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Executive Director
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Col Brian P. Duffy, Commander
Joint Base Elmendorf-Richardson
10480 Sogen Avenue
JBER, Alaska 99506

July 29, 2013

Re: Cease Discrimination Against Lt. Col. Kenneth Reyes' Speech

Dear Colonel Duffy:

It has come to our attention that you ordered the removal of Chaplain Lt. Col. Kenneth Reyes' column titled, "No Atheists in Foxholes: Chaplains Gave all in World War II," from the "Chaplain's Corner" on the Joint Based Elmendorf-Richardson's website. This chilling action restricts Chaplain Lt. Col. Reyes' ability to fulfill his obligations as a military chaplain to speak on matters of faith, and impermissibly suppresses his First Amendment freedoms. Contrary to the 673d Air Base Wing's stated goal of ensuring it "does not advocate any particular religion or belief set over another," your selective removal of one chaplain's viewpoint violates your declared goal. We respectfully request that you immediately rectify this harm, apologize to Chaplain Lt. Col. Reyes for the discrimination you inflicted upon him, and re-post his essay on the website.

A chaplain, by definition, ministers to spiritual needs. Indeed, the very nature of the word "chaplain" necessitates that the individual possesses a belief in God and a desire to be a conduit of faith in God to others. In fact, since General George Washington founded the chaplain corps on July 29, 1775, chaplains have been enabling military personnel to worship according to their conscience. Military chaplains thus have an obligation and role to encourage faith and to be a source of spiritual support and encouragement to the men and women in uniform whom they serve.

As an ordained clergyman, therefore, Chaplain Lt. Col. Reyes' very duties require him to provide religious instruction and spiritual counseling. Notably, in the essay at issue, Chaplain Lt. Col. Reyes did not even provide religious instruction *per se*, but merely pondered the historical context of an expression and its relation to the meaning of faith, "both religious and secular." Far from an attempt to coerce any particular belief, he posed for consideration: "What is faith to you?" Contrary to the assertion by the Military Religious Freedom Foundation (MRFF), Chaplain Lt. Col. Reyes never said anyone "must have faith." He simply suggested that everyone "expresses some form of faith each day, whether it is religious or secular," and noted that "[e]ven the strongest of beliefs can change, and, I may add, can go both ways - people can be drawn to or away

from ‘faith.’” Chaplain Lt. Col. Reyes’ reflective essay expressing a variety of opinions in no way rises to an “anti-secular diatribe.”

Additionally, the First Amendment of the United States Constitution protects chaplains’ freedom of expression and freedom of religion. While we recognize that military personnel voluntarily agree that their First Amendment freedoms can be limited in some circumstances for the sake of the military’s overall mission, these freedoms are not extinguished entirely. *See Ogden v. U.S.*, 758 F.2d 1168 (7th Cir. 1985). In particular, a chaplain must have the right to freely practice his faith as his very obligation within the military is to minister to those who seek his assistance.

In the case at issue, Chaplain Lt. Col. Reyes’ essay remains well within the constitutionally protected framework of protected religious speech, and, far from having an aggressive or coercive effect, simply posed thought-provoking ideas on an historical expression and the meaning of “faith.” Notably, even if Chaplain Lt. Col. Reyes had been advocating a specific religion in his article, it would have been permissible and indeed necessary to allow it to remain in the public forum. But the fact that his essay did not advocate any particular religion, but simply provided a historical understanding of a phrase and posed open-ended, soul searching questions applicable to anyone regardless of his or her personal religious or philosophical leanings underscores even further the discriminatory nature of your action. Your intolerance for this Chaplain’s perspective not only violates his constitutionally-protected rights, but casts a chilling effect on the thoughts and religious beliefs of others seeking to enter into the dialogue.

Moreover, your improper selection of Chaplain Lt. Col. Reyes’ essay for disfavored treatment suggests viewpoint-based discrimination, also impermissible under the U.S. Constitution. As the United States Supreme Court declared, "It is as objectionable to exclude both a theistic and an atheistic perspective on the debate as it is to exclude one, the other, or yet another political, economic, or social viewpoint." *See Rosenberg v. Rector*, 515 U.S. 819 (1995). Your base’s website appears to facilitate a forum for speech and thoughts to be exchanged from a wide spectrum of perspectives, yet your action impermissibly silenced one particular viewpoint. However, “[i]t is axiomatic that the government may not regulate speech based on its substantive content and the message it conveys.” *See Police Dept. of Chicago v. Mosley*, 408 U.S. 92 (1972). Indeed, “[d]iscrimination against speech because of its message is presumed to be unconstitutional,” especially when the government targets a speaker’s particular views on a topic. *See Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994) and *R.A.V. v. St. Paul*, 505 U.S. 377 (1992). Viewpoint discrimination is thus an egregious violation of First Amendment freedoms.

Our military chaplains—and the men and women they serve—place their very lives on the line every day for the freedom you denied Chaplain Lt. Col. Reyes by silencing his viewpoint. To succumb to threats and implicitly agree that one man’s reflection on a historic statement amounts to “hate” constitutes an unjust censorship of constitutionally permissible speech. Your failure to recognize that the column in no way accomplished the accusations placed against it by the MRFF must be remedied immediately. Neglecting to do so will only further discrimination and intolerance in the military.

In conclusion, Chaplain Lt. Col. Reyes was well within his proscribed duties when he wrote and published his essay. Its removal provides yet another example of the climate of intimidation perpetuated against military chaplains for simply seeking to express and share their beliefs. But selectively silencing speech on matters of faith deprives men and women their right to engage in the free market place of ideas.

Accordingly, we request that you immediately discontinue such discriminatory actions as they are contrary to the law, formally apologize to Chaplain Lt. Col. Reyes for the wrongful action, and reinstate his essay on the website. Our hope is that, with your amenability to our reasonable request, we can resolve this unfortunate injustice without taking recourse to legal measures.

Sincerely,

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Executive Director
Chaplain Alliance for Religious Liberty