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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MILITARY RELIGIOUS FREEDOM FOUNDATION, and **SPECIALIST JEREMY HALL**,	)	
Plaintiffs,	)	
vs.	)	Case No. 07-2444-JWL
UNITED STATES DEPARTMENT OF DEFENSE SECRETARY ROBERT GATES, and **MAJOR FREDDY J. WELBORN**,	)	
Defendants.	)	

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

I. Introduction

1. This is a Constitutional common law/Bivens action whereby plaintiffs seek to vindicate rights to lawful assembly and free speech and rights to be free from governmental endorsement of religion under the First Amendment of the Constitution of the United States, to prevent loss of rights without due process and equal protection under the Fifth Amendment of the Constitution of the United States and to prevent imposition of an impermissible religious test under Art. VI, Clause 3 of the Constitution of the United States.

II. Parties

2. Plaintiff Military Religious Freedom Foundation (MRFF) is a not-for-profit public interest organization that advocates, *inter alia*, that the military recognize and defend the rights of individuals to be free of compulsory religious practices. MRFF has supporters and members that include plaintiff Jeremy Hall.

3. Plaintiff, Specialist Jeremy Hall, is an active duty member of the United States Army currently deployed to Contingency Operations Base (COB) Speicher, Iraq. Plaintiff is stationed at Fort Riley, Kansas, and is a resident of Geary County, Kansas.

4. Defendant Robert Gates is Secretary of the United States Department of Defense and is responsible for the actions of subordinates.

5. Defendant Freddy J. Welborn is a Major in the United States Army.

III. Jurisdiction

6. This case involves rights under the Constitution of the United States and jurisdiction is vested in this Court by 28 U.S.C. § 1331.

IV. Venue

7. Venue in this District Court is proper under 28 U.S.C. § 1391(e)(3).

V. Facts

8. Plaintiff Hall is attached to the 97th Military Police Battalion that is based at Combat Operations Base Speicher, Iraq.

Plaintiff began his second deployment to Iraq September 28, 2006. Plaintiff has performed his military duties consistent with orders. His performance evaluations while in Iraq evidence such.

9. Plaintiff Hall is an atheist and as such does not participate in religious services, ceremonies or rituals that are conducted on and around the military installation where he is currently assigned. To the best of plaintiff Hall's knowledge, none of his atheist beliefs, or conduct related thereto, have had the effect of undermining his duties or the effectiveness of his or other's response to command. Plaintiff Hall is known as an atheist to other personnel at the installation and has admitted his atheism when confronted by his military cohorts. Examples of such include:

> a) on Thanksgiving Day November 25, 2006, plaintiff and other military personnel assembled for a dinner to commemorate the holiday. Once the plaintiff, and others, were seated at the table, a call to hold hands and join in a Christian prayer was made by another individual at the plaintiff's table. Plaintiff politely and respectfully declined to engage in the prayer. Immediately after plaintiff made it known he would decline to join hands and pray, he was confronted, in the presence of other military personnel, by the senior ranking NCO staff sergeant who asked plaintiff why he did not want to pray, whereupon plaintiff explained because he is an atheist. The staff sergeant asked plaintiff what an atheist is and plaintiff responded it meant that he (plaintiff) did not believe in God. This response caused the staff sergeant to tell plaintiff that he would have to sit elsewhere for the Thanksgiving dinner. Nonetheless, plaintiff sat at the table in silence and finished his meal;

b) in July, 2007, while on duty and prior to an operation in Kirkuk, Iraq, the plaintiff declined to participate in a Christian prayer led by a Colonel. The plaintiff walked away from the assembly of individuals that prayed;
c) during a duty assignment at the military installation in Iraq, plaintiff used the word "God" in what he intended to be a nonreligious context. But a Sergeant L. Ruiz overheard the use of "God" and claimed to plaintiff such use indicated plaintiff indeed was not an atheist.

10. Plaintiffs are aware that at the military installation Christian based organizations are allowed to conduct religious meetings and services without disruptions or threats of retaliation.

11. On July 31, 2007, plaintiff Hall attempted to conduct and participate in a meeting of individuals who consider themselves atheists, freethinkers, or adherents to non-Christian religions. With permission from an army chaplain, plaintiff Hall posted flyers around COB Speicher announcing the meeting. The meeting attendees included plaintiff Hall, other military personnel and nonmilitary personnel.

12. During the course of the meeting, defendant Welborn confronted the attendees, disrupted the meeting and interfered with the plaintiff Hall's and the other attendees' rights to discuss topics of their interests. During the confrontation, and because of plaintiff's actions in organizing the meeting, defendant Welborn threatened plaintiff Hall with an action under the Uniform Code of Military Justice and further threatened to prevent plaintiff Hall's reenlistment in the United States Army.

13. Plaintiffs allege that defendant Welborn's exercise of authority and conduct in disrupting the above-described meeting and making threats against plaintiff Hall was done under color of United States law.

14. On information and belief, plaintiffs allege that the acts of defendant Welborn, and the failure of defendant Gates to prevent such violations, is evidence of a pattern and practice of constitutionally impermissible promotions of religious beliefs within the Department of Defense (D.O.D.) and the United States military. Evidence of such patterns and practices includes, but is not limited to:

a) Constitutionally impermissible support provided for religious events including providing military personnel and equipment for events sponsored by Christian organizations that promote Christian beliefs;

b) Constitutionally impermissible support for religious organizations within the military, and those organized by and comprised of members of the military, such as Officers Christian Fellowship and CREDO Spiritual Fitness Divisions, and Military Ministry;

c) Constitutionally impermissible support for private religious organizations are granted access to military installations, some of which are under D.O.D. contract. These organizations include Military Ministry, Cadence Ministries, Malachi Ministries and Military Community Youth Ministries;

d) Consitutionally impermissible support for official endorsement of private religious organizations by members of the military and/or the Department of Defense. Endorsed organizations include: Christian Embassy, Operation Straight Up, and H.O.P.E. Ministries International;

e) Constitutionally impermissible support for Christian proselytizing and tolerance of anti-semitism;

f) Constitutionally impermissible support for use of military assets in a religious entertainment production;

g) Constitutionally impermissible support for blatant displays of religious symbolism on military garb, figher aircraft and squadron buildings by the U.S. Air Force 523rd Fighter Squadron;

h) Constitutionally impermissible support for placement of a biblical quotation above the door of the Air and Space Basic Course classroom at Maxwell Air Force Base;

i) Constitutionally impermissible support for illegal use of official military e-mail accounts to send e-mails containing religious rhetoric;

j) Constitutionally impermissible support for attempts by missionary organizations such as Force Ministries and the Officers' Christian Fellowship and CMF to create "Christian soldiers" by training active-duty military personnel to evangelize their subordinates and peers;

k) Constitutionally impermissible support for military leadership appearing in uniform in promotional videos for these missionary organizations and openly discussing their commitment to bring religion into the military.

15. The pattern and practices of the constitutionally impermissible promotions of religious beliefs are prohibited by, *inter alia*, the U.S. Air Force core value policy on religion that represents the bounds of permissible conduct and provides as follows:

> Military professionals must remember that religious choice is a matter of individual conscience.

> Professionals, and especially commanders, must not take it upon themselves to change or coercively influence the religious views of subordinates.

16. Plaintiffs allege that the defendant Gates has a duty to exercise his authority to prohibit his subordinate, defendant Welborn, and similarly situated subordinates, from engaging in acts that infringe plaintiffs' constitutional rights.

VI. **Causes of Action**

17. Defendant Welborn's exercise of authority and conduct in disrupting the above-described meeting and making threats against plaintiff Hall was contrary to clearly established law and had the effect of denying the plaintiff Hall his right to free assembly and speech as guaranteed by the First Amendment. U.S. CONST. amend. I.

18. Defendant Welborn's conduct was contrary to the clearly established law and effectively denied plaintiff Hall his right to be free of government sponsored religious activity as guaranteed by the First Amendment. U.S. CONST. amend. I.

19. Infringement upon plaintiff Hall's right to conduct an atheist/freethinker/nonchristian meeting without unreasonable interference and threats of retaliation is a denial of his right to equal protection under the Fifth Amendment because religious groups at Combat Operations Base Speicher are encouraged, facilitated and sanctioned by the Department of Defense. U.S. CONST. amend. V.

20. Plaintiff Hall's rights under the First Amendment were denied without due process guaranteed by the Fifth Amendment. U.S. CONST. amend. V.

21. Plaintiff Hall, as a member of the armed services of the United States, has been constructively required to submit to a religious test as a qualification to his post as a soldier in the United States Army. This test is a violation of plaintiff Hall's rights under Article VI, Clause 3 of the United States Constitution. U.S. CONST. Art. VI, cl. 3.

VII. Remedies

22. Plaintiffs seek equitable relief in the form of an injunction prohibiting defendant Welborn from: a) interfering with plaintiff Hall's rights to free speech and assembly that do not diminish plaintiff Hall's response to command; b) to refrain from conduct that has the effect of establishing compulsory religious practices; and c) to require that defendant Gates exercise his authority and prevent his subordinate, defendant Welborn, and those subordinates similarly situated, from infringing upon plaintiff Hall's Constitutional rights. Plaintiffs also seek costs, fees and other relief deemed appropriate by the Court.

Respectfully submitted,

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