



MILITARY RELIGIOUS FREEDOM
f o u n d a t i o n

Friday, June 6, 2014

General Mark A. Welsh III
Chief of Staff, United States Air Force
1670 Air Force Pentagon
Washington, DC 20330-1670

Re: Air Force Instruction 1-1

General Welsh,

I have just become aware that you have asked the leadership of the United States Air Force Academy (USAFA) for comments on proposed changes to [para 2.11 and 2.12 of AFI \(Air Force Instruction\) 1-1](#) regarding USAF members' authority to exercise their right to religious expression. As I understand the specific proposal sent to USAFA, most unfortunately, it DOES attempt to significantly change the basic language currently contained in [para 2.11 \(original version\)](#), which very effectively limits commanders' and/or supervisors' authority to witness or proselytize to their otherwise defenseless subordinates (now contained in para 2.12).

In what can ONLY be viewed as a staggering capitulation by the USAF to the fundamentalist Christian religious extremist/Tea Party Congressional members on Capitol Hill, your new AFI 1-1 proposed language totally eliminates the following words, specifically referencing USAF "Leaders at all levels," from this current regulation. To wit, "For example, they must avoid the actual or apparent use of their position to promote their personal religious beliefs to their subordinates or to extend preferential treatment for any religion. Commanders or supervisors who engage in such behavior may cause members to doubt their impartiality and objectivity. The potential result is a degradation of the unit's morale, good order, and discipline."

What a horrific pity to see that the USAF has abandoned the profoundly protective powers those words have had for thousands of Air Force personnel in the 22 months in which they have thus far been permitted to exist. I have already [written you on May 29, 2014](#) concerning that most critical matter. Additionally, the proposal, on which you are presently seeking feedback from the Academy, attempts to most deleteriously change USAF member peer-to-peer religious expression. Therefore, the further issue here is the extent of military members' freedom to witness their personal religious beliefs to, or proselytize, other USAF members. This damage calculus presumably includes their military subordinates if one factors in the stunning exclusion of the most crucial language just denoted above vis-a-vis "Leaders at all levels." [Please refer to my earlier letter](#) to you, in which I explained the United States Supreme Court's clarion-call decision in Parker v. Levy, 417 US 733 (1974), where the Supreme Court explained the FAR more limited scope of First Amendment freedoms available to military members, compared to other (civilian) citizens of the United States.

Sir, I know that you did not seek my comments, but please understand that the [Military Religious Freedom Foundation \(MRFF\)](#) is obviously extremely focused on this precise matter and that [our civil rights mission](#) absolutely compels us to substantively comment. Therefore, please seriously consider our most legitimate concerns and materially factor them into your decisions. I hope our comments are not unwelcome; they are intended and designed to help inform your thinking. Therefore, with respect, we submit the following.

The proposed change to USAF service members' expressions of religious beliefs, though, which includes witnessing and proselytizing fellow USAF members, authorizes such actions when the Airmen's words are an "***expression of a sincerely held belief***, unless the expression would be a ***real, not hypothetical, adverse impact*** on military readiness, unit cohesion, good order and discipline, health and safety, and mission accomplishment."

MRFF's concern regarding the proposed revision is, first, that the test here is expressed as a cumulative, not the alternative, test. Therefore, a USAF member cannot be restricted from such expressions unless ALL of the several adverse effects on the Air Force can be proven... i.e., an adverse impact on military readiness, unit cohesion, good order and discipline, health and safety, ***and*** mission accomplishment. For example, it is regrettably not enough that ONLY good order and discipline is negatively impacted, if the proof does not ALSO demonstrate degradation of mission accomplishment. That formula illicitly exceeds the clear test set out by the United States Supreme Court in Parker v. Levy. In that seminal case, the Supreme Court specifically held that any ONE of the several adverse impacts upon the Service was sufficient to authorize the commander to restrict speech, to include religious speech. Therefore, the ***and*** must be replaced with an ***or***. General Welsh, there IS no reasonable alternative, either practically or as a matter of foundational and controlling law.

Secondly, MRFF is terribly concerned pursuant to this revised standard, that a military member, who professes a "sincerely held" religious belief in conjunction with his/her expressed disdain or disgust for having to perform duties with a lesbian, gay or bisexual (LGB), African-American, Muslim, Jewish, atheist/agnostic or female Airmen, for example, cannot be held accountable for his/her discriminatory speech--so long as the helpless target(s) of that denigrating speech are unable to demonstrate so-called "real" injury. This stunning newly proposed policy would categorically reject decades of the development of law, beginning with President Kennedy's Administration, on actionable discrimination based on race, religion, gender and sexual orientation. In an Air Force that is instructed routinely to celebrate and promote diversity within our ranks, this boundless allowance of expression for "sincerely held" beliefs would incontrovertibly have disastrous consequences. General Welsh, I seriously question whether President Obama or Secretary Hagel supports this astonishingly prejudicial approach. Thus, I effusively recommend that you do NOT authorize and protect those religious expressions, to include witnessing and proselytizing, which the United States Supreme Court specifically elected to NOT protect in Parker v. Levy as an appropriate exercise of First Amendment speech by military members.

Thirdly, we are (and so should you be) EXTRAORDINARILY concerned that the proposed revised language of AFI 1-1 requires that the cumulative negative adverse impact ... on military readiness, unit cohesion, good order and discipline, health and safety, **and** mission accomplishment ... must be "**real, not hypothetical**." This terrible draft alteration appears to require that, before an Airman may EVER be held accountable for religious expression, that same "expression" must have a demonstrable and measurable negative impact on military readiness, unit cohesion, good order and discipline, health and safety, **and** mission accomplishment **and also** must be deemed actual ("not hypothetical") in the expression of the victim's (injured party's) concern. We are deeply and decidedly troubled that this policy, if adopted by the USAF, will universally discourage military members from EVER filing complaints about religious witnessing and proselytizing for fear that their uncorroborated complaints will be considered merely "hypothetical," and not "real." I think you would agree that the Department of Defense would NEVER adopt such a similar shocking policy shielding abusers regarding sexual assault, sexual harassment, and racial discrimination--or, for that matter, even aircraft maintenance standards. You, sir, would NEVER, for example, require that before an Airman is held accountable for sexual assault that the victim's sense of injury be "real, not hypothetical." Why, therefore, General Welsh, would you even CONSIDER adopting such an excessively permissive and exonerating policy regarding religious witnessing and proselytizing? Indeed, sir, especially when the United States Supreme Court's test in Parker v. Levy does not in ANY manner require adoption of such a high burden of proof before a military member is held accountable for the negative impact of their actions as could be determined by any reasonable observer?

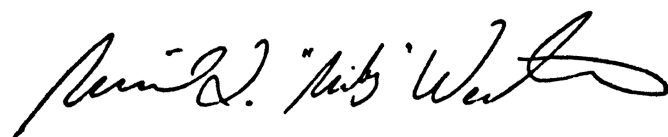
Lastly, we are acutely concerned with the [additional language to para 2.11.4](#) which appallingly requires that "sincerely held beliefs may not be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training or assignment." General Welsh, did you REALLY and SERIOUSLY mean that an Airman, who publicly criticizes, for example, a fellow LGB Airman because that LGB Airman's lifestyle is contrary to the declarant/Airman's "religious belief," CANNOT be held accountable for the negative impact that his/her speech has on morale, good order, and discipline of the LGB Airman, merely because the declarant/Airman's religious beliefs are "sincerely held?" Indeed, sir, did you EARNESTLY accept the injustice of the foregoing scenario regardless of the fact that the declarant/Airman should have known that his/her comments would degrade the morale of the LGB Airman (and their unit) and potentially other LGB Airmen? Because I KNOW how much you support the Air Force as an instrument of national defense, and the companion need to embrace diversity in our all-volunteer force, I strongly suspect that, somehow, sir, you did NOT consider the unintended disastrous consequences of the proposed revised language. It literally strains credulity to believe that such irrefutably bigoted and hurtful wording has even been proposed as an amendment to AFI 1-1.

Again, General Welsh, please accept these comments as my best advice to you as the ultimate military commander and leader of the USAF. If we are to remain the best Air Force on the planet, relying on an all-volunteer force for our greatness, we have an imperative mandate to absolutely respect minority religious rights or those who follow no faith at all... But it is quite more than just that as well, sir. As I mentioned to you in [my prior letter of May 29, 2014](#), MRFF has well over 37,000 armed forces clients, both active duty and veterans. Ninety-six percent of this number of MRFF clients self-identify as sincerely believing Christians: both Protestants from a literal plethora of denominations, and Roman Catholics. These particular Christian MRFF clients are facing severe religious civil rights discrimination merely because they are viewed by their military superiors as just not being "Christian enough." The USAF simply cannot give-in to the unconstitutionally noxious and odious demands of a minority view of viciously fundamentalist Christian extremist legislators in order to avoid their Congressional criticism, and the recrimination of their legions of fellow traveler, parachurch supporters. We are better than that, sir. We must uphold the Air Force's Core Values, which require that we particularly protect non-fundamentalist Christian and religious (and non-religious) minority rights. The Founders wanted, as a matter of constitutional primacy, to protect American citizens from the unbridled passions and potential biases of those freedom-usurpers claiming title to represent the would-be religious majority. Sir, you are our first, and best, line of defense. Please protect America's Airmen from dehumanizing and debasing religious abuse by other Airmen (especially their leaders), who are mistakenly and/or willfully led to believe that the faux "majority" religious view, or more specifically a virulent fundamentalist version of same ("Dominion Christianity"), ought to, by right and might, enjoy dominance over non-fundamentalist Christian and minority religious (and non-religious) views in the most powerful and deadly Air Force in the world.

We are all Americans, General Welsh, regardless of our religious (or non-religious) views--committed to support and defend the Constitution of the United States and the precious freedoms it guarantees. Every American, regardless of his or her religious beliefs (or no beliefs), deserves a fair and equal opportunity to become a great USAF Airman, to be respected for their honorable service, evaluated and promoted based solely on her/his performance and demonstrated character, and NOT on his/her religious (or non-religious) affiliation or "sincerely held religious beliefs."

Sir, please let me speak clearly here. We expect you to do the right thing. It is not complex but actually simple. We are counting on you to defend and protect the religious (and non-religious) rights of ALL Airmen and NOT just those with "sincerely held religious beliefs".

Sincerely,



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

CC:

President Barack Obama
Deborah Lee James, Secretary of the Air Force
General Martin E. Dempsey - Chairman of the Joint Chiefs of Staff
Admiral James A. Winnefeld Jr. - Vice Chairman of the Joint Chiefs of Staff
General Raymond T. Odierno - Chief of Staff of the United States Army
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