



P.O. Box 28004
Raleigh, NC 27611
(919) 834-3466
www.acluofnorthcarolina.org



1301 K Street, NW, Ste 850E
Washington, DC 20005
(202) 466-3234
www.au.org



Program on Freedom of Religion & Belief
915 15th Street, NW
Washington, DC 20005
(202) 675-2330
www.aclu.org

July 5, 2011

Via U.S. Mail and Fax
Hon. John M. McHugh
Secretary of the Army
1400 Defense Pentagon
Washington, DC 20301-1400
Fax: (703) 697-8036

Lieutenant General Frank G. Helmick, Commanding General
Colonel Stephen J. Sicinski, Garrison Commander
XVIII Airborne Corps and Fort Bragg
2175 Reilly Road, Stop A
Fort Bragg, NC 23810
Fax: (910) 432-0520

Re: Preferential Sponsorship of Christian Events at Fort Bragg

Dear Mr. Secretary, Lieutenant General Helmick & Colonel Sicinski:

As you know, the Army provided both financial support and formal sponsorship to a Christian evangelical event, “Rock the Fort,” which was held on the Main Post Parade Field at Fort Bragg on September 25, 2010. The event was co-sponsored by the Fort Bragg Religious Support Office and the Billy Graham Evangelistic Association (“BGEA”), and documents indicate that Army chaplains had primary responsibility for planning the event. Those Fort Bragg entities with designated duties at Rock the Fort included: (1) the Religious Support Office; (2) the Event Action Officer (Chaplain McElroy); (3) the Directorate of Emergency Services; (4) the Directorate of Public Works; (5) the Installation Safety Office; (6) the Directorate of Family and Morale, Welfare and Recreation (DFMWR); (7) the Public Affairs Office; (8) the Fort Bragg Fire and Emergency Services; (9) Womack Army Medical Center Preventative Medicine; and (10) the Fort Bragg Directorate of Plans, Training and Mobilization. Documents we received pursuant to a Freedom of Information Act request reveal that \$50,000 in financial support, and \$30,000 in logistical and security support, was furnished for the event. Additionally, last June, Chaplain David P. Hillis sent a letter to local churches on official Department of Defense (“DoD”) letterhead, promoting the Rock the Fort event and explaining that the event would be

“evangelistic in nature” and that “the concert will conclude with a clear Gospel message.” And on June 24, 2010, Chaplain Hillis sent an email to a large number of chapel pastors and Unit Ministry Team (UMT) members stating that “Rock the Fort will share a clear presentation of the Christian Gospel. Attendees will have an opportunity to respond to the Gospel Evangelistic message, be encouraged by Fort Bragg Chaplains and trained counselors, and then be offered ongoing Biblical Spiritual Resiliency training at our military chapels and local churches.” The Fort Bragg Action Officer targeted areas within ninety miles of Fort Bragg for the event’s publicity.

Furthermore, documents show that legal counsel advised event organizers to include, pursuant to military policy, a disclaimer on all advertising materials. Yet no such disclaimer appears in any of the printed material used to advertise Rock the Fort. The After Action Review conducted by the Army indicated that this disclaimer was “required by the legal review, especially when being distributed by a [sic] from a non-Federal entity.” The After Action Review acknowledges that this disclaimer was not used.

In response to complaints about Rock the Fort, Lieutenant General Helmick vowed “to provide the same support to comparable events sponsored by similar non-Federal entities.”¹ The documents we have received further indicate that the legal department advised Fort Bragg Garrison Commander Colonel Stephen Sicinski of this equal-treatment requirement. Despite that assurance and advice, Colonel Sicinski refused to provide the same venue or financial support for a comparable atheist event — “Rock Beyond Belief” — that was being planned by Sergeant Justin Griffith and other active duty Soldiers. Additionally, proposed performers for Rock Beyond Belief were told that they needed to provide “statements of intent” regarding their commitment to perform at the event, whereas no such requirement was made of the Rock the Fort performers. The denial of the venue and funding forced cancellation of the then-planned Rock Beyond Belief event.

The Army’s support and sponsorship of Rock the Fort, as well as its denial of similar support for Rock Beyond Belief, conflicts with governing DoD regulations.

1. The Army’s support of Rock the Fort ran afoul of the following regulations:

- Joint Ethics Regulation 3-211(a) specifies that “[t]he head of a DoD Component command or organization may provide . . . , on a limited basis, the use of DoD facilities and equipment (and the services of DoD employees necessary to make proper use of the equipment), as logistical support of an event sponsored by a non-Federal entity, *except for fundraising and membership drive events . . .*” (emphasis added).
- Section 4.1.4 of the same Directive requires that, except for programs that are open to the general public at no charge for admission and are patriotic events or celebrations of national holidays, the DoD’s participation in an event sponsored by a non-Federal entity shall be incidental to the event. The DoD defines “incidental support” as “support [that] has a negligible or minimal impact on the planning, scheduling, functioning, or audience draw of a public event.” “Co-sponsorship of events [by a Department of Defense

¹ See <http://ffrf.org/uploads/legal/FtBraggresponse.pdf>.

Component] with a non-Federal entity is prohibited” when the event is related “to the purpose or business of the co-sponsoring, non-Federal entity.”

- Section 4.2.9 of DoD Directive 5410.18, which is entitled “Selective Benefit and Preferential Treatment,” provides that “[c]ommunity relations activities *shall not support, or appear to support, any event that provides a selective benefit to any individual, group, or organization, including any religious or sectarian organization, ideological movement, political campaign or organization . . .*” (emphasis added).

Rock the Fort plainly provided a selective benefit to evangelical Christians and to the Billy Graham Evangelistic Association, a religious organization that “exists to support and extend the evangelistic calling and ministries of Billy and Franklin Graham by proclaiming the Gospel of Jesus Christ to all [they] can by every effective means available and by equipping others to do the same.” http://www.billygraham.org/about_index.asp. According to the Association, “[t]he Rock the Fort outreach is designed to channel new believers into your church, so you can encourage them to further spiritual growth.” <http://www.grahamfestival.org/Festival/pgview.aspx?pgid=88&cid=26>. Supporting an event designed to increase membership in Christian churches cannot be squared with the regulations, much less with the First Amendment. Furthermore, based on the Army’s own admissions, it is clear that Fort Bragg officials engaged in substantial co-sponsorship and support of Rock the Fort—support that cannot plausibly be deemed “incidental.”

2. The refusal to provide similar support to the Rock Beyond Belief event is equally violative of DoD regulations:

- Joint Ethics Regulation 3-211(a) specifies that “[t]he Head of the DoD Component command or organization may provide . . . on a limited basis, the loan of DoD facilities and equipment (and the services of DoD personnel necessary to ensure proper use of the equipment), as logistical support of an event sponsored by a non-Federal entity . . . when the head of the DoD command or organization determines all of the following: . . . (5) The DoD Component command or organization is able and willing to provide similar support to comparable events.”
- Section 4.2.9 of DoD Directive 5410.18 requires that “[w]hen DoD support is provided to one non-Federal entity, the DoD Component commands or organizations providing such support must be able and willing to provide similar support to comparable events sponsored by similar non-Federal entities.”
- Sections 4.2.4.1 & 4.2.4.1.5 of that same Directive likewise allow the loan of DoD facilities, equipment, and personnel only when the “DoD Component command or organization is able and willing to provide similar support to comparable events . . . sponsored by similar non-Federal entities.”

Army officials’ decision to deny the sponsors of the Rock Beyond Belief event the same support they awarded to Rock the Fort — and to impose additional requirements on Rock Beyond Belief performers — cannot be squared with the plain meaning of these provisions.

As you undoubtedly know, the government's contribution of funds to a religious event raises serious constitutional questions. *See, e.g., Bowen v. Kendrick*, 487 U.S. 589 (1988). At a minimum, however, any such support must be provided on an equal-opportunity basis, without preference for some faiths over others, or for religion over non-religion. *See, e.g., Rosenberger v. Record and Visitors of the Univ. of Va.*, 515 U.S. 819 (1995). This neutrality requirement is expressly captured in the Army's own regulations, as reflected above.

Accordingly, we ask you to ensure that Fort Bragg strictly adheres to DoD Directive 5410.18 and the DoD Joint Ethics Regulation by refraining from supporting or appearing to support any event that provides a selective benefit to any religious organization or to an explicitly sectarian religious belief system. Second, we ask that you take steps to ensure compliance with DoD regulations that require the provision of similar support to comparable events sponsored by similar non-Federal entities — including Rock Beyond Belief — insofar as this can be accomplished consistently with constitutional limitations. Finally, we ask you to provide proper training to personnel within the Fort Bragg command structure to ensure strict adherence to military regulations in making decisions about whether to partner with non-Federal entities in presenting events.

Please inform us at your earliest convenience of your position on these matters.

Sincerely,

Ayesha N. Khan
Legal Director
Americans United for Separation
of Church and State
1301 K Street, NW, Suite 800
Washington, DC 20005

Katherine Lewis Parker
Legal Director
ACLU of North Carolina
P.O. Box 28004
Raleigh, NC 27611

Daniel Mach
Director
ACLU Program on Freedom
of Religion and Belief
915 15th Street, NW
Washington, DC 20005