



May 29, 2019

The Honorable Robert Wilkie
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Sent via email and U.S. Mail CMRRR#7017 1450 0000 9915 9518

Re: Inclusion of Religious Items on POW/MIA Remembrance Displays

Secretary Wilkie:

First Liberty Institute is a national religious liberty organization dedicated to defending religious liberty for all Americans. The Northeast POW/MIA Network retained First Liberty Institute in this matter. Please direct all correspondence on this matter to me at the contact information provided below.

We write to encourage you to issue a policy applicable to all VA facilities that permits the inclusion of a Bible in POW/MIA remembrance displays. As you undoubtedly know, current VA policy delegates the decision of whether to permit such displays to the individual facility director.

On behalf of the Northeast POW/MIA Network, please accept our gratitude for the VA's strong stand against the Military Religious Freedom Foundation (MRFF) and its dubious lawsuit against the Manchester VA Medical Center. The Northeast POW/MIA Network is the organization responsible for creating and maintaining the POW/MIA remembrance display at the Manchester VA Medical Center. World War II Prisoner of War, Herman "Herk" Streitberger, who is also a member of the Northeast POW/MIA Network donated his personal Bible for inclusion in the display. Herk's Bible is now the subject of the MRFF lawsuit.

The MRFF stands for anything but religious freedom within the military, and its true agenda is revealed by its fruitless and meritless litigation efforts. The MRFF's lawsuits and threats are little more than attempts to bully government officials into capitulation. While we are grateful and we commend the VA for its refusal to be bullied, we also encourage you to seize this opportunity to put an end to these incessant complaints and lawsuits.

Although the inclusion of a Bible in a POW/MIA remembrance display is perfectly permissible under the U.S. Constitution, current VA policy guidance delegates the

discretion to authorize such displays to individual VA facility directors. As a result, it is conceivable that some VA facilities will authorize POW/MIA remembrance displays that include Bibles, some will authorize POW/MIA remembrance displays that do not include Bibles, while others still might not authorize any displays at all. Our veterans—especially those who spent time captured or missing—deserve a uniform policy that allows Americans to honor and remember their service and sacrifice at all VA facilities.

Moreover, the current VA policy of delegating the discretion to individual facility directors could actually expose the VA to more litigation. As demonstrated in the Manchester VA Medical Center case, each facility director could be sued for his or her decision. Indeed, although including the Bible is constitutionally permissible, removing the Bible might actually violate the Constitution as a form of impermissible viewpoint discrimination.

The First Amendment to the United States Constitution prohibits the government from “abridging the freedom of speech” of private individuals or groups. The government also may not suppress or exclude the speech of private groups individuals for the sole reason that their speech contains religious content or symbolism. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753 (1995); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981).

The Supreme Court also stated that “the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.” *Lamb’s Chapel v. Ctr. Moriches Sch. Dist.*, 508 U.S. 384 (1993). In other words, were the VA to remove a Bible purely because of the Bible’s religious character, but permit non-religious materials such as books, newspapers, magazines, etc., then VA would actually be demonstrating favoritism to some viewpoints at the expense of others. The Constitution forbids this. But a uniform, VA-wide policy clearly permitting the Bible’s inclusion in displays would foreclose such a violation.

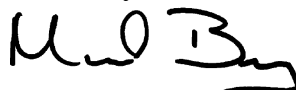
The fact that an outside group more than 2,000 miles away claims to be offended is also insufficient legal grounds to remove the Bible. As the Supreme Court recently stated in the case of *Town of Greece v. Galloway*, 572 U.S. 565 (2014):

Offense, however, 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.

No patient, visitor or employee is compelled to read a donated Bible that is part of a POW/MIA remembrance display. But even if a Bible were left on a waiting room table, a VA medical facility is exactly the sort of place where veterans and dependents may decide to think about religious matters. To deny patients and visitors access to what is often a source of strength and comfort is inappropriate and unnecessary under any reasonable reading of the First Amendment or VA policies.

Mr. Secretary, we commend your strong leadership, and we encourage you to continue your demonstrated commitment to our veterans. We ask that you put an end to the piecemeal litigation by the MRFF and other activist groups by implementing a VA-wide policy that permits Bibles to be included in POW/MIA remembrance displays. If I may be of assistance, or if you wish to discuss this further, please feel free to contact me. I may be reached at [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Berry". The signature is fluid and cursive, with the first name "Michael" and the last name "Berry" clearly distinguishable.

Michael Berry
Chief of Staff
Director of Military Affairs
First Liberty Institute