or anything similar? If not, where is the discrimination? It seems merely to lie in the eye of the beholder, and that is too tenuous a claim to constitute unlawful discrimination.

On page 14 of his letter, Mr. Rehkopf raises more unsubstantiated claims about persons being denied “equal opportunity” because of General Teichert’s beliefs. Once again, absolutely no proof is provided of actual wrongdoing. Mr. Rehkopf’s innuendoes do not suffice. Nor does the fact that “MRFF is firm in its conviction” that one must check his religious beliefs “at the office door or upon donning one’s service uniform”⁵³ constitute proof of wrongdoing. In fact, the MRFF’s *firm convictions* are directly contradicted by AFI 1-1, para 11, which recognizes that every Airman (including General Teichert) is not only able to practice his beliefs while respecting the viewpoints of others but is encouraged to do so. The Air Force has already decided the equities in such matters and has rejected Mr. Rehkopf’s contrary view.

On page 14, Mr. Rehkopf resorts to creating a ludicrous strawman argument about creating “separate squadrons for Lutherans, Catholics, Baptists, Muslims, Mormons, Wiccans, Atheists, etc. . . .” and then alleges, “[y]et, that is precisely the effect (if not overt intent) of Brig Gen Teichert’s actions here, *viz.*, if you are not part of his personal religious orientation, whether you believe in religion or not, you are not part of the 412th Test Wing’s ‘team.’” This sounds ominous, so where’s the proof? Even Mr. Rehkopf is forced to admit that he cannot prove intent.

⁵¹ *Id.* at 13 (quoting DoDI 1300.17, *Accommodation of Religious Practices Within the Military Services*, para 4(a) (2014)) (emphasis in original).

⁵² ENG. OXFORD LIVING DICTIONARIES, <https://en.oxforddictionaries.com/definition/observe> (last visited Aug. 20, 2018).

⁵³ Rehkopf Letter, *supra* note 2, at 14.

And he provides nothing to substantiate that that is what General Teichert believes or has said. Nor does he provide any evidence whatsoever that that is what has occurred to anyone in the 412th Test Wing's "team." Accusations without supporting evidence are worthless.

So far, Mr. Rehkopf's analysis is premised overwhelmingly on innuendo and deep-seated religious prejudice. He has not identified a single service member or civilian at Edwards AFB who has suffered actual harm from any action or statement made by General Teichert. *Given all the wrongdoing that Mr. Rehkopf alleges, one would think that at least one concrete instance of unlawful discrimination could be produced.* Yet, even that low threshold has not been overcome. A subjective fear by various persons at Edwards AFB that something bad might occur someday is insufficient to justify the rabid attacks aimed at BrigGen Teichert by the MRFF and other groups opposed to free religious expression in the military.

Beginning on page 15, Mr. Rehkopf lays out what he calls his legal arguments. Once again, Mr. Rehkopf cites to valid regulations, but his error comes in trying to stretch the principle enunciated therein to cover what was not intended to be covered. For example, he notes that according to Article I, Section 8, Clause 14, of the Constitution, Congress has plenary authority to "make Rules" governing the military. That is true. Then, Mr. Rehkopf resorts to another strawman argument to show that no First Amendment right is unrestricted: "MRFF submits the following. If a religious tenet requires *e.g.*, a human sacrifice to 'cleanse one's soul,' the First Amendment's Free Exercise Clause would not provide a viable defense to a criminal homicide charge."⁵⁴ From this strawman, Mr. Rehkopf concludes, "The simple fact that 41 members of the EAFB [Edwards AFB] community (most of whom are self-identified as Christians) have lodged complaints with MRFF pertaining to Brig Gen Teichert's conduct as noted above, is not *de minimis* or insignificant."⁵⁵ Such conclusory statements without evidence of actual (not hypothetical) harm are worthless. There is no evidentiary tie (i.e., actual evidence of wrongdoing) between the allegation and the result sought. The military cannot expect its commanders to be able to carry out their duties if subjective fear of potential wrongdoing by a hypersensitive subordinate is sufficient to require the commander to answer for such fear. *Answering for actual wrongdoing is valid; answering for unsubstantiated subjective fear of possible harm is not.*

Further, no one is suggesting that General Teichert's First Amendment rights are unlimited, which Mr. Rehkopf seems to think would be an anticipated argument.⁵⁶ But the law does not restrict General Teichert's rights in a manner that Mr. Rehkopf suggests. He cites to *Parker v. Levy* and *United States v. Gray* to support the assertion that a General Officer's First Amendment rights are limited.⁵⁷ Of course, First Amendment rights are not absolute. Both *Levy* and *Gray*, however, dealt with statements against the military, statements which strike at the heart of morale, good order, and discipline. In *Gray*,⁵⁸ an enlisted Marine called the United States Constitution a farce and urged other Marines to not "sit back and take these unjust Rules

⁵⁴*Id.* at 16.

⁵⁵*Id.*

⁵⁶*Id.*

⁵⁷*Id.* at 15.

⁵⁸*United States v. Gray*, 42 C.M.R. 255, 256 (C.M.A. 1970).

and do nothing about it.”⁵⁹ He also expressed his distaste for killing people in battle, his negative experience of serving in the military, and his desire for an immediate end to the war.⁶⁰

In *Levy*,⁶¹ an Army doctor told soldiers that the United States’ involvement in the Vietnam War was wrong, that he would refuse to fight, and that enlisted African American soldiers should also refuse to fight in the war.⁶² The Court ruled that the First Amendment protection carries less weight in the military context because the armed forces have different considerations than civilians.⁶³

In this matter, General Teichert’s expression of personal religious beliefs is in no way analogous to the expression in *Levy* and *Gray*. The former (free exercise and confidently practicing one’s beliefs) is protected by the Constitution as well as AFI and DOD regulations, whereas the latter (speaking against the nation’s military and its practices) is a direct attack on good order and discipline and prohibited. There is no legal basis to cite *Levy* and *Gray* to support the argument that General Teichert’s right to religious expression on a personal social media site is limited in the manner suggested by Mr. Rehkopf.

Mr. Rehkopf’s diversity claims are equally absurd. He claims that General Teichert has publicly rejected diversity.⁶⁴ *Yet, since diversity includes diversity of religious belief, General Teichert is, in effect, being accused of having rejected religious diversity by engaging in it.* Note how circular the argument is and how ludicrous the effort becomes to charge General Teichert unless one is absolutely opposed to any religious expression accessible to a General Officer’s subordinates (which in turn strongly suggests a violation of the General Officer’s right to diversity). Further, Mr. Rehkopf provides no example of such rejection. He “submits that Brig Gen Teichert’s publicly posted remarks demonstrate his discriminatory animus and overt condemnation of all personnel under his command who do not share his personal and particular dominionistic brand of Christianity.”⁶⁵ Yet, all of the alleged remarks cited in the letter deal with the expression of General Teichert’s faith. They do not condemn or discredit any other belief. It is incomprehensible how MRFF and its 41 clients came to a conclusion that such remarks are somehow meant to condemn their respective beliefs.

Next, Mr. Rehkopf alleges improper political activities. For example, the Prayer List requests prayers for, *inter alia*, the President, the Vice President, and the Trump Administration; “Christian faithfulness to participate in government, preach about government, and pray for government”; “a return to national righteousness”; and “the unborn.”⁶⁶ To support his allegations of improper political activities, Mr. Rehkopf cites to DoDD 1344.10 para 4.1.3.2.2, which prohibits “[u]se of official authority or influence to . . . affect the course or outcome of an

⁵⁹*Id.* at 261.

⁶⁰*Id.* at 261–62.

⁶¹*Parker v. Levy*, 417 U.S. 733, 736 (1974).

⁶²*Id.* at 736–37.

⁶³*Id.* at 758–59, 761.

⁶⁴Rehkopf Letter, *supra* note 2, at 19.

⁶⁵*Id.* at 20.

⁶⁶*Id.* at 20–21.

election” and para 4.1.2.3, which prohibits “[a]llow[ing] or caus[ing] to be published partisan political articles, letters, or endorsements . . . written by the member that solicits votes for or against a partisan political party, candidate, or cause.”⁶⁷ As is clear from the quoted regulations, General Teichert’s Prayer List has nothing to do with soliciting votes or influencing the outcome of an election. All Christians are encouraged to pray for their leaders whether they agree with those leaders or not. All Christians are encouraged to pray for the nation where they live. It is hard to imagine that an officer like General Teichert would be required to fight for and protect his country and its leaders but be prohibited to request a prayer for the same country and leaders, even when doing so on a personal social media site uncoupled from his military responsibilities.

* * * * *

From the foregoing, we believe it is apparent that Mr. Rehkopf’s complaints are baseless. He has provided no evidence that General Teichert has spoken ill of any other faith or of non-belief. He has provided no evidence that General Teichert is trying to force his beliefs on anyone. He has provided no evidence that General Teichert has treated anyone differently because they hold beliefs different to his. He has provided no evidence that General Teichert does not support DoD and Air Force policies on diversity or anything else. He has provided no evidence that General Teichert has attempted to sway anyone to vote for a specific candidate for office or for a specific bill. Mr. Rehkopf’s arguments stem from deep-seated prejudice against General Teichert’s religious beliefs (as evidenced by the numerous pejorative descriptions he uses of General Teichert’s faith) as well as a concomitant belief on Mr. Rehkopf’s part that Christians like General Teichert seek to impose their religious beliefs on others. That is revealed more fully in the section below.

THE MRFF AND ITS AGENDA

Although Mr. Rehkopf and the MRFF have every right to believe and espouse the views they do, it is imperative that government officials be aware of what the MRFF’s agenda entails. It is also imperative that government officials not accept such charges at face value. Mr. Rehkopf and the MRFF espouse a skewed view of the Constitution and its guarantees and requirements.

The MRFF was founded by Mr. Michael L. “Mikey” Weinstein, a self-described opponent of so-called “Dominionist Christians” in the military. Mr. Weinstein 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.”⁶⁸ Moreover, how Mr. Weinstein describes his organization, the

⁶⁷*Id.* at 21.

⁶⁸See, e.g., Susan Galloway, *Mikey Weinstein’s Speech Makes Me Ask Questions*, available at http://www.militaryreligiousfreedom.org/press-releases/indymedia_rochester.html (Nov 7, 2009). 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#.T0QKSlcgdel>. (by seeking to attack the Catholic Church as well, Mr.

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.”⁶⁹

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 . . .*”⁷⁰ The MRFF finds Constitutional violations everywhere. BrigGen Teichert’s personal website was simply the most recent example. It is also interesting to note that Mr. Weinstein and the MRFF have yet to win a case in court on their skewed view of the Constitution. That alone should be enough to give pause as you entertain this most recent complaint.

Mr. Weinstein and the MRFF routinely accuse others of making offensive and bigoted comments. 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.”⁷¹ Mr. Weinstein continued: “[W]e’ve lost the Marine Corps, we’ve lost the Army, we’ve lost the Navy and the Air Force.”⁷² 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 the MRFF is fighting for religious tolerance, Mr. Weinstein is in reality a serial purveyor of religious intolerance who repeatedly propagates the despicable lie that Evangelical and Fundamentalist Christians “would willingly, even eagerly, condemn, ostracize and *even put to death* their fellow citizens for praying to the wrong god.”⁷³ He even asserts: “I know that they will stop at literally nothing to achieve their ends. *That includes mass murder.*”⁷⁴ Mr. Weinstein claims that “fundamentalist dominionist Christians are willing to kill to achieve their twisted agenda.”⁷⁵ 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,”⁷⁶ Mr. Weinstein

Weinstein demonstrated a broad-based hostility to Christianity, in general, which no U.S. Government official should tolerate).

⁶⁹Brian Kresge, *An Interview with Mikey Weinstein*, JEWIS IN GREEN (Aug. 24, 2007), <http://www.jewsingreen.com/2007/08/an-interview-with-mikey-weinstein/>.

⁷⁰Michael L. Weinstein & Davin Seay, *With God on Our Side* 129 (2006) (emphasis added).

⁷¹MIL. RELIGIOUS FREEDOM FOUND., http://www.militaryreligiousfreedom.org/Media_video_festival-of-books_index.html (last visited Feb. 27, 2012).

⁷²Mikey Weinstein, *Champion of the First Amendment “Award Acceptance Speech”: The Christianization of the Military: Mikey Weinstein*, FREEDOM FROM RELIGION FOUNDATION (Apr. 2007) (transcript available at <http://www.ffrf.org/publications/freethought-today/articles/The-Christianization-of-the-Military/>).

⁷³Michael L. Weinstein & Davin Seay, *No Snowflake in an Avalanche* 119 (2012) (emphasis added).

⁷⁴*Id.* at 178 (emphasis added).

⁷⁵*Id.* at 179.

⁷⁶*Id.* at 31.

expects everyone he addresses to simply believe that *he* can speak *with authority* about what certain *Christians* believe. For example, *without citing any authoritative source whatsoever*, Mr. Weinstein claims that “Christian fundamentalist dominionists . . . believe that the Bible instructs them *to eradicate all nonbelievers* as a prerequisite for the second coming of Christ.”⁷⁷ Elsewhere, once again without citing any authority to back up his statement, he claims that “hardcore fundamentalist Christian elements within every branch of the military [are] intent on creating nothing less than an army of zombie zealots prepared to fight and die in order *to usher in* the dispensational reign of Jesus Christ on earth.”⁷⁸ Such ludicrous assertions, bordering on paranoia, are commonplace in Mr. Weinstein’s writings and speeches. Mr. Rehkopf’s recent assertions about General Teichert fall neatly into that category as well.

CONCLUSION

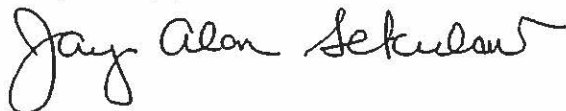
The MRFF’s frequent demands invite extreme caution on the part of all persons who receive their demand letters, lest the recipients become unwitting pawns in the MRFF’s strategy to eviscerate religious freedom in the U.S. armed forces. Mr. Weinstein has readily admitted that he values the use of diatribe, embellishment, and harangue as tools to get his way. Mr. Rehkopf’s specious demands regarding BrigGen Teichert fit neatly into that mold.

Mr. Rehkopf’s misreading of the Constitution and military regulations, no matter how forcefully stated, is not binding on you and your staff. In fact, your very oath of office requires you to support and defend the Constitution of the United States, not someone’s misinterpretation of the document. You and your staff must not become complicit in the MRFF’s desire to consign constitutional expression to Chapels or individual homes. That is not what the Constitution requires.

Accordingly, we strongly and respectfully urge you to disregard Mr. Rehkopf’s specious demands. Other than a subjective fear on the part of 41 persons at Edwards AFB that some harm might someday befall them, no legally cognizable injury has been raised. Accordingly, Mr. Rehkopf’s many allegations are baseless, and they must be treated as such by you.

Should you or any member of your staff desire further information or assistance concerning this matter, please do not hesitate to contact our office. We stand ready to assist you in any way we can.

Respectfully yours,



Jay Alan Sekulow
Chief Counsel



Robert W. Ash
Senior Counsel

⁷⁷*Id* at 197 (emphasis added).

⁷⁸*Id* at 12 (emphasis added).