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Program on Freedom of Religion and Belief 915 15th Street NW Washington, DC 20005 T/202.675.2330 WWW.ACLU.ORG

March 25, 2011

### VIA FACSIMILE AND U.S. MAIL

The Honorable John McHugh Secretary of the Army 1400 Defense Pentagon Washington DC 20301-1400 Fax: (703) 697-8036

Public Records Request Related to "Rock the Fort" and "Rock Beyond Belief" Re:

Dear Secretary McHugh,

Last fall, we wrote to you to express deep concern about an evangelical Christian concert that was held on base at Fort Bragg on September 25, 2010. You may recall that according to a letter sent on Department of the Army letterhead by Chaplain Colonel David P. Hillis (see enclosed letter), that event was not an occasion at which Fort Bragg simply opened the base to an outside group to express the outside group's individual ideas in a limited public forum. Rather, the Department of the Army itself was involved in sponsoring and planning the religious event.

In his letter, Colonel Hillis stated that the event, entitled "Rock the Fort," was "evangelistic in nature." Further, Colonel Hillis invited local ministers to participate in the event in order to "work together in this unifying Christian event." Documents that we received in response to a public records request demonstrate that not only did the event take place, but Colonel Hillis and other Army officials, including Colonel Stephen J. Sicinski, were instrumental in (1) organizing the event; (2) tracking its success; (3) issuing a media release and otherwise engaging with the media about the event; and (4) notably, creating a budget and coordinating funding for the event. Excerpts of relevant correspondence are enclosed. See e.g. FOIA FA-11-0190 at page 10 (Colonel Hillis noting his preference for securing a particular Christian rock band); page 14 (Chaplain Scott Kennedy noting that "the target audience is young Soldiers"); page 15 (Chaplain Egert noting, "When LTG Helmick saw the concert on the calendar this morning COL Sicinski told him it was a Christian concert. Helmick responded with one word: 'Great!' It's a go! PTL!"); page 30-31 (Army officials coordinating funding and devising budget); page 34 (Army officials discussing the launch of a "publicity plan for Rock the Fort"); page 38 (Memorandum of Instruction for Rock the Fort concert, outlining "support requirements," including budget); page 51 (Army's "Media Release" regarding Rock the Fort concert, noting that "the Fort Bragg Garrison Religious Support Office will host a Fort Bragg/Fayetteville Community-wide Christian 'Rock the Fort' concert").

In your response letters to us dated November 1 and 3, 2010, you stated that you "requested a written After Action Review (AAR), detailing the Fort Bragg support provided to the 'Rock the Fort' event, the cost of such support and information regarding how the installation addressed similar requests from other religious entities over the past year." This letter serves as a follow-up Freedom of Information Act ("FOIA") request, pursuant to 5 U.S.C. § 552 and the Department of Justice implementing regulations, 28 C.F.R § 16.11 for all documents related to that AAR.

As noted in the ACLU of North Carolina's letter dated October 5, 2010, we believe that the actions of Colonel Hillis and the Department of the Army, in coordinating, planning and supporting last year's Rock the Fort concert, violated the Establishment Clause of the First Amendment to the United States Constitution. The United States Supreme Court has noted that "[w]hatever else the Establishment Clause may mean (and we have held it to mean no official preference even for religion over nonreligion, see, e.g., Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 109 S.Ct. 890, 103 L.Ed.2d 1 (1989)), it certainly means at the very least that government may not demonstrate a preference for one particular sect or creed (including a preference for Christianity over other religions)." County of Allegheny v. ACLU Greater Pittsburgh Chapter, 492 U.S. 573, 605 (1989). See also Larson v. Valente, 456 U.S. 228, 244 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another."). Religious endorsement is also forbidden in the statements of government officials, such as those found in Colonel Hillis's letter, referenced above, as well as in the countless emails obtained through our public records request. See N.C. Civil Liberties Union v. Constangy, 947 F.2d 1145, 1152-53 (striking down judge's practice of opening court with a prayer).

Further, we remind you that it is no defense to argue that soldiers and their families were not coerced to participate in the event (even if that were in fact the case, although there appears to be evidence of coercion as well). Although coercion is "sufficient" to prove an Establishment Clause violation, it is "not necessary." Lee v. Weisman, 505 U.S. 577, 604 (1992) (Blackmun, J., concurring); see also County of Allegheny, 492 U.S. at 597 n.47 (rejecting the defendants' argument that proof of coercion should be required in Establishment Clause cases); Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 224-25 (1963); Engel v. Vitale, 370 U.S. 421, 430 (1962). Any time the government puts its stamp of approval on religious activity, it creates an atmosphere of coercion in which individuals must choose between participating against their will and protesting in embarrassment. Lee, 505 U.S. at 592.

Finally, in addition to Establishment Clause violations that appear to have occurred in connection with the Rock the Fort concert, we seek additional documents in order to determine whether the Army is also violating the free speech rights of Sergeant Justin Griffith, an atheist serviceman who is seeking to host a concert at Fort Bragg, entitled "Rock Beyond Belief." We seek information to determine whether Fort Bragg is extending support to Rock Beyond Belief that is

substantially similar to that provided to Rock the Fort. We also seek information to determine whether Fort Bragg is imposing requirements on Rock Beyond Belief that are more restrictive than those imposed on Rock the Fort.

Consequently, in addition to the request set forth above, this letter constitutes a FOIA Request for the following:

- All documents related to any funding sources for the Rock Beyond Belief event;
- All correspondence to, from and between any official of the Department of the Army related to the Rock Beyond Belief event; and
- All documents related to Fort Bragg's compliance with the First Amendment to the United States Constitution, as well as all relevant DOD Directives, including DOD Directive 5410.18.

In addition to the document requests set forth in this letter, we also want to follow up on documents requested in the ACLU of North Carolina's October 5, 2010 letter. It appears that we have not received the following documents:

• All policies and procedures related to the authority of military chaplains to coordinate, sponsor and promote overtly religious events.

Please provide a response to this request by Friday, April 22, 2011. Thank you again for your consideration of this letter.

Sincerely.

Katherine Lewis Parker

Legal Director

ACLU of North Carolina

P.O. Box 28004

Raleigh, NC 27611

Ayesha N. Khan

Legal Director

Americans United for Separation of Church

and State

1301 K Street, NW, Suite 800

Washington, DC 20002

202-466-3234

Daniel Mach

Director

ACLU Program on Freedom of Religion and Belief

915 15<sup>th</sup> Street, NW

Washington, DC 20005

202-675-2330

Enclosures

cc: Lieutenant General Frank G. Helmick Commanding General XVIII Airborne Corps & Fort Bragg 2175 Reilly Road, Stop A Fort Bragg, NC 28310 Fax: (910) 432-0520

> Dr. Robert M. Gates, Secretary of Defense Department of Defense 1400 Defense Pentagon Washington, DC 20301-1400

Colonel David P. Hillis david.hillis@us.army.mil



### DEPARTMENT OF THE ARMY

HEADQUARTERS, UNITED STATES ARMY GARRISON, FT BRAGG 2175 REILLY ROAD, STOP A FORT BRAGG, NORTH CAROLINA 28310

OFFICE OF THE GARRISON CHAPLAIN

2 June 2010

Dear Fellow Minister in the Gospel!

I am privileged to announce an exciting event which will change Fort Bragg and the surrounding areal On Saturday, September 25, 2010, the Billy Graham Association is coming to Fort Bragg to offer a free concert and the Christian message to all of Fort Bragg and the surrounding community! The event will be called Rock the Fort and has had several successful and similar events at Army Posts around the country. Rock the Fort is evangelistic in nature and will feature a free Children's Program from 2 to 3:30 pm and a free Adult Program from 5 to 7:30 pm with a Christian rock concert that will headline two highvisibility Christian artist groups. The concert will conclude with a clear Gospel message.

In view of the enormous impact this event can have on our Post and our area, my request to you is simple. Would you and your congregation join the Fort Bragg Unit Ministry Teams and me to be a crucial part of the success of this exciting outreach to the Fort Bragg community? Specifically, I pray that you and your church would join with us in several challenges: to work together in this unifying Christian event, to offer to your congregation to participate in one of the free "Christian Life Witness Courses". provided by the Billy Graham Association on September the 17th-18th (location to be announced), to help advertise, reach out and invite your neighbors and to pray for the Spiritual success of this event.

Fort Bragg has been blessed throughout the years because you have continued to be a Spiritual support to so many of our Soldiers and Families who have sought solace and refuge with your loving congregation! For your Ministry in the Gospel, I salute you! As well, I look forward to this opportunity to minister along side of you and to excel even more in Spiritual care and outreach to our Soldiers, their Families and to our entire community!

I would be honored to personally call you or visit you in order to share with you the vision of Rock the Fort and to answer any questions. You can reach me at 910-396-1121 or at david.hillis@us.army.mil. As well, I hope to send some of our Fort Bragg Chaplains to your congregation to share the Rock the Fort video, to answer questions and to encourage. I sincerely look forward to sharing in your fellowship and to labor for our Lord in His vineyard!

In His Service

Chaplain (Colonel) U. S. Army

Fort Bragg Garrison Chaplain

## McElroy, Antonio J LTC MIL USA

From:

Hillis, David P COL MIL USA Monday, June 07, 2010 10:12 PM

Sent: To:

'janderson@bgea.org'

Cc:

McElroy, Antonio J MAJ MIL USA; 'jwfisher@bgea.org'; 'jwclarke@bgea.org';

'dlucas@bgea.org'; 'jmcclintock@bgea.org'

Subject:

Re: Brandon Heath

Jeff, That sounds great. Hawk Nelson and Jason Crabb. The children's ministry 'God Rocks' would be fantastic. Will keep praying. Things are moving along here with continued command support all the way to LTG Helmick. Blessings, Dave

From: Anderson, Jeff

To: Hillis, David P COL MIL USA

Cc: McElroy, Antonio J MAJ MIL USA; Fisher, Julie W.; Clarke, J W; Lucas, Debbie L.;

McClintock, Jim

Sent: Mon Jun 07 21:46:56 2010 Subject: Re: Brandon Heath

Gentlemen...I am sorry my communication was not clear--Brandon was already booked with another opportunity so he is not available to us on September 25.

JW Clarke is going after Hawk Nelson and Jason Crabb in that order.

We are also pursuing the group God Rocks out of Toronto for the Children's program. The Billy Graham Association has used God Rocks a couple of times in 2008. They are very effective communicators to Children and are very excited to minister at Ft. Bragg.

Our financial team is finalizing the program dollars available tomorrow.

We hope to have the guests confirmed within the week. We will keep you posted.

God bless!

Jeff

From: Hillis, David P COL MIL USA <david.hillis@us.army.mil>

To: Anderson, Jeff

Cc: McElroy, Antonio J MAJ MIL USA <antonio.mcelroy@us.army.mil>

Sent: Mon Jun 07 21:12:31 2010 Subject: Re: Brandon Heath

Jeff, The feedback has been overwhelmingly Nelson Hawk as a first choice. I like Jars of Clay. I am sure Jason Crabb would be great as well. Great news concerning Brandon Heath. I am currently at a training conference until 9 June and will back in the office on the 10th. I trust that the Lord will bring the right artists. CH Hillis

### McElroy, Antonio J LTC MIL USA

From:

Scott Brickell [brickell@brickent.com]

Sent: To: Friday, June 04, 2010 5:28 PM

Cc:

Scott Brickell; info@brickhouseentertainment.com

Subject:

Re: Rock the Fort Need Your Feedback ASAPI: Reference Available Artists Priority Listlill

(UNCLASSIFIED)

All,

Hawk Nelson would be my first choice...of the artist that you have listed below.

Let me know if I can help in any way:

Thanks

Brickell 615-300-6543 cell

On 6/4/10 4:09 PM, "Kennedy Scott C MAJ" <scott.craig.kennedy@soc.mil> wrote:

Sir,

I would go with Hawk Nelson. Here's my reasoning: in my estimation, the target audience is young Soldiers. This group would most appeal to this demographic.

On the cc line is Scott Brickell. He is a dear friend of 37 years. He manages Mercy Me, Addison Road, Sidewalk Prophets, Fee among others. He managed Audio Adrenaline for 20 years until their recent retirement.

I meant to link CH McElroy up with him sooner, but I dropped the ball.

Not sure what support he could provide, but I know he has been wanting to bring some bands to Army Posts.

http://www.brickhouseentertainment.com/ <blockedhttp://www.brickhouseentertainment.com/>

have a great weekend.

Scott

Scott Kennedy CH (MAJ), US Army Operations Chaplain

FOIA FA-11-0190 page 14

HQ, US Army Special Operations Command .

Office: 910-432-9076 cell: 910-728-0357 red: 239-9076

Priority List!!!! (UNCLASSIFIED)

scott.craig.kennedy@us.army.mil
scott.craig.kennedy@us.army.smil.mil

From: Egert, Chester C COL MIL USA FORSCOM [mailto:chester.c.egert@us.army.mil] <br/>
<br/

Sent: Friday, June 04, 2010 9:31 AM

Subject: Re: Rock the Fort Need Your Feedback ASAP!: Reference Available Artists

When LTG Helmick saw the concert on the calendar this morning COL Sicinski told him it was a Christian concert. Helmick responded with one word: "Great!". It's a go! PTL!

Ch Egert

(b) (6)

---- Original Message -----

From: Hillis, David P COL MIL USA (b) (6)

To: McElroy, Antonio J MAJ MIL USA:

Sent: Thu Jun 03 18:14:29 2010

Subject: Rock the Fort Need Your Feedback ASAPI: Reference Available Artists Priority ListIII (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Rock the Fort Team, Need your suggestions concerning feedback on the list of possible headline artists listed below for 'Rock the Fort.' CH McElroy needs to respond by COB on Friday (tomorrow) and give BEGA, Jeff Anderson and JW Clarke our list by priority using the list below of the three strongest possibilities in terms of availability on 25 Sept. for the headline artist. The list is (1) Jars of Clay, (2) Hawk Nelson, and (3) Jason Crabb. Which one's would best resonate with the audience for Fort Bragg that we have talked about for both Families, Soldiers, and teenagers.

A Brief Description from Billy Graham Association below:

Jason Crabb has a southern gospel background but has emerged as a CCM solo artist in the past year - very popular.

Jars of Clay has a broad appeal, well-known and would appeal to parents and their kids as well as soldiers.

What I need you to assist me with is to take a look at the revised taskings under DES base on your input from below and tell me if DES concur. If you do not concur then tell me what you concur on and give me a solution for the non-concurs.

I need to get this MOI submitted this week but I need your input before CORP get a hold of this.

Your quick response will be greatly appreciated.

Thanks

Chaplain(MAJ-P) Antonio J. McElroy 910-309-3521

----Original Message-----

From: Parsons, Michael S MAJ MIL USA Sent: Friday, May 14, 2010 12:52 PM To: McElroy, Aptonio J MAJ MIL USA (D)(6)

Subject: RE: Chaplains need a concur/non concur respone on Rock the Fort MOI before submittal to CORP G3 (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

CH McElroy,

You were correct to use Daughtry example. This, like all the MWR events, comes down to money when we look at support to any event. Special events generate overtime and unforecasted expenditures. Due to budget constraints and funding levels we are required to be reimbursed for services rendered that are outside of standard police requirements. Below I have provided items that should be added to the MOI and a cost/personnel break down. Your budget manager would have to work with the Directorate of Emergency Services budget section for the proper money transfer codes.

Personnel and equipment expenditures.

- 30 x DACPs ISO of security of event for 12 hours = approx. \$23,400
- : (Standard planning rate to include use of GSA vehicles for a MP/DACP is \$65 an hour)
- 8 x VMS cost \$300 each a day to rent. This would require 2 days of rentals. \$4800 in total
- 4 x light sets cost \$100 each a day to rent. This would require 2 days of rentals. \$800 in total
  - 2 x 15-pack vans to transport security comes to approx \$800.
  - Total forecasted security cost is \$29,000 to provide support to

the event.

MOI bullet changes.

- 1. Will only need 15 BMM MPs instead of 30 because of the threat. The PMO sections and DACPs fill in the other requirements to come up to the 30 x personnel, but are still added in the personnel security price.
- 2. Also, if you do this at Pike's Field or the Stadium it would reduce the Security and BMM (blocking points) requirements because the areas are more contained. Additionally, what about the Fairgrounds?
- 3. Must add a coordination piece with Fort Bragg Fire. Fort Bragg Fire must conduct inspections and usually have an element present.
- 4. EMS must remain on site through the entire concert, this includes until all spectators have departed the venue.
- 5. A threat assessment is required through the Fort Bragg Security and Intel section because of the number of personnel attending.
- 6. Security prior to the day of the event was not factored into this assessment. BMM or your organization need to perform this function. The PMO can drive by as part of our normal patrols.
- 6. Correct spelling of Provost Marshal

Please let me know if you have any questions.



ATW,

(b) (6)

Provost Marshal Fort Bragg Provost Marshal Office Office: 910-643-4370

DSN: 593-4370

RB: 910-644-6503 (b) (6)

conus.army.mil

----Original Message-----

From: McElroy, Antonio J MAJ MIL USA Sent: Thursday, May 13, 2010 6:21 PM

To:(b) (6)

P CIV USA FORSCOM

Subject: FW: Chaplains need a concur/non-concur respone on Rock the Fort MOI before submittal to CORP G3 (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Just want to verify if the announcement is okay to put on my upcoming "Rock the Fort Flyer" for 25 September. I copied this directly from the Fort Bragg Army Ten Miler publicity.

As I begin to launch my publicity plan for Rock the Fort. The Garrison Commander has supported this event to be open to the public. I wanted to make sure that the below statement is a correct statement to put out to the public. I took this directly from the Army Ten-Miler brochure.

Fort Bragg Access: The public is invited to participate in this event. Without a military ID card and a vehicle decal, you will be required to present an ID card and your vehicle registration in order to access the installation. Your vehicle will undergo security search. Recommended access points are All American Freeway, Bragg Boulevard at Randolph, and Bragg Boulevard at Knox. Please allow yourself plenty of time. A complete list of access points can be found at <a href="http://www.bragg.army.mil/ProvostMarshall/">http://www.bragg.army.mil/ProvostMarshall/</a>

I await for your guidance.

CH (LTC) McElroy

----Original Message----

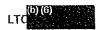
From: McElroy, Antonio J LTC MIL USA Sent: Thursday, June 24, 2010 3:42 PM To: (0)(6) LTC MIL USA FORSCOM

Cc: Hillis, David P COL MIL USA

Subject: RE: Advertising Flyer (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE



As I begin to launch my publicity plan for Rock the Fort. The Garrison Commander has supported this event to be open to the public. I wanted to make sure that the below statement is a correct statement to put out to the public. I took this directly from the Army Ten-Miler brochure.

Fort Bragg Access: The public is invited to participate in this event. Without a military ID card and a vehicle decal, you will be required to present an ID card and your vehicle registration in order to access the installation. Your vehicle will undergo security search. Recommended access points are All American Freeway, Bragg Boulevard at Randolph, and Bragg Boulevard at Knox. Please allow yourself plenty of time. A complete list of access points can be found at <a href="http://www.bragg.army.mil/ProvostMarshall/FBAaccess.htm">http://www.bragg.army.mil/ProvostMarshall/FBAaccess.htm</a>.

I await for your guidance.

Chaplain(LTC) McElroy 910-309-3521

Classification: UNCLASSIFIED

Caveats: NONE

Classification: UNCLASSIFIED



# DEPARTMENT OF THE ARMY US ARMY INSTALLATION MANAGEMENT COMMAND HEADQUARTERS, UNITED STATES ARMY GARRISON, FT BRAGG 2176 REILLY ROAD, STOP A FORT BRAGG NORTH CAROLINA 28310-5000

IMSE-BRG-RS-CS

MEMORANDUM THRU

DPIN CONCUMINI

SG8 M07/30

FOR COS

SUBJECT: Memorandum of Instruction (MOI) for 25 September Rock the Fort Concert

1. Purpose. To provide guidance and establish responsibilities for the preparation and conduct of the Rock the Fort Concert, scheduled for 25 September 2010, at the Main Post Parade Field.

#### 2. Discussion.

- a. The Rock the Fort Christian Concert will feature gifted musicians, speakers, and bands. 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 congregations
- b. The support requirements are outlined in the MOI and Tab A.

3. Recommendation. That the CofS signs the MOI at Tab A.

Encls '

Rock the Fort Site Layout

DAVID P. HILLIS

Chaplaln (COL) USA

Garrison Chaplain

COORDINATION:

XVIII ABN CORPS ACofS G3

PAO

**DPTM** 

DES

concur/nonconcur JP Date 2 June 10

concur/<del>nonconcu</del>r LG Date 27 May 10

concur/nenconcur CW Date 2 June 10

concur/nonconcur MP Date 2 June 10

IMSE-BRG-RS-CS

SUBJECT: Memorandum of Instruction (MOI) for Rock the Fort (RTF) Concert, 25 Sep 10

DPW
ISO
DFMWR
WAMC(Preventive Medicine)
Fire And Emergency Services

concur/nonconcur JC Date 14 May 10 concur/nonconcur RE Date 13 May 10 concur/nonconcur EW Date 28 May 10 concur/nonconcur AM Date 3 June 10 concur/nonconcur SB Date 27 May 10



# MEDIA RELEASE

Fort Bragg Públic Affairs Office Fort Bragg, NC 28310-5000 (910) 396-5600/5620 FAX: (910) 396-4568



FOR IMMEDIATE RELEASE MEDIA RELEASE NO. 10393 SEPT. 21, 2010

### FORT BRAGG/FAYETTEVILLE COMMUNITY TO HOST "ROCK THE FORT"

FORT BRAGG, N.C. – The Fort Bragg Garrison Religious Support Office will host a Fort Bragg/Fayetteville Community-wide Christian "Rock the Fort" concert at the Main Post Parade Field Saturday, Sept. 25.

Food vendors, a Golden Knights demonstration jump and the children's musical and gospel presentation will begin around 2 p.m. The adult musical and gospel presentation begins at 5 p.m. and ends at 7:30 p.m.

Musicians Hawk Nelson, Jason Crabb and God Rocks will perform.

Guest evangelist Josh Holland, a member of the Billy Graham Evangelistic Association, will also be in attendance and make a presentation.

Hawk Nelson is a Christian rock band from Peterborough, Ontario. The band has become very popular in the Christian music scene and was voted "Favorite New Artist" by Christ. Community. Music. (CCM) Magazine in their February 2006 Reader's Choice Awards. In 2006, Hawk Nelson won a number one spot on VHI's top 20 video countdown with "The One Thing I Have Left" music video.

Jason Crabb is a 10-time Dove Award winner for gospel music. Jason Crabb won the award for Best Southern/Country/Bluegrass Gospel Album at the 52<sup>nd</sup> Annual Grammy Awards this year.

God Rocks! is a children ministry. God Rocks! was created to "Energize Kids With the Good News!" Through music, videos, curriculum and live events, God Rocks! teaches kids important lessons from the Bible in a fun way.

"It is our goal here at Fort Bragg, that we offer top quality religious programs and events that will assist Soldiers and their Families, retirees, and DA civilians that will invigorate their faith, reinforce their spiritual resiliency and enhance their spiritual growth and faith development, especially during this time of high operational tempo and persistent conflict," said Chaplain (Col.) David Hillis, Fort Bragg Garrison Chaplain.

-MORE-