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February 1, 2018

Brig. Gen. John J. Nichols  
Commander, 509th Bomb Wing  
509 Spirit Blvd.  
Whiteman Air Force Base, Mo. 65305  
Sent by email: E-mail: [john.nichols.2@us.af.mil](mailto:john.nichols.2@us.af.mil)

RE: National Prayer Breakfast, Feb. 13, 2018

Dear Brig. Gen. John J. Nichols,

I am counsel for the Military Religious Freedom Foundation and I write to you concerning violations of civil rights occurring under your command at Whiteman Air Force Base.

This correspondence is a follow-up to the communications with several of your staff including your Vice Commander, Colonel Mark Ely, initiated by Michael "Mikey" Weinstein on behalf of the Military Religious Freedom Foundation (MRFF) and its Whiteman AFB clients. Mr. Weinstein is the Founder and President of MRFF.

Mr. Weinstein has been contacted by approximately twenty-three USAF Officers, NCOs and USAF civilians<sup>1</sup> under your command at Whiteman AFB with concerns that the above-referenced prayer breakfast has been promoted improperly and contrary to U.S. Air Force requirements. They have brought this matter to MRFF because they fear retaliation if they raised this issue directly with you or through their respective chains of command. Specifically, while the event is promoted on the premise that attendance is voluntary, the advertisement states that you are personally sponsoring it. The promotional announcement states as follows:

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<sup>1</sup> Seventeen of the personnel who have contacted MRFF about this matter are Christians. This is noted not because such is a predicate to object to use of U.S. Air Force assets for preferential treatment of any particular religious sect. Rather, it is brought to your attention because these people of faith also recognize the requirement to uphold the separation of church and state embodied in the Establishment Clause of the First Amendment.



On behalf of Brig. Gen. John J. Nichols,  
Chaplain, Lt. Col. Kent Schmidt would like to invite you to the  
National Prayer Breakfast at Whiteman Air Force base  
on Feb. 13, 2018, 8 a.m. at Missions End.

The keynote speaker will be  
Chaplain Maj. Gen. Dondi Costin, Air Force Chief of Chaplains,  
speaking on "Faith Works".

Tickets will cost \$5 and include a full American breakfast. For more  
information or to sign up, contact the base chapel at (660) 687-3652.

Under the standards specified at Chapter 2, Section 2.12 of the Air Force Instruction 1-1 commanding officers must avoid an appearance or inference that a particular religious sect is being promoted. Chapter 2, Section 2.12 provides as follows:

2.12. Balance of Free Exercise of Religion and Establishment Clause. Leaders at all levels must balance constitutional protections for their own free exercise of religion, including individual expressions of religious beliefs, and the constitutional prohibition against governmental establishment of religion. **They must ensure their words and actions cannot reasonably be construed to be officially endorsing or disapproving of, or extending preferential treatment for any faith, belief, or absence of belief.**<sup>2</sup>

(Emphasis added)

The promotion of the event done under the auspices of your command status is a problem for at least significant two reasons. First, it infers that you officially endorse preferential treatment for the religious message inherent in the event. Second, as the commander of Whiteman AFB, the message implicit in the event's promotional message is that attendance is mandatory.

Granted, the promotional message does not specifically state attendance is required. However, in most employment settings, including a military installation, when the "boss" promotes an event the implication is that attendance is required. I am informed that this phenomenon now has a particular label: "voluntold". Hence, while there may be a fig leaf of legitimacy that attendance is voluntary because the announcement does not say attendance is mandatory, the personnel who have contacted MRFF interpret the invitation's opening verbiage, "On behalf of Brig. Gen. John J. Nichols....", to be a thinly-veiled message that to get/stay on the good side of the boss, they had better sign up for and attend the event.

The "fix" for the violation of Sec. 2.12 is to revise the event's promotional message by removing your endorsement of it. Such does not diminish the event. But it would bring the event's

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<sup>2</sup> AFI 1-1 provides that violations of its directives are potentially punishable as crimes under the Uniform Code of Military Justice (UCMJ) and gives as an example UCMJ Article 92, "Failure To Obey Order or Regulation", specifically a dereliction of duty offense.

promotion into conformance with Chapter 2.12 of the Air Force Instruction 1-1 and longstanding applicable United States Supreme Court precedent. See: *Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971), *Larson v. Valente*, 456 U.S. 228, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982).

In the absence of a proper and timely revision, such as that suggested above, of the event's promotion, MRFF and its USAF clients under your command reserve the right to seek all available remedies under, *inter alia*, Inspector General investigatory review, UCMJ Article 138 redress, the Equal Employment Opportunity Act, 42 U.S.C. 2000e, and constitutional common law, *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999 (1971).

Given the fast-approaching Feb. 13, 2018 date of the planned event, please advise me and Mr. Weinstein of your final decision as soon as possible so as not to unduly prejudice MRFF's clients from pursuing potentially preventive and injunctive relief in order to oppose the subject National Prayer Breakfast at Whiteman AFB.

Thank you.

Yours truly,



Robert V. Eye

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