

Daniel Briggs

From: Daniel Briggs
Sent: Monday, September 28, 2015 10:41 AM
To: [REDACTED]
Subject: MCB Hawaii Sign

Dear Col. Killeen,

I am writing on behalf of Alliance Defending Freedom (ADF) in response to an email you received from the Military Religious Freedom Foundation (MRFF) demanding the move or removal of a sign on base saying, "God Bless the military, their families, and the civilians who work with them."

The sign should not be removed. As it stands, the sign is not grounds for an Establishment Clause violation. However, removal of the sign would certainly be in violation of the Establishment Clause, showing preference for no religion over religion. MRFF's reference to time, place, and manner restrictions relates to a different area of law and is inapplicable. Even if it did apply, any such restrictions on speech must not treat speech differently based on content. We urge you to ensure the sign receives the same treatment as any other sign on base in accordance with applicable policies and regulations. Further analysis is below to assist you in discussions with your JAG and IG.

Our nation has many constitutionally permissible reminders of our historical and cultural roots, from our national motto, "In God We Trust", to "so help me God" in the Commissioned Officer's Oath to the presidential proclamations accompanying each National Day of Prayer. MRFF predictably sees an Establishment Clause violation wherever religious speech is present. Its argument is based on the so-called "separation of church and state," which it interprets to mean that anything remotely religious must be purged from the military. However, federal courts have recognized that "[t]his extraconstitutional construct has grown tiresome. The First Amendment does not demand a wall of separation between church and state." *ACLU of Ky. V. Mercer Cnty.*, 432 F.3d 624, 638 (6th Cir. 2005). In fact, the Establishment Clause "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any." *Lynch v. Donnelly*, 465 U.S. 669, 673 (1984). MRFF exhibits this hostility as it seeks to marginalize religion and to push it to the far corners of the military community.

That some military members on base purportedly complained about the sign is not grounds for removal or disparate treatment. When people confront speech they find offensive, the First Amendment provides a simple solution: They can avert their eyes. *See Cohen v. California*, 403 U.S. 15, 21-22 (1971). The Establishment Clause does not provide a heckler's veto to those who find offense. The Supreme Court reached this conclusion in *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1826 (2014), reasoning that "[a]dults often encounter speech they find disagreeable; an Establishment Clause violation is not made out any time a person experiences a sense of affront. . ." MRFF and its members are entitled to feel offense, but it is part of living in a pluralistic military community.

The Marine Corps is a diverse organization that strives to value pluralism and tolerance. We urge you to carefully consider the applicable regulations and policies on point and apply them in a way that treats this sign fairly as compared to all other signs on base.

Hopefully the preceding will assist you in your decision. If you wish to discuss this matter further, please do not hesitate to contact us.

Sincerely,

Daniel Briggs

Legal Counsel, Director of Military Affairs
Alliance Defending Freedom