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Not For Motion Practice or Pleadings

The Hon. James N. Mattis (*via email only*)
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

12 August 2018

RE: Brig Gen E. John Teichert, USAF, Commander, 412th Test Wing, Edwards AFB, CA
Formal Complaint: Religious Intolerance/Proselytizing; Violations of DoD Diversity &
Civil Liberties Policies; and Air Force Standards Violations

Ref: (a) DoDD 1020.02E (2016) (e) DoDD 1344.10 (2008) (i) AFI 35-107 (2017)
(b) DoDD 1350.2 (2015) (f) DoD 5500.07-R (j) AFI 36-7001 (2012)
(c) DoDI 1300.17 (2014) (g) AFI 1-1 (2014)
(d) DoDD 1000.29 (2014) (h) AFI 1-2 (2014)

Dear Secretary Mattis:

I am writing on behalf of the *Military Religious Freedom Foundation* [MRFF], which I represent in this matter. MRFF is an IRS recognized non-profit civil rights entity which is dedicated to and advocates for the preservation of the constitutionally mandated separation of church and state in the U.S. Armed Forces. MRFF, however, is *not* anti-religion, anti-Christian, atheist, etc., – it merely seeks to preserve and protect what the First Amendment mandates.

For the reasons stated below, MRFF demands a formal investigation of its complaints herein.

The MRFF currently represents over 57,000 active duty Sailors, Soldiers, Marines and Airmen, Service Academy/ROTC/OTS/OCS cadets and midshipmen, National Guard and Reserve personnel, DoD Civilian Employees, and Veterans. MRFF recognizes that military life requires individual adherence to shared patriotic principles. MRFF also recognizes the need for military personnel to at times temporarily relinquish some Constitutionally granted personal freedoms for the sake of military discipline, objectives, and mission accomplishment.

MRFF currently has numerous U.S. military and DoD civilian clients at Edwards Air Force Base, California [EAFB]. MRFF brings this Formal Complaint on behalf of 41 of those clients (32 self-identifying as Christian) – many of whom are in mortal fear of retaliation should they be

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personally identified in this matter, something that MRFF suggests is an equally troublesome issue. Thus, MRFF respectfully demands your expeditious intervention and resolution of this matter consistent with the references noted above, as well as the provisions of the First Amendment to the U.S. Constitution.

As MRFF's legal counsel in this matter, please note that I am experienced with military law in general and DoD and Air Force [AF] policies, directives, instructions, and regulations regarding the Military Equal Opportunity [MEO] Program, discrimination, diversity, civil liberties, and First Amendment religious issues in particular. I was a USAF Judge Advocate for some 27+ years. Lastly, on the topic of "leadership," (to include the lack thereof), I have been published in the Air Force's *Air and Space Power Journal*,¹ as well as in the Army journal *Parameters* on this topic.²

NATURE OF THE COMPLAINT

Summary

Brigadier General [Brig Gen] E. John Teichert, USAF (Frocked), is currently the Commander of the 412th Test Wing at EAFB, which includes being the installation commander. According to his official biography, EAFB has "more than 11,000 active duty, reserve, civil service and defense contractors, making it the second largest base in the U.S. Air Force."³ After receiving complaints from MRFF clients at EAFB about Brig Gen Teichert's conduct, MRFF conducted a preliminary investigation into those complaints. As a result, MRFF submits that there is reasonable cause for you to order the following:

- a. Direct the DoD Civil Liberties Officer [DoD/DCMO] to investigate whether Brig Gen Teichert's conduct interferes with or violates the civil liberties of service-members and civilians under his command, pursuant to DoDD 1000.29, *DoD Civil Liberties Program*, ¶ 4 (c)-(e) (2014); and DoDI 1300.17, *Accommodation of Religious Activities Within Military Services*, ¶ 4.a (2014);
- b. An investigation into whether Brig Gen Teichert's conduct interferes with or violates the diversity or equal opportunities of service-members and civilians under his command, pursuant to DoDD 1020.02E, *Diversity Management and Equal Opportunity in the DoD*, Encl. 2, ¶ 2 (2018); DoDD 1350.2, *Department of Defense Military Equal Opportunity (MEO) Program*, ¶ 4.2 (2015); and DoD 5500.07-R, *Joint Ethics Regulation* ¶ 1-300(d) and (g), and ¶ 2-207 (2011); and

¹ See, Rehkopf, *Reply to "Maj Gen William 'Billy' Mitchell: A Pyrrhic Promotion,"* 21 Air & Space Power J. 21 (Fall, 2007); and Rehkopf, *Lorenz on Leadership*, 22 Air & Space Power J. 21 (Fall, 2008).

² See, Rehkopf, *Commentary & Reply, On "The General Stanley McChrystal Affair: A Case Study in Civil-Military Relations,"* 41 *Parameters* 87 (2011).

³ Available at: <https://www.edwards.af.mil/About/Biographies/Display/Article/880804/brigadier-general-e-john-teichert> [Last accessed: 7 August 2018].

Secretary Mattis, Letter, 3.

c. Direct that the DoD/IG investigate Brig General Teichert's conduct and whether as relevant herein, it interferes with or violates the following:

(1) Air Force Instruction [AFI] 1-1, *Air Force Standards*, (2014),⁴ specifically:

(a) Paragraph 1.5: "You must live by rules and standards that are often more restrictive than those found in civilian life."⁵

- Brig Gen Teichert is not exempt from this.

(b) Paragraph 2.11: "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." [Emphasis added].⁶ *See also*, ¶ 2.15.8.

- Brig Gen Teichert apparently cannot (or will not) accept this mandate.

(c) Paragraph 2.11.1: "Your right to practice your religious beliefs does not excuse you from complying with directives, instructions and lawful orders. . . ."

- Brig Gen Teichert is not exempt from this.

(d) Paragraph 2.12, which states:

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 disproving of, or extending preferential treatment for any faith, belief, or absence of belief***. [Emphasis added].⁷

⁴ This is a punitive / mandatory compliance regulation and can form the basis for adverse action under the *Uniform Code of Military Justice* [UCMJ], 10 U.S. Code § 801 *et seq.*, *e.g.*, Article 92, UCMJ [violation of a lawful general regulation or dereliction of duty], or Article 133, UCMJ [conduct unbecoming an officer and a gentleman].

⁵ This will be addressed in greater detail below.

⁶ This is one of the major issues here – 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). For MRFF and its clients, that is unacceptable especially coming from a Flag Officer.

⁷ This is another major issue – when a Wing / Installation commander of Flag rank "suggests" something as
(continued...)

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- The complete absence of any valid disclaimer by Brig Gen Teichert adds to MRFF's clients' concerns, and in MRFF's opinion, gives the *appearance* of an official endorsement.
- (e) Paragraph 2.15.5, *Use of Social Media*, which states 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.*** [Emphasis added].⁸

- As noted, Brig Gen Teichert has *not* included valid disclaimers on his social media posts.
- (2) AFI 1-2, *Commander's Responsibilities*, ¶3.2(2014),⁹ states in relevant part a key component of "leadership," to wit: "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

⁷ (...continued)

controversial as specific religious tenets, subordinates, such as MRFF's clients at EAFB, are rightly concerned about what the DoD and AF are saying and what their commander is saying. There is certainly the "appearance" of specific religious endorsement here as documented below. This is not an isolated nor speculative concern – the *appearance* of unlawful command influence [UCI] has plagued the military justice system for decades. *See, e.g., United States v. Chikaka*, 73 M.J. 310, 313 (CAAF 2017), where the Court noted:

And yet, despite this long-standing precedent, Appellant's commanding officer, who outranked the entire panel and was within the chain of command of at least one member, was permitted to testify at some length about the importance of a harsh sentence being imposed by the court-martial. We conclude that this testimony constituted "some evidence" of unlawful command influence. [footnote omitted].

Thus, when a commander suggests that something, such as religious beliefs, is "important" to the commander, subordinates who are not obtuse, will take the cue.

⁸ Brig Gen Teichert's *personal* website expressly identifies him as an Air Force officer and as the Commander of the 412th Test Wing at EAFB.

⁹ This is also a punitive / mandatory compliance regulation.

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1-1, *Air Force Standards*.¹⁰

- The “personal example” here, MRFF submits, is that Brig Gen Teichert’s religious proclamations as a *commander* affects MRFF’s clients at EAFB, be they Christian (85% self-identify as such), agnostic, atheist, Jew, Muslim, etc., or of no religious persuasion.

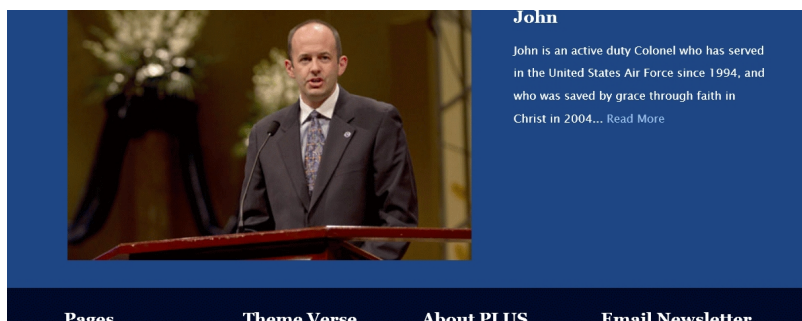
(3) AFI 36-7001, *Diversity*, (2012):¹¹

- (a) Paragraph 1.3.2.1: “Demographic Diversity – inherent or socially defined personal characteristics, including . . . religion”
- (b) Paragraph 1.6: “Implementation of the Air Force diversity policy is the responsibility of every Air Force leader.”

FACTS RELEVANT TO THIS COMPLAINT

A. Establishment Clause Violations and the Appearance Thereof.

Brig Gen Teichert was “frocked” as a general officer in July of 2018, when he assumed command of the 412th Test Wing at EAFB. Sometime in early 2013, he created a public webpage and blog, along with social media accounts (Facebook and Twitter) to promote his fundamentalist, dominionist “Christian” beliefs. He created an acronym for this he called “PLUS” which stands for Prayer at Lunchtime for the United States.¹² Additionally, that homepage contains the following:



Screenshot Taken 7 August 2018

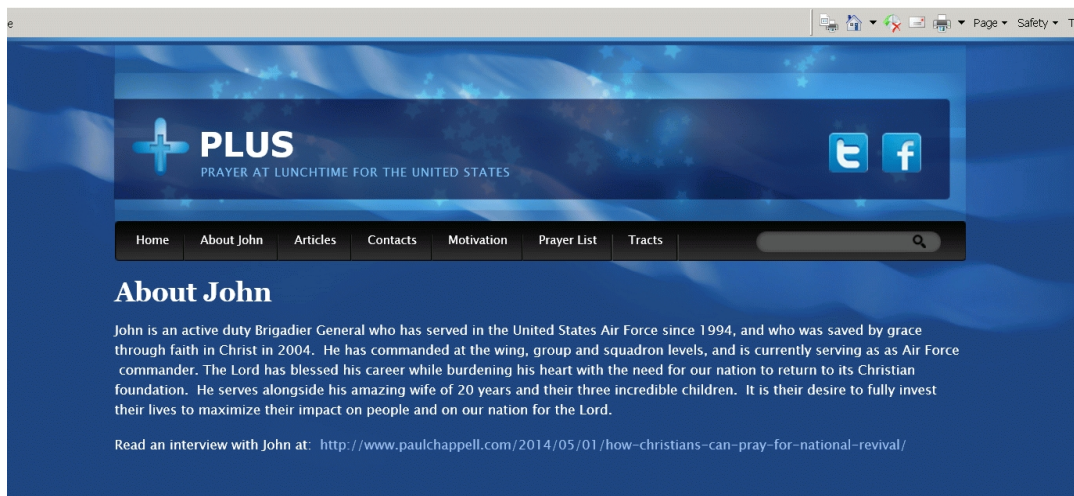
¹⁰ As demonstrated in more detail below, MRFF submits that Brig Gen Teichert is in substantial violation of AFI 1-1, as well as other official policies, directives, and instructions, especially the absence of disclaimers and manifested intolerance for religious diversity.

¹¹ This is also a punitive / mandatory compliance regulation.

¹² See his homepage: <http://prayatlunch.us/> [Last accessed: 7 August 2018].

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If one clicks on the “Read More” link, it takes you here:



Screenshot – 7 August 2018

Clicking on the link to “Read an interview with John” takes you here:



Screenshot taken 7 August 2018 – Now Brigadier General Teichert in his AF flight suit

That is at the beginning of the interview article dated 1 May 2014, with then Colonel Teichert,¹³ which violates virtually every provision of AFI 1-1, to include not having valid disclaimers. That, MRFF suggests is exacerbated by what he said during this published interview.

¹³ Available here: <https://paulchappell.com/2014/05/01/how-christians-can-pray-for-national-revival>. [Last accessed: 7 August 2018].

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[Introduction] As a friend of mine has well-stated, “Praying is the least that we should do for our nation, and *it’s the most that we can do.*” [Emphasis added].¹⁴

That friend is **Colonel John Teichert**—a man who has served his nation in the United States Air Force for the past twenty years. When he talks about the most we can do and the least we should do, he knows what he’s talking about.

A little over a year ago, Colonel Teichert began a prayer initiative to encourage American Christians to intercede for our country with faithfulness and importunity. It’s called PLUS (Prayer at Lunchtime for the United States), and it is a tool to encourage and equip Christians to pray faithfully for revival in America.

* * * * *

I asked Colonel Teichert to answer a few questions via interview format regarding his military background, his salvation testimony, his love for our country, and PLUS itself. I think the interview below will be encouraging to you, and if you haven’t already, I would encourage you to sign up for PLUS updates (more on that below).

What compelled you to join the military?

I grew up with a deep love for my country that my parents had instilled deep within me, and that gave me a natural desire to serve my country. Also from a young age, I wanted to fly, and joining the Air Force was a natural step to becoming a fighter pilot. Ultimately, my desire has always been to maximize my impact on our nation in a life of service.

What is your current rank?

I’m a Colonel, currently in a job responsible for operational test and evaluation for all Air Force fighters, bombers, weapons, and space systems.

How long have you served in the Air Force?

I am approaching twenty years of service. I’ve been very blessed to have had a meaningful impact in the jobs that I’ve had as a fighter pilot, as a test pilot, and as a leader. As a young person, I was able to fly in combat over both Iraq and the former Yugoslavia. As a first assignment fighter pilot it was a formative experience in my life and my career.

I followed that assignment as an F-15E instructor pilot. I trained new pilots and weapon system officers in how to fly, fight, and win.

¹⁴ MRFF suggests that this raises serious concerns about his warrior *ethos* and leadership abilities. Arlington and other National Cemeteries are filled with the graves of servicemembers of all religions and none, of all sexual orientations of both genders, of all skin colors, etc., who indeed did more and who paid the ultimate sacrifice. “All gave some and some gave all.”

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I then went to test-pilot school, which was when I came to Lancaster where I got saved. I graduated from test-pilot school and went on to be a test pilot for the F-22 Raptor. I eventually became the commander of that organization, responsible for insuring the Raptor's long-term lethality and survivability.

Will you share your salvation testimony?

I came to Lancaster Baptist Church in December 2002 for the first time. My wife and I were looking for a church, and we found a good ad for Lancaster Baptist in the Yellow Pages, so we visited. We were immediately made to feel welcome and at home, and we enjoyed what I now know is a balance of grace and truth.¹⁵

* * * * *

What is your goal for PLUS?

Ultimately, I pray this tool will prompt Christians to be faithful in prayer such that it will spur widespread revival in our nation. The goal is to change our national spirit so that the Lord can change our national direction.

I'm concerned about our country's drift away from the foundation on which we were built. I personally believe that those who call themselves Christians are largely to blame because we have failed to stand up for the cause of Christ in our country. We have failed to pray. We have failed to put into practice the principles in 2 Chronicles 7:14. On our watch, we have allowed our country to slip away from its founding Christian principles while it has become increasingly intolerant of Christianity.¹⁶

MRFF suggests that one does not need a "crystal ball" to see that now 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*.

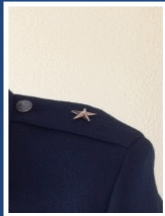
From his website/blog, Brig Gen Teichert, on 21 July 2018, posted the following:

¹⁵ *Id.*

¹⁶ *Id.*

Potency and Sufficiency

POSTED BY JOHN ON JULY 21ST, 2018 | CATEGORIZED AS BLOG POST



II Corinthians 3:5 "Not that we are sufficient of ourselves to think any thing as of ourselves; but our sufficiency is of God"

I Corinthians 4:7 "For who maketh thee to differ from another? And what hast thou that thou didst not receive? Now if thou didst receive it, why dost thou glory, as if thou hadst not received it?"

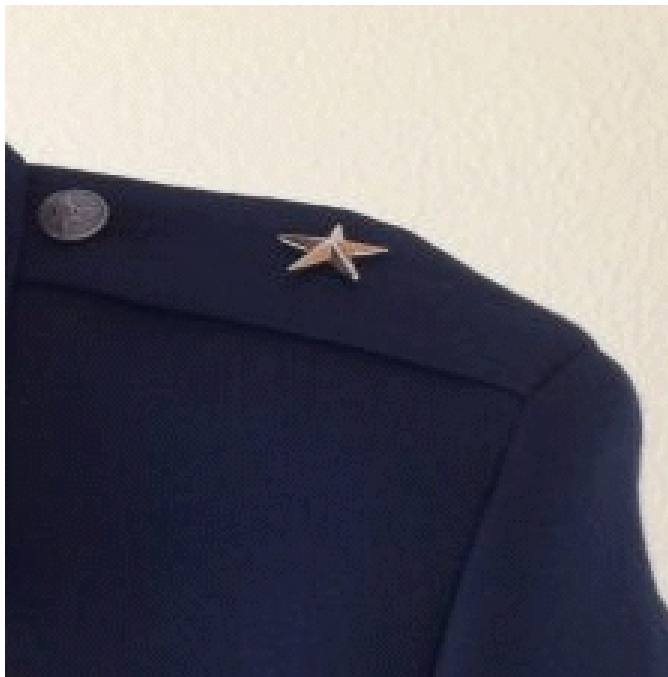
This past week, I was honored, humbled and blessed to pin on the rank of Brigadier General. Though I had been selected for promotion several months ago, this week was finally the time to enact the promotion based on the starting of a new job with greater levels of responsibility. I have to admit, looking over at the single star on each shoulder still takes my breath away.

Throughout this season of promotion, the two Bible verses above continued to ring through my head. I am not sufficient of myself. My sufficiency is fully from God. Everything I have, I received from Him. I must never glory in myself and instead must only glory in Him. The moment I forget these important truths is the moment that I shift into the status of an eroding life that lacks potency and sufficiency.

The same is true for our churches. We are not sufficient of ourselves. Our sufficiency is fully from God. Everything we have, we received from Him. We must never glory in ourselves and instead must only glory in Him. The moment we forget these important truths is the moment that we shift into the status of an eroding institution that lacks potency and sufficiency.

The same is also true for us as a nation. We are not sufficient of ourselves. Our sufficiency is fully from God. Everything we have, we received from Him. We must never glory in ourselves and instead must only glory in Him. The moment we forget these important truths is the moment that we shift into the status of an eroding nation that lacks potency and sufficiency.

MRFF would point out that besides the religious "sermon" Brig Gen Teichert espoused in that post, his inclusion of a photograph of his uniform epaulet with his general's "star" clearly gives the appearance and impression that "the general is interested in this" to those under his command – especially when he goes around at lunch time urging people to pray for the United States. The image is quite telling,¹⁷ and in direct violation of AFI 1-1.



¹⁷ See, <http://prayatlunch.us/potency-and-sufficiency/> [Last accessed: 8 August 2018].

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This is not the first time that Brig Gen Teichert used his military rank in a religious promotion (and again, without the mandated disclaimers). In July of 2016, he was a speaker at the Wyldewood Baptist Church, Oshkosh, Wisconsin's "Meeting in the Air. The program¹⁸ lists him as:

Colonel E. John "Dragon" Teichert
F22 Raptor Test Pilot, United States Air Force

Most recently, while in uniform at his official change-of-command ceremony attended by hundreds of people, Brig Gen Teichert again invoked his personal religious beliefs by stating "***I first want to thank my Lord and Savior***"¹⁹ For those who do not believe in *his* "Lord and Savior," those words were not only intolerant, but also in clear violation of AFI 1-1, ¶2.11 and ¶ 2.12.

MRFF suggests that it is highly improbable that a then Colonel [0-6] and now Brigadier General [0-7] is unaware of the requirements of either AFI 1-1, or the *Joint Ethics Regulation*. If he is, then there are some serious flaws in the senior Professional Military Education [PME] schools.

Brig Gen Teichert's homepage (and the hundreds of his regular postings there) are in direct violation of AFI 1-1, ¶ 1-5, which mandates *inter alia*: "You must live by rules and standards that are often more restrictive than those found in civilian life." This is especially true for commissioned officers holding Flag billets.²⁰ He openly (but falsely) advocates that America was founded as a "Christian nation."²¹ Brig Gen Teichert and his source ignore commonly known facts – at the "beginning of the Revolutionary War," there were *no* Americans, except the *Native Americans* and few of them were Christians. It also ignores the fact 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

¹⁸ Available here: <https://www.teaysvalleybaptist.com/missions/Open%20Missionaries/Warinner%20Robert.pdf> [Last accessed: 8 August 2018].

¹⁹ Video at: https://cdn.dvidshub.net/media/video/1807/DOD_105841071/DOD_105841071-1920x1080-6221k.mp4 [scroll to 3:14 minute mark; last accessed: 10 August 2018].

²⁰ See AFI 1-2, ¶ 3.2, addressing basic leadership principles:

Effectively leading people is the art of command. . . . 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, performance, and discipline outlined in AFI 1-1, *Air Force Standards*. Further, commanders will establish and maintain a healthy command climate which fosters good order and discipline, teamwork, cohesion and trust. A healthy climate ensures members are treated with dignity, respect, and inclusion, and does not tolerate harassment, assault, or unlawful discrimination of any kind. . . .

²¹ "Undoubtedly, our nation was founded by Christians as a Christian nation. Studies indicate that at the beginning of the Revolutionary War, between 98.4% and 99.8% of Americans were professing Christians (Sacred Fire, p. 29)." Webpost dated 24 April 2018, available at: <http://prayatlunch.us/in-our-midst/> [Last Accessed: 8 August 2018]. His "source" is the book *Sacred Fire* by Professor Peter Lillback, which has been severely criticized by other historians, e.g., Professor Jon Rowe at: <http://usreligion.blogspot.com/2010/05/george-washingtons-religion-founding.html> [Last Accessed: 8 August 2018].

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whereupon Penn and fellow Quakers emigrated to that colony.²² It also ignores the fact that prior to the Revolutionary War, there were significant Jewish communities in the Colonies.²³ MRFF points this out simply to demonstrate that Brig Gen Teichert's many religious rants simply have no historical basis.

Consider his post dated 16 March 2018:



Home About John Articles Contacts Motivation Prayer List Tracts

Noble Beginnings

POSTED BY JOHN ON MARCH 16TH, 2018 | CATEGORIZED AS BLOG POST



II Corinthians 3:5 "Not that we are sufficient of ourselves to think any thing as of ourselves; but our sufficiency is of God"

President Ronald Reagan reminded us of the following:

"It's been written that the most sublime figure in American history was George Washington on his knees in the snow at Valley Forge. He personified a people who knew that it was not enough to depend on their own courage and goodness, that they must also seek help from God - their Father and preserver. Where did we begin to lose sight of that noble beginning, of our conviction that standards of right and wrong do exist and must be lived up to? Do we really think that we can have it both ways, that God will protect us in a time of crisis even as we turn away from him in our day-to-day life?"

General Washington turned to God in time of crisis at Valley Forge because he had an established relationship with Him. Throughout his life, he recognized that it was not enough to depend on his own courage and goodness, but that he needed help from his Father and preserver. It wasn't enough to ask for protection in time of crisis, but the Lord was needed in his day-to-day life to live up to the standards of right and wrong. His sufficiency was of God and not of himself. That one picture of Washington praying personifies this important truth.

We must not wait for a crisis to pray, but instead should pray frequently as a part of an established relationship with God. We need to recognize that we must not depend on our own courage and goodness, but instead on our Father and preserver. It isn't enough to ask for protection in times of crisis, but the Lord is needed in our day-to-day lives to live up to the standards of right and wrong. Our sufficiency must be of God and not of ourselves. May our time of prayer personify this important truth.

PLEASE PRAY PASSIONATELY FOR THE SUFFICIENCY TO LIVE UP TO GOD'S STANDARDS OF RIGHT AND WRONG IN THIS LAND. May our prayers personify God's important truths, and reflect our nation's noble beginnings.

His source is former President Reagan, but its accuracy is highly suspect especially when one considers other available historical evidence.²⁴ But, there is direct evidence of then General Washington's thoughts about religion in his Army:

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

²² See: <https://www.history.com/topics/history-of-quakerism> [Last accessed: 8 August 2018].

²³ See: <http://americanjewisharchives.org/education/timeline.php> [Last accessed: 8 August 2018].

²⁴ See, e.g., <http://www.virginiaplaces.org/religion/religionw.html> [Last accessed: 8 August 2018].

Secretary Mattis, Letter, 12.

of a more generous toleration, and the choice of the Chaplains 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 things 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 most foreign to their wishes or intention to excite by any act, the smallest uneasiness and jealousy among the Troops.*** [emphasis added].²⁵

Washington and his generals were worried about even the “smallest uneasiness” over religion and objected to anything that would “compel men to a mode of worship that they didn’t profess.”

Finally, MRFF requests that you look at Brig Gen Teichert’s “Prayer List.”²⁶ There are two facets here that in combination violate the First Amendment’s Establishment Clause,²⁷ as well as applicable DoD issuances. The first is the source, *viz.*, an active-duty Air Force brigadier general who commands the second largest base in the Air Force. It is especially troubling to MRFF because *without* any of the mandated disclaimers, he publicly links his military rank and position throughout his web postings. The second is the actual content of his “Prayer List.”

DoDD 1350.2, *Department of Defense Military Equal Opportunity (MEO) Program*, ¶ 4.2 (2015), clearly states that “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.*** [Emphasis added].

Looking at Brig Gen Teichert’s “Prayer List,” one sees his public advocacy as a general officer for:

- “● Christian leaders to find favor among men”
 - ◆ This is religious and gender discrimination.

²⁵ George Washington to the president of Congress, June 8, 1777. John C. Fitzpatrick, ed., *The Writings of George Washington from the Original Manuscript Sources 1745-1799*, vol. 8 (Washington, DC: Government Printing Office, 1933), 203.

²⁶ See: <http://prayatlunch.us/prayer-list/> [Last accessed: 9 August 2018].

²⁷ In response to the anticipated argument that Brig Gen Teichert is protected by the “Free Exercise” Clause of the First Amendment, MRFF would note that while members of the military have *some* “Free Exercise” rights, the simple answer (as discussed in more detail below) is that the Supreme Court has held that pursuant to Article I, § 9, Clause 14 [the “Make Rules” clause] Congress can (and has) limited those rights. See, e.g., *Parker v. Levy*, 417 U.S. 733 (1974), discussed below.

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- “● 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.
- “● Appreciation for a nation formed, blessed and prospered by God’s power”
 - ◆ For agnostics, atheists and other non-believers, religious discrimination.

MRFF submits that such religious intolerance simply has no place within the DoD, especially from a general officer. It flies in the face of DoDI 1300.17, *Accommodation of Religious Practices Within the Military Services*, ¶ 4(a) (2014), which states in relevant part:

The DoD places a high value on the rights of members of the Military Services to *observe*^[28] the tenets of their *respective religions* or to observe no religion at all.^[29] It protects the civil liberties of its personnel and the public to the greatest extent possible, consistent with its military requirements, in accordance with DoD Instruction (DoDI) 1000.29.”
[Emphasis added].

MRFF also submits that Brig Gen Teichert’s public ministering also violates DoDD 1020.02E, *Diversity Management and Equal Opportunity in the DoD*, (2015), Encl. 2, ¶ 2, describing DoD’s MEO program as one that:

- a. Promotes equal opportunity as being critical to mission accomplishment, unit cohesiveness, and military readiness
- b. Ensures that:
 - (1) All service members are afforded equal opportunity in an environment free from . . . unlawful discrimination on the basis of . . . religion, sex (including gender identity), or sexual orientation.

²⁸ Note that the word used is “observe” and not public practice or proselytizing.

²⁹ Clearly the DoD acknowledges that there are multiple religions or “no religion at all,” not just Brig Gen Teichert’s extremist, dominionistic “Christianity.”

Secretary Mattis, Letter, 14.

See also, DoDI 1000.29, *DoD Civil Liberties Program*, ¶ 4 (2014).

A commander – especially one who is a general officer – should by definition, be a leader. A real leader leads his/her Airmen, Soldiers, Sailors or Marines, regardless of their skin color, national heritage, gender, sexual orientation, or religious/non-religious preferences, by example. And MRFF states that this is the issue in this matter. Brig Gen Teichert’s fundamentalist Christian beliefs are – to whatever extent he feels like believing – his own to have *privately*, but as the Commander of an 11,000 person Wing, cannot withstand constitutional and legal scrutiny when he overtly and publicly preaches those beliefs, especially without the mandated disclaimers, on his webpage and postings. What about the Airmen and civilians at the 412th Test Wing who are agnostics, atheists, Buddhists, Hindu, Jewish, Muslim, etc., or who are non-religious? What “equal opportunity” do they have with a commander who is publicly intolerant of *their* personal beliefs or non-beliefs? How can a commissioned officer, much less a general officer, who has taken an oath to “support and defend the Constitution,” openly and publicly defy the storied principles of the First Amendment remain an officer?

MRFF is firm in its conviction that a commander – as applicable to all Airmen – is entitled to his or her own religious beliefs or to have no religious beliefs. However, those must be checked at the office door or upon donning one’s service uniform. Those who can’t (or won’t) keep their personal religious beliefs (or non-beliefs) separate from their command responsibilities are *not leaders*, especially those having the status, power, and prestige of a general officer.

No one would take seriously a proposal for the Air Force to have separate squadrons for Lutherans, Catholics, Baptists, Muslims, Mormons, Wiccans, Atheists, etc., or non-religious personnel. That would stand the core value of “service before self” on its head. Yet, 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.”

MRFF notes that Title 5, C.F.R. § 2635(b), *in general* allows one to use their military title or position for “teaching, speaking and writing purposes.” However, there is an important and relevant caveat to this:

1. It is *prohibited* where “the subject of the activity deals in significant part with . . . (2) *any* ongoing or announced policy, program or operation of the agency” [5 C.F.R. § 2635.807(a)(2)(E)(2)] [Emphasis added];

It is clear that the DoD has both policies and programs, as demonstrated by the relevant DoD issuances noted herein, which pertain to civil liberties, equal opportunity and discrimination, and religious practices. Brig Gen Teichert is not exempt from any of this while he remains on active-duty.

MRFF’s Complaint here notes in detail AFI 1-1’s restrictions on the use of *social media* by AF members. That has been supplemented by AFI 35-107, *Public Web and Social Communication* (17 March 2017), where ¶ 5.5 states in relevant part: “Do not post any defamatory, libelous . . . or

Secretary Mattis, Letter, 15.

otherwise offensive . . . material.” MRFF respectfully submits that this new AFI reinforces its position that Brig Gen Teichert’s postings are deeply “offensive” to MRFF’s clients at EAFB. His webpage and blogposts violate the core principles of those AFI’s and should be terminated immediately.

B. Legal.

While Brig Gen Teichert as a citizen has basic First Amendment rights, as a uniformed, commissioned *general* officer in our Armed Forces, those rights may be (and have been) circumscribed in ways inapplicable to civilians. The Supreme Court of the United States in a case styled as *Parker v. Levy*, 417 U.S. 733 (1974), noted three principles as to why a servicemember’s First Amendment rights may *constitutionally* be limited:

- *First*, “This Court has long recognized that the military is, by necessity, a specialized society separate from civilian society.”³⁰
- *Second*, “[The UCMJ] and the various versions of the Articles of War which have preceded it, regulate aspects of the *conduct* of members of the military which in the civilian sphere are left unregulated.”³¹
- *Third*,

While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections. The fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it.³²

Parker quoted with approval from *United States v. Gray*,³³ viz.:

Servicemen, like civilians, are entitled to the constitutional right of free speech. ***The right of free speech, however, is not absolute in either the civilian or military community*** [citations omitted]. . . . ***[S]imilar speech by a subordinate towards a superior in the military can directly undermine the power of command; such speech, therefore, exceeds the limits of free***

³⁰ 417 U.S. at 743.

³¹ *Id.* at 749 [emphasis added].

³² *Id.* at 758.

³³ 42 C.M.R. 255 (CMA 1970).

speech that is allowable in the armed forces. [Emphasis added]³⁴

It is clear that the rights enshrined within the First Amendment *as applied* to servicemembers (including general officers) are more limited than those applicable to civilian citizens. Thus, arguments about the Free Exercise Clause as it is applied to civilians, do *not* control its application to active-duty servicemembers such as Brig Gen Teichert. There are two intertwined reasons for this. The first is *constitutional*. With respect to active-duty servicemembers, First Amendment rights must be juxtaposed with the express Constitutional provision contained in Article I, § 8, Clause 14, *i.e.*, the Constitution gives plenary authority to Congress to “make Rules” governing the U.S. military.³⁵ Congress has done that in two ways. First, by enacting the *Uniform Code of Military Justice* [UCMJ], 10 U.S. Code § 801 *et seq.* Second, by enacting statutes which created the offices of the Secretary of Defense and the Service Secretaries with the authority to issue rules, regulations, and policies applicable to servicemembers. That is the authority for the issuance of the DoD and AF publications applicable herein.

With the above premise, MRFF is confident that Brig Gen Teichert’s conduct herein is unconstitutional, illegal, and prejudicial. Here the prejudice is abundantly present, pernicious, and palpable. To counter the anticipated argument that a military member has the “right” to his/her “Free Exercise,” First Amendment rights are unrestricted and thus, not prejudicial to anyone, 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.

Here the prejudice prong is equally as disturbing. The simple fact that 41 members of the EAFB 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.³⁶ All MRFF clients at EAFB regarding this issue have insisted upon anonymity because of rational and realistic fears of retaliation. Indeed, one MRFF client, because of the current “Command Climate,” that has changed since Brig Gen Teichert assumed command only one month ago, is in actual fear of *physical* violence to him/her and family should his/her identity as a complainant be exposed.³⁷ How does that promote diversity, unit cohesion, good order and discipline, religious tolerance and *esprit de corps*? The numerous complaints to MRFF conclusively demonstrate that it does not.

The Supreme Court has also specifically addressed this in the case of *Goldman v. Weinberger*, 475 U.S. 503 (1986). There the Court reiterated the principles enumerated in *Parker*:

Our review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or

³⁴ *Id.* at 258.

³⁵ *See*, footnote 26, *supra*.

³⁶ Compare this with the issue of DoD sexual assault cases where victims have repeatedly stated that they are terrified to report such criminal abuse, for *bona fide* fears of retaliation.

³⁷ The undersigned has validated that personal fear.

Secretary Mattis, Letter, 17.

regulations designed for civilian society. The military need not encourage debate or tolerate protest to the extent that such tolerance is required of the civilian state by the First Amendment; to accomplish its mission the military must foster instinctive obedience, unity, commitment, and *esprit de corps*.³⁸

The Court went on to state:

In the context of the present case, when evaluating whether military needs justify a particular restriction on religiously motivated conduct, courts must give great deference to *the professional judgment of military authorities* concerning the relative importance of a particular military interest.³⁹

The “professional judgment” here is expressed in the promulgated *mandatory* diversity and equal opportunity policies, programs and regulations of both the DoD and the AF. As discussed above, most of the applicable DoD and AF directives, instructions, or regulations are punitive for UCMJ purposes mandating compliance – there are no “General Officer” exceptions.

Lastly, consider the Supreme Court case of *Bolden v. Roy*, 476 U.S. 693, 699 (1986), where the Court observed as applicable herein, the following:

Our cases have long recognized a distinction between the freedom of individual *belief*, which is absolute, and the freedom of individual *conduct*, which is not absolute. [emphasis added].

1. Article 92, UCMJ: *Failure to Obey Order or Regulation*.

This statute reads in relevant part:

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

* * * * *

(3) is derelict in the performance of his duties;
shall be punished as a court-martial may direct.

A number of such regulations are applicable in this matter:

a. DoDD 1020.02E, *Diversity Management and Equal Opportunity in the DoD (2016)*.

Paragraph 3(b)(1) of this Directive states that it ensures that “All Service members are afforded equal opportunity in an environment free from . . . unlawful discrimination on the basis of . . . sex (including gender identity), or sexual orientation.” Brig Gen Teichert’s actions herein have clearly

³⁸ 475 U.S. at 507.

³⁹ *Id.* Emphasis added.

Secretary Mattis, Letter, 18.

created a hostile environment not only for all of MRFF's clients at EAFB, but the Base population as a whole.

Paragraph 4(b), of this Directive mandates that “. . . commanders and supervisors prominently post and enforce such policies and procedures.” Thus, your office is also respectfully requested to investigate *compliance* by Brig Gen Teichert's “commanders and supervisors.”

b. AFI 1-1, *Air Force Standards* (2012).

This regulation begins by stating: “COMPLIANCE WITH THIS PUBLICATION IS MANDATORY.”⁴⁰ It then states that:

This instruction is directive in nature and failure to adhere to the standards set out in this instruction can form the basis for adverse action under the Uniform Code of Military Justice (UCMJ).

That language triggers its enforceability under Article 92(1), UCMJ. Of import here, it goes on to state at ¶ 1.8:

Diversity is a military necessity. Air Force capabilities and warfighting skills are enhanced by diversity among its personnel. At its core, such diversity provides our Total Force an aggregation of strengths, perspectives, and capabilities that transcends individual contributions. Air Force personnel who work in a diverse environment learn to maximize individual strengths and to combine individual abilities and perspectives for the good of the mission. Our ability to attract a larger, highly talented, diverse pool of applicants for service with the Air Force, both military and civilian, and develop and retain our current personnel will impact our future Total Force. [Emphasis added]

With that basic premise, AFI 1-1 goes on to discuss the precise scenario at issue herein at ¶ 2.15, entitled, “**Use of Social Media.**” This states in relevant part:

Compliance with the standards discussed in this instruction does not vary, and is not otherwise dependent on the method of communication used. ***You are personally responsible for what you say and post on social networking services and any other medium.*** Regardless of the method of communication used, ***Air Force standards must be observed at all times, both on and off-duty.*** [Emphasis added].

The next three subparagraphs all apply to Brig Gen Teichert's webpage and blogposts at issue here:

⁴⁰ All capital letters in original.

Secretary Mattis, Letter, 19.

2.15.2. Your obligation to maintain appropriate communication and conduct with officer and enlisted personnel, peers, superiors, and subordinates (to include civilian superiors and subordinates) is applicable whether you communicate via a social networking service or other forms of communication, such as e-mail, instant messaging, or texting.

2.15.3. ***You must avoid offensive and/or inappropriate behavior on social networking platforms*** and through other forms of communication that could bring discredit upon on the Air Force or you as a member of the Air Force, or that would otherwise be harmful to good order and discipline, ***respect for authority***, unit cohesion, morale, mission accomplishment, or the trust and confidence that the public has in the United States Air Force.

2.15.4. ***Airmen who provide commentary and opinions on internet blogs*** that they host or on others' internet blogs, ***may not place comments on those blog sites, which reasonably can be anticipated, or are intended, to degrade morale, good order, and discipline of any members or units in the U.S. Armed Forces, are Service-discrediting***, or would degrade the trust and confidence of the public in the United States Air Force. [Emphasis added]

As proof that Brig Gen Teichert's various postings at issue herein "degrade[d] morale, good order, and discipline" amongst military members, MRFF refers to the fact that 41 members of the 412th Test Wing made specific complaints to MRFF – the majority of whom are ironically by personnel self-identifying as "Christians!"

c. AFI 36-7001, Diversity (2012).

Again, this regulation begins with the admonition that compliance is mandatory. Its stated purpose in ¶ 1.1, is in relevant part:

Air Force capabilities and war fighting skills are enhanced by diversity among its personnel. At its core, diversity provides our Total Force an aggregation of strengths, perspectives, and capabilities that transcends individual contributions. Air Force personnel who work in a diverse environment learn to maximize individual strengths and to combine individual abilities and perspectives for the good of the mission. Our ability to attract a larger, highly talented, diverse pool of applicants for service with the Air Force, both military and civilian, and develop and retain our current personnel will impact our future Total Force.

By publicly rejecting diversity within the AF, Brig Gen Teichert is the antithesis of the AF's (and DoD's) diversity programs, policies and regulations.

With respect to his chain-of-command, ¶ 1.4.2.1., commands that AF leaders:

Secretary Mattis, Letter, 20.

Ensure all qualified personnel are welcome in America's Air Force.

The next paragraph, ¶ 1.4.2.2, goes on to mandate AF leaders to:

Educate and train all personnel on the importance of diversity, including mutual respect, thus promoting an Air Force culture that values inclusion of all personnel in the Total Force and views diversity and inclusion throughout the workforce as a force multiplier in accomplishing the Air Force mission.

Respectfully, your office must to investigate *why* Brig Gen Teichert continues to ignore or reject diversity, and why his superiors have not ensured their compliance with these AF regulations.

2. Article 133, UCMJ, Conduct Unbecoming an Officer and Gentleman.

The gravamen of this offense in this matter – even in an unofficial or private capacity – is that a *commissioned officer* should not engage in conduct (to include speech) which “seriously compromises the person’s standing as an officer.”⁴¹ Certain actions such as “unfair dealing . . . indecorum . . . [or] injustice”⁴² may rise to the level of “Conduct Unbecoming,” something MRFF suggests is clearly demonstrated by the words, tenor, and context of Brig Gen Teichert’s blogposts at issue.

MRFF 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. For those members of the 412th Test Wing at EAFB who are, *e.g.*, agnostic, atheist, Hindu, Jewish, Mormon, Muslim, humanists, secularists, etc., his *conduct* at issue here, “seriously compromises [his] standing as an officer.”

3. Improper Political Activities.

As noted above, Brig Gen Teichert maintains a “Prayer List” on his public webpage.⁴³ MRFF maintains that considering the nature, tone, and number of prayer suggestions by him, that he is in violation of DoDD 1344.10, *Political Activities by Members of the Armed Forces* (2008). That Prayer List (again, without any of the mandated disclaimers) solicits prayers for *inter alia* the following:

“President Trump, Vice President Pence, and the Trump Administration”

“Christian faithfulness to participate in government, preach about government, and pray for government”

⁴¹ MCM, Part IV, ¶ 59.

⁴² *Id.*

⁴³ See: <http://prayatlunch.us/prayer-list/> [Last accessed: 9 August 2018].

Secretary Mattis, Letter, 21.

“Christian leaders to find favor among men”

“A return to national righteousness”

“Recognition of God’s preeminence in our lives and in our land”

“Key leaders to accept Christ as their Savior”

“Appreciation for our national Christian heritage”

“The unborn”

“Proper Christian citizenship that includes regular and fervent prayer and fasting”

“A change in our national spirit so God can change our national direction”

“Appreciation for a nation formed, blessed and prospered by God’s power”

DoDD 1344.10, ¶ 4.1.2.2., prohibits active duty members from the following:

Use official authority or influence to . . . affect the course or outcome of an election

Paragraph 4.1.2.3., prohibits members from doing the following:

Allow or cause 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.

Unless one has lived in utter solitude since 2014 with no access to the outside world, it is obvious that Brig Gen Teichert is referring to now President Trump and the Republican party with his direct reference to “President Trump . . . and the Trump Administration,” and references to “Christian faithfulness” about “government;” “Christian leaders;” “national righteousness;” “Key leaders;” “our national Christian heritage;” “Christian citizenship;” “our national direction;” and “a nation formed, blessed and prospered by God’s power.” In addition, his reference to the “unborn,” cannot be mistaken for anything but the current abortion debate or “cause.”

MRFF submits that if this DoDD was and is in force at all times relevant herein, then Brig Gen Teichert is in violation of it by any rational assessment.

C. Consent to Release.

MRFF, by and through its undersigned counsel, agrees and consents to your office’s release of this document for any purpose deemed appropriate to your investigation.

CONCLUSION

As an aid to your investigation, MRFF suggests consulting a Report by the Congressional Research Service, entitled, *Diversity, Inclusion, and Equal Opportunity in the Armed Forces: Background and Issues for Congress*, (2016),⁴⁴ both for background material and for information and historical background on DoD's protection of one's religious or non-religious persuasions.

Officers who profoundly disagree with *official* DoD and AF policies, programs, and regulations designed to ensure *diversity* and *equal opportunity* within the U.S. military community have two fundamental choices: (1) accept them; or (2) resign their Commission. But, an officer may not simply ignore them, especially while flouting the required "disclaimers" designed to ensure that members of the command and general public do not perceive that a general officer's public religious rants constitute an official U.S. government endorsement of such, or even give the *appearance* of such an endorsement.

Furthermore, MRFF suggests that effective and efficient military leadership does *not* bury its head in the proverbial sand, so as to not "see" and thus not "know" what their subordinates are doing on social media. *Cf.* AFI 1-1, ¶ 2.15.4, *supra*. The disrespect for official DoD and AF policies and programs here is, as MRFF states, open, notorious and appears to be in direct violation of numerous regulations and the UCMJ itself.

Public trust – as noted above – in America's commissioned officer corps is a vital and basic component of federal ethical standards. That trust has been shattered in MRFF's opinion, as exemplified by the webpage and blogposts at issue.

Therefore, for all of the reasons set forth herein, MRFF demands a full and vigorous investigation.

You and your staff are authorized to communicate with me via email regarding this matter.

Respectfully submitted,

/s/ Donald G. Rehkopf, Jr.

DONALD G. REHKOPF, JR.

Attorney at Law

cc: SecAF *via email*
CSAF *via email*
DoD/IG *via email*

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⁴⁴ Available at: <https://fas.org/sgp/crs/natsec/R44321.pdf> [Last accessed: 31 March 2017].