

March 28, 2014

Lt. Gen. Michelle D. Johnson
Superintendent
2304 Cadet Drive, Suite 3300
U.S. Air Force Academy, CO 80840-5001

Dear Lt. Gen. General Johnson:

By June of 2013 a number of events had occurred within the U.S. Armed Forces that raised significant concerns about the status of the religious liberties so greatly prized by all Americans. Consequently, a number of non-profit organizations formed the Restore Military Religious Freedom Coalition (the Coalition) to defend the religious rights that have long been enjoyed by members of our Armed Forces.¹ We write to express our concern regarding recent events at the United States Air Force Academy (the Academy) regarding religious speech and expression² -- noting that Members of Congress are also interested in developments at the Academy.³ Most specifically, we address the Academy's response to the white board controversy and the related public statement released on the subject.⁴

As a general matter, somewhere along the way the Air Force and the Academy seem to have adopted a novel view of American law regarding the First Amendment and freedom of speech and expression – particularly, religious speech.⁵ While it is certainly true that there are occasions in which military necessity requires that “the good of the entire unit” be placed above that of the interests of “any single individual,”⁶ the incident involving the cadet, his white board, and the Bible verse written on it cannot be construed to be one of them – even remotely. As the Academy has stated publicly, cadet white boards are allowed to contain both official and personal messages. Furthermore, these personal messages often include quotations that are philosophical and inspirational to the owner of the white board. Once the Academy allowed the

¹ More information on the Coalition may be found at this website: <http://www.militaryfreedom.org/>.

² A member of the coalition, Lt. Gen. Jerry Boykin (USA, retired), executive vice-president of the Family Research Council, wrote to Brig. Gen. Armacost in his own capacity on February 28, 2014, regarding remarks Brig. Gen. Armacost made to the Academy's assembled faculty on February 4, 2014.

³ Letter, Representative Jim Bridenstine to Lt. Gen. Michelle D. Johnson, Superintendent, U.S. Air Force Academy (Nov. 18, 2013) (“So Help Me God” and oath-taking); Letter, Representative Doug Lamborn to Lt. Gen. Michelle D. Johnson, Superintendent, U.S. Air Force Academy (March 13, 2014); House Armed Services Committee, *President's 2015 Air Force Budget Request*, 113th Cong., 2nd sess. 2014; C-Span, “President's 2015 Air Force Budget Request,” C-Span Video Library, <http://www.c-span.org/video/?318303-1/hearing-fy2015-air-force-budget> (accessed March 24, 2014)(see, for example, questions by Representatives McIntyre, Lamborn, Fleming, and Forbes).

⁴ Statement from Academy Superintendent, News Release #039, U.S. Air Force Academy Public Affairs, USAF Academy, Colorado (March 14, 2014)(Superintendent's Statement).

⁵ We note we are not alone among private organizations in believing the Air Force's understanding of the First Amendment is badly skewed. See Letter, Jay Sekulow, American Center for Law & Justice to Lt. Gen. Michelle D. Johnson, Superintendent, U.S. Air Force Academy (March 17, 2014).

⁶ Superintendent's Statement, p. 1.

cadets the opportunity to express themselves on their white boards, it became unacceptable to censor that speech based on its specific content or general subject matter as enunciated.⁷ The specific speech in question (the Galatians 2:20 passage) was clearly restricted solely due to its religious and Christian content.

In the Academy's Statement of March 14, 2014, the Academy relies upon Air Force Instruction 1-1 (AFI 1-1), to support its position that a cadet in a position of influence may not express any personal religious views. We believe that the relevant section of AFI 1-1, among other things, wrongly attempts to establish that any person in military authority has a diminished right to express his or her beliefs whether religious or non-religious.⁸ There is no basis in constitutional or statutory law for such an overly broad generalization and limitation of the rights of the officer corps. If the cadet in question had been forcing subordinates to listen to sermons on the need for Christian salvation, the Academy's response would be correct, but the cadet at issue used no compulsive means to spread his religious beliefs. The indecipherably vague standard in AFI 1-1, Section 2.11 (*i.e.*, "actual or *apparent* use...") creates something approaching a listener's veto that unacceptably chills free speech – especially, at a *university*, an institution that should create and foster a marketplace of ideas.

Furthermore, we remind you of the issuance of Department of Defense Instruction 1300.17 (DODI 1300.17) on January 22, 2014.⁹ Section 4(b) makes the following declaration:

In accordance with section 533(a)(1) of Public Law 112-239 (Reference (d)), as amended, ..., unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Military Departments will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) of Service members in accordance with the policies and procedures in this instruction.

DODI 1300.17 reflects changes in the Fiscal Year 2013 and Fiscal Year 2014 National Defense Authorization Act which require that the Department of Defense protect the religious expression of service members. A recent news report indicates that Col. Paul Barzler, the Air Force Academy Staff Judge Advocate, appears to believe that DODI 1300.17 applies only "to religious grooming and apparel matters, but not writing a [Bible] verse on a white board or even verbally sharing a verse."¹⁰ We hope there has been some misunderstanding because such an interpretation would be an idiosyncratic reading of DODI 1300.17. For example, consistent with the language in Section 4(b), Section 4(d) states that "[i]n so far as practicable, a service

⁷ The Supreme Court has clearly stated that "[d]iscrimination against speech because of its message is presumed to be unconstitutional." *Rosenberger v. University of Virginia*, 515 U.S. 819, 828 (1995).

⁸ The relevant section for our purposes is Section 2.11 ("Government Neutrality Regarding Religion"). AF 1-1 was issued on August 7, 2012.

⁹ DOD Instruction 1300.17, "Accommodation of Religious Practices within the Military Services," February 10, 2014 (among other things including the protections of the Religious Freedom Restoration Act (42 U.S.C. § 2000bb *et seq.* (2012))).

¹⁰ Ken Klukowski, "Air Force: Christians' Religious Speech Not Legally Protected Right," *Breitbart.com* (March 16, 2014) (quoting attorney Michael Berry of the Liberty Institute who met with Col. Barzler).

member's expression of sincerely held beliefs ... may not provide the basis for a list of disciplinary actions." This provision clearly encompasses far more than matters of apparel and grooming: its primary focus relates to the freedom to express ideas and beliefs without the fear of punishment.

Assuming for the sake of argument that Col. Barzler's interpretation of DODI 1300.17 accurately reflects current Air Force legal analysis, such an interpretation would be inconsistent with Section 533(a)(1) of Public Law 112-239, as amended by Section 532 of P.L. 113-66. DODI 1300.17 closely tracks the NDAA's statutory language which states:

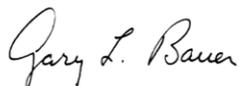
Unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate individual expressions of belief of a member of the armed forces reflecting the sincerely held conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such expression of belief as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.¹¹

Section 533(a)(1) may cover matters relating to garments and grooming, but any reasonable reading of this provision must recognize that it is primarily concerned with matters of thoughts and beliefs. Regardless of the effect the Academy may have believed AFI 1-1 to have, this statute is superior law and compliance with it and its resulting DOD implementing regulations is not optional.

We believe the Academy has overstepped its constitutional and statutory bounds in the incident involving the cadet's white board. This is not a minor matter. The Academy's actions and policy pronouncements, unless quickly corrected, will continue to chill speech at the Academy, harm morale, and create unnecessary confusion for cadets. Thus, we urge you to obtain more objective analyses of the First Amendment issues involved here and correct the errors that have been made.

In closing, we request a meeting to continue this discussion with representatives from our coalition, including General Jerry Boykin, Chaplain Ron Crews, and Michael Berry, Esq.

Respectfully,



Gary L. Bauer
President
American Values

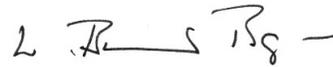


William J. Becker, Jr.
Founder/President
Freedom X

¹¹ Fiscal Year 2013 National Defense Authorization Act, Pub. L. 112-239, div. A, title V, §533, Jan. 2, 2013, 126 Stat. 1727, as amended by Fiscal Year 2014 National Defense Authorization Act, Pub. L. 113-66, div. A, title V, §532(a), Dec. 26, 2013, 127 Stat. 759, <http://www.gpo.gov/fdsys/pkg/CPRT-113HPRT86280/pdf/CPRT-113HPRT86280.pdf>



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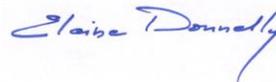
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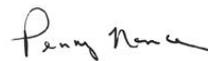
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