



November 24, 2015

Dr. Miguel H. LaPuz
Director
Salem VA Medical Center
1970 Roanoke Blvd.
Salem, VA 24153
Via Facsimile (540) 983-1096 and Regular Mail

Re: Christmas expression and celebration at the Salem VA Medical Center

Dear Dr. LaPuz:

We recently learned that you sent an email to all Salem VA employees about the “various regulations for holiday displays in federal facilities.” We write out of concern that the email went too far in its directives and exhibited a hostility to religion at a time of year that is undoubtedly religious and is celebrated as such by millions of Americans, including the employees who work at Salem VA and the veterans your facility serves. Specifically, your directives about holiday displays and about the religious expression of employees of the Salem VA Medical Center are incorrect and do not reflect an accurate understanding of the law.

By way of introduction, Alliance Defending Freedom is an alliance-building legal ministry that advocates for the right of people to freely live out their faith. Alliance Defending Freedom frequently assists government officials at all levels in understanding their rights and responsibilities concerning seasonal religious expression.

Your email stated that “public areas may only be decorated in a manner that is celebratory of the winter season,” and concluded that “trees (regardless of the types of ornaments used) have been deemed to promote the Christian religion and will not be permitted in any public areas this year.” We were happy to hear that you later reversed your decision and have decided to allow Christmas trees in public areas if they are accompanied by other religious symbols such as a Menorah. But the initial email, and your correction, reflect a gross misunderstanding of the law. First, Christmas trees are not Christian symbols. In fact, the United States Supreme Court has stated that a Christmas tree by itself, not surrounded with any other symbols of the season, is constitutional. The Court stated:

The Christmas tree, unlike the menorah, is not itself a religious symbol. Although Christmas trees once carried religious connotations, today they typify the secular celebration of Christmas. . . . Numerous Americans place Christmas trees in their homes without subscribing to Christian religious beliefs, and when [a government] tree stands

alone in front of [a government building], it is not considered an endorsement of Christian faith.¹

The Salem VA can put up Christmas trees by themselves without violating the Establishment Clause. Thus, your directive email that stated that Christmas trees promote the Christian religion is wrong and is an incorrect statement of the law on this point. Also your decision to only allow Christmas trees if they are accompanied by symbols of other faiths is incorrect as a matter of law. Over-reactions such as this to Christmas displays evidences not a desire to be neutral toward the religious aspects of the holiday, but instead shows a studied hostility toward the religious celebration of Christmas.

So too does your directive about employees' Christmas decorations, limiting it to areas not regularly open to the public. It is a fundamental principle of constitutional law that government officials may not censor speech simply because the speech is religious or contains a religious perspective.² Government employees do not forfeit constitutional protection upon entering the public workplace.³ Rather, courts balance the employees' constitutional rights against the government's need to run an efficient work place.⁴ The government may restrict employee speech only where it can prove that its interests outweigh those of the employee.⁵ This burden is even greater when, like here, the government imposes broad speech restrictions that affect an entire group of employees.⁶

In *Tucker v. State of California Department of Education*, for example, the federal court struck down as unconstitutional a policy that prohibited employees from displaying any religious artifacts, tracts, or materials outside their offices or cubicles, and also prohibited any oral or written religious advocacy in the workplace.⁷ The court rejected the government's claims that religious speech in general impacted workplace efficiency, or that employees have a legal right to avoid all religious speech in the workplace.⁸ It also rejected the notion that by allowing employees to engage in religious speech and display religious materials, the government was somehow endorsing religion. A public employee's speech, the court explained, "does not always represent, or even appear to represent, the

¹ *County of Allegheny v. ACLU*, 492 U.S. 573, 616-17 (1989) (emphasis added).

² *Good News Club v. Milford Cent. Sch. Dist.*, 533 U.S. 98 (2001); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981).

³ *Tucker v. State of California Dept. of Educ.*, 97 F.3d 1204, 1210 (9th Cir. 1996).

⁴ *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968).

⁵ *Tucker*, 97 F.3d at 1210.

⁶ *Id.* at 1210-11.

⁷ *Id.* at 1208-09.

⁸ *Id.* at 1211-12.

views of the state.”⁹ Moreover, “[r]easonable persons are not likely to consider all of the information posted on bulletin boards or walls in government buildings.”¹⁰

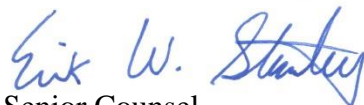
Thus, the court concluded that “banning the posting of *all* religious materials and information in *all* areas of an office building except in employees’ private cubicles . . . is not a reasonable means of achieving the state’s legitimate ends.”¹¹

Here, the fact that the Salem VA Medical Center allows holiday displays in public areas demonstrates that such employee expression does not impose on your ability to run an efficient workplace. Moreover, *Tucker’s* holding forecloses any claim that religious expression in the workplace would intrude on the rights of other employees or violate the Establishment Clause. In short, the email directive you sent infringes upon your employees’ First Amendment rights.

The email directive muzzles the very religious diversity it purportedly promotes. If the VA truly seeks diversity, it must be genuine in its pursuit and recognize employees’ constitutionally guaranteed freedom to exercise their sincerely held religious beliefs without coercion from the government. And if someone happens to be offended by a greeting of “Merry Christmas” or a Christmas tree in the lobby, “Offense...does not equate to coercion. Adults often encounter speech they find disagreeable; and an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views.”¹²

Please respond to this letter in writing with assurances that the Salem VA will respect the rights of its employees and veterans it services.

Respectfully submitted,



Senior Counsel
Alliance Defending Freedom

⁹ *Id.* at 1213 (citing *Texas State Teachers Assoc. v. Garland Indep. Sch. Dist.*, 777 F.3d 1046 (5th Cir. 1985)).

¹⁰ *Id.* at 1215.

¹¹ *Id.* at 1216 (emphasis in original); see also *Brown v. Polk County*, 61 F.3d 650, 659 (8th Cir. 1995) (striking down as unconstitutional a policy that prohibited religious proselytizing, witnessing, or counseling in the workplace).

¹² *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1826 (2014).