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October 27, 2014

Colonel Craig R. Baker
Commander, 180th Fighter Wing (OHANG)
2660 South Eber Road
Swanton, OH 43558-9645

RE: Censorship of Individual Expression of Belief

Dear Colonel Baker:

I am a retired Army chaplain, and Executive Director of *Chaplain Alliance For Religious Liberty*, a non-profit group working to preserve religious freedom for military members and chaplains. I am writing regarding your inappropriate decision to censor Colonel Florencio Marquinez's editorial in the September 2014 edition of *The Stinger*, titled "A Spiritual Journey as a Commander." While I understand your desire to promote pluralism in your unit, on this occasion your zeal for that laudable value unnecessarily trampled a subordinate's cherished rights. You have sent a clear message to servicemembers everywhere: the Air Force no longer tolerates public expressions of belief. Instead, faith-based speech is now disfavored and is to be treated unequally compared with purely secular expressions. I ask you to reconsider.

In your own *Stinger* editorial in April 2014, titled "Commander's Comments: Lead Well," you encouraged your members to follow the Air Force Core Value of *Integrity*, which you defined as "an uncompromising and predictably consistent commitment to honorable, moral, ethical, **spiritual** and artistic values and principles."¹ It was more than a little ironic, then, that you chose that same column as the place to censor Colonel Marquinez because he shared his spiritual values with readers. My comments below will demonstrate why your actions—perhaps well-intentioned—violated military policy, federal law, and the United States Constitution.

As you know, the First Amendment protects airmen and even commanders in their exercise of free speech and religion, in both their religious beliefs and their individual expression of those beliefs. The Ohio Air National Guard is not free to censor the protected speech of one of its members based on the content of that speech. Nor can it intentionally burden a member's exercise of religion, which the Supreme Court has defined to include "belief and profession," as well as actions such as "proselytizing."²

¹ Colonel Craig R. Baker, "Commander's Comments: Lead Well," *The Stinger*, April 2014, available at <http://www.180fw.ang.af.mil/shared/media/document/AFD-140411-028.pdf> (last visited October 23, 2014) (emphasis added).

² *Employment Division v. Smith*, 494 U.S. 872, 877 (1990).

You may believe your decision to censor Colonel Marquinez was required by military policy—specifically Air Force Instruction 1-1—but in fact it was not. As I note below, the current version of AFI 1-1 does not accurately capture the law in this area; however, even it did, your actions still would not be justified. Although paragraph 2-11 of that instruction advises commanders not to use their position “to promote their personal religious beliefs to their subordinates,” Colonel Marquinez’s editorial did not violate that aspiration. His reference to his own Christian journey was stated in the context of his personal spiritual values—an area you acknowledge is part of *Integrity*. He did not promote his uniquely Christian beliefs to his readers, but merely invited those going through stressful circumstances to turn to “God” in their need. This generic acknowledgment of the value of faith was as appropriate as the National Motto itself—“In God We Trust”—which he quoted in his very next sentence. It was as proper as our Commander-in-Chief’s speech at this year’s National Prayer Breakfast, stating that we are “all children of a loving God; brothers and sisters called to make His work our own.”³

Although Colonel Marquinez did not violate any legal limits, your decision to censor him did. Both federal law and Department of Defense policy require you to “accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs)....”⁴ You failed to do so when, after initially publishing his editorial, you then removed it because he expressed his sincere religious beliefs. Your actions led to a national spectacle and the false appearance that Colonel Marquinez did something wrong. As noted above, there was nothing in his article that could have an adverse impact on military readiness, unit cohesion, and good order and discipline.

In any event, the current version of AFI 1-1 too stringently limits a military member’s religious rights and ignores Congress’s decrees in the National Defense Authorization Acts (NDAA) for 2013 and 2014. In the NDAA for 2015, Congress is attempting to force the revision of both AFI 1-1 and DoDI 1300.17 to more accurately capture the freedom of servicemembers that already exists in this area. Congress wants the military to “ensure that verbal and written expressions of an individual’s religious beliefs are protected by the Department of Defense as an essential part of the free exercise of religion by a member of the Armed Forces.”⁵ In this situation, your actions failed to protect Colonel Marquinez’s appropriate written expression of his individual beliefs.

Worst of all, your actions violated his rights under the First Amendment—both his free exercise of religion and his free speech. The Supreme Court has noted that the government violates the Free Exercise Clause when it bans acts “only when they are engaged in for religious reasons, or only because of the religious belief that they display.”⁶ By forbidding Colonel Marquinez’s religious expression in *The Stinger*, you have done just that. Had he provided a purely secular set of values, and encouraged readers merely to rise to their full human potential, you would have never censored his remarks. You took action solely because his remarks displayed religious belief.

³ President Barack Obama, “Remarks by the President at National Prayer Breakfast,” February 6, 2014, available at <http://www.whitehouse.gov/the-press-office/2014/02/06/remarks-president-national-prayer-breakfast> (last visited October 23, 2014).

⁴ DoD Instruction 1300.17, para. 4(b) (implemented by ANGI 36-7).

⁵ NDAA 2015, Sec. 528, *Revised Regulations for Religious Freedom* (available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr4435pcs/pdf/BILLS-113hr4435pcs.pdf>).

⁶ *Employment Division v. Smith*, 494 U.S. 872, 877 (1990).

This type of censorship also raises a "Free Speech" issue. Although *The Stinger* is a publication for your unit, in the past you have allowed commanders and others to write articles on various topics, expressing their opinions on issues and telling their personal stories. Your own editorial about integrity and "spiritual values" is but one example. Having done this, you cannot now censor Colonel Marquez because it so happens that his personal journey involved religious faith. For instance, in one case the Supreme Court held that a public university could not refuse to fund a student publication merely because it contained religious messages and the school did not wish to violate the Establishment Clause. As the Court noted in that case, "Discrimination against speech because of its message is presumed to be unconstitutional. . . . The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."⁷

The Air Force has previously allowed speakers to share their personal stories, even if their comments strayed into the area of religious belief or non-belief. Consider an article just last year from an official publication at Moody Air Force Base, entitled, "Atheist Ponders Spiritual Fitness." In that commentary, an atheist airman shared his views about what constituted "spiritual fitness" in the Air Force. In addition to explaining that he did not believe in God, and discussing non-theistic ways to be spiritual, the writer concluded by suggesting that "maybe we don't have a divine purpose, but rather that we must find our own."⁸ Colonel Marquez's article was no different than this, except that he expressed a belief in God.

I am deeply disturbed by your decision to censor the colonel based purely on his individual expression of religious belief. Not only did you publicly humiliate him by your actions, but you have sent a chilling message to other members of the Air Force, that they need to keep their faith to themselves or else risk the judgment of the command. I sincerely hope that you will reconsider your decision and allow the colonel's article to be republished without censorship, along with an acknowledgement that he did nothing wrong in expressing his beliefs.

The Air Force is a diverse organization that should value pluralism and tolerance. This includes tolerance for those who have religious faith and wish to express it in a respectful, appropriate, and non-coercive way, just as Colonel Marquez did in his editorial. If you would like to discuss this further, please contact me via email at rcrews@chaplainalliance.org.

Thank you for your consideration and service.

Sincerely,



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⁷ *Rosenberger v. Rector and Visitors of Univ. of VA*, 515 U.S. 819, 829 (1995).

⁸ Senior Airman Jarrod Grammel, "Atheist Ponders Spiritual Fitness," *23d Wing Public Affairs*, May 20, 2013 (available at <http://www.moody.af.mil/news/story.asp?id=123349257>).