

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

**R. DAVID MULLIN,
JOHN DOE #1,
JOHN DOE #2,
JOHN DOE #3,
JOHN DOE#4,
THE MILITARY RELIGIOUS FREEDOM FOUNDATION, a corporate entity,**

Plaintiffs,

v.

LT. GEN. MICHAEL C. GOULD, Superintendent, U.S. Air Force Academy, in his official capacity,

Defendant.

COMPLAINT

PLAINTIFFS, by and through counsel David A. Lane of KILLMER, LANE & NEWMAN, LLP, respectfully allege for their Complaint as follows:

I. INTRODUCTION

Overview

1. This is a civil rights action brought on behalf of the Plaintiffs, all of whom are currently faculty members at the United States Air Force Academy in Colorado Springs, Colorado, save for the institutional Plaintiff. On February 10, 2011, the Air Force Academy (AFA) will host an event called the National Prayer Luncheon on the campus of the Academy. According to the AFA, the event's purpose has consistently been: "to bring together the leadership of the United States in recognition of the spiritual values upon which our

Nation is founded." According to the AFA: "There will be readings by an Islamic Airman, a Jewish Airman, an African-American Christian Airman, a Jewish chaplain (rabbi), a Buddhist sensei and a Catholic chaplain (priest). By design, this expresses some of the rich religious diversity that makes up America's Air Force and your United States Air Force Academy." The keynote speaker will be Lt. Clebe McClary, a highly decorated disabled Vietnam veteran (Silver Star and Bronze Star) from South Carolina. According to his website, McClary is a retired Marine, who was wounded in Vietnam and now serves the "Lord's Army," and believes that USMC (US Marine Corps) will always stand for "US Marines for Christ."

2. This event is being hosted, organized and sponsored on the AFA campus by the command structure of the AFA itself. While apparently no tax dollars are being used to fund this event as it is financed by the "Chapel Tithes and Offerings Fund" the AFA command structure is responsible for this event.
3. It is contended in this law suit that for the command structure of the AFA to undertake a purely religious activity such as this is a violation of the Establishment Clause of the First Amendment to the United States Constitution. Plaintiff s who are all faculty or staff members, both civilian and military, at the AFA seek injunctive relief in order to stop this from occurring. They are proceeding as John Doe plaintiffs in this action as they fear retribution from the command structure if their identities are revealed.

II.

Jurisdiction And Venue

4. This is an action pursuant to *Bivens v. Six Unknown Drug Agents*, 403 U.S. 388 (1971). Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343 and 2201.

5. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the state of Colorado, and all of the parties are residents of the state. At all pertinent times mentioned herein, Defendant was employed by the United States Air Force, and is currently acting under color of federal law.
6. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events relevant to the claims contained herein occurred within the State of Colorado.

II. PARTIES

7. Other than Plaintiff R. David Mullin as well as the institutional Plaintiff, The Military Religious Freedom Foundation (MRFF), all Plaintiffs wish to proceed in this matter as “John Doe” Plaintiffs.
8. Each Plaintiff believes that there exists a climate of coercion and fear at the AFA stemming from Command foisting religion upon students, faculty and staff.
9. Each Plaintiff fears that any dissent from the “party line” will result in serious negative consequences for them in their careers in the Air Force, yet each Plaintiff objects to the Prayer Luncheon and believes that its official sanction by the AFA denies them their Constitutional rights under the Establishment Clause of the First Amendment.
10. Plaintiff R. David Mullin is an associate professor of economics at the AFA and has been so employed for thirteen years.
11. John Doe#1 is a commissioned Air Force officer assigned to an AFA academic department. He is also a graduate of the AFA and has spent quite a number of years on campus as a cadet and on the faculty and staff.
12. John Doe #2 is a civilian faculty member at AFA who is an associate professor and has been there for approximately one decade.

13. John Doe #3 is an active duty military employee of the AFA, stationed AFA for a number of years. He interacts with cadets on a daily basis in an academic environment.
14. John Doe #4 is a commissioned officer at the AFA. He is on the faculty and operates within the academic environment on a daily basis interacting with students, staff, faculty and the command administration regularly.
15. The Military Religious Freedom Foundation (MRFF) is a nonprofit charitable civil rights advocacy organization. It is a Washington D.C.-based 501(c)3 corporation. Among many civil rights awards and nominations, MRFF has received three Nobel Peace Prize nominations, including one for this year; 2011. MRFF currently represents in excess of 21,000 active duty United States marines, sailors, soldiers, airmen, service academy cadets and midshipmen, reserve component and national guard personnel, coastguard personnel and veterans. MRFF ensure that all members of the U.S. armed forces and veterans receive their comprehensive religious freedom civil rights which are guaranteed in the First Amendment of the United States Constitution and related provisions.
16. Defendant Gould is the Superintendent and commanding officer at the AFA and is in charge of and has overall responsibility for the operations of the AFA, including the prayer luncheon forming the subject matter of this litigation.

III. FACTUAL BACKGROUND

17. According to the AFA the prayer luncheon in question is scheduled for February 10, 2011.
18. This event is being sponsored/hosted/endorsed by several entities within the command structure of the AFA, including the 10th Air Base Wing which is a unit based at the AFA, the United States Air Force Academy Support Squadron, the Base Exchange, and the Air

Force Academy Association of Graduates, as well as the Academy as a whole.

19. The involvement and entanglement of these entities includes the endorsement, advertising, and promotion of the event; the use of official government email; and the use of official Academy and Unit emblems.
20. The event is officially called the Air Force Academy National Prayer Luncheon.
21. The event is being held at the Academy's Falcon Club, a facility operated by the United States Air Force Academy Support Squadron, not a chapel facility.
22. The official "National Prayer Luncheon Announcement & E-Invitation" email received by Academy personnel came from the 10th Air Base Wing (ABW) command, not the chaplain's office. The 10th ABW is a permanent party Air Force unit located at the Air Force Academy. This email was sent to a general distribution list for Academy personnel by a senior non-commissioned officer (NCO) who is not affiliated in any way with the chaplains office, with a notice at the top of the email stating that the invitation was "SENT ON BEHALF OF THE 10TH ABW VICE COMMANDER."
23. When the recipient clicks on the link in this email to go to the "E-Invitation," they are directed to a webpage with an Air Force Institute of Technology (AFIT) URL containing an animated graphic of an envelope, out of which slides a card intended to look like the outside front panel of a folded invitation. The entire "front panel" of the invitation "card" consists of the official United States Air Force Academy emblem, not the emblem of the Chaplain Corps or anything else to indicate that this is a chapel-run event.
<https://einvitations.afit.edu/McClary761/anim.cfm>
24. The invitation itself also has only the official United States Air Force Academy emblem on it, and states immediately below this emblem: "You are cordially invited to the United

States Air Force Academy National Prayer Luncheon." Nowhere on the invitation does it say that the luncheon is being run by a chapel or chaplain's office or any campus group.

25. The invitation describes keynote speaker Lt. McClary only as an "Inspirational Speaker/Author and Highly Decorated Vietnam War Veteran," with no mention that he is a fundamentalist Christian speaker.

26. Like all other parts of this E-Invitation sent out by the 10th Air Base Wing command, the online R.S.V.P. form contains only the official United States Air Force Academy emblem. The only reference to the chapel on this page is that cash payments for registration are "Due to Chapel NLT 2 Feb 11."

27. In addition to the 10th ABW, other command entities have sent out email invitations to the event to general distribution lists using official government email. One of these, sent to all Executive Officers by the Academy's Director of the Commander's Action Group was in turn forwarded by the Executive Officer of the Academy's Department of Economics & Geosciences to all officers and NCOs under him. This email informed its recipients that they could register for the event with a faculty member in one of the academic buildings rather than the chapel.

28. In a letter written by David Cannon, the Academy's Director of Communication, to the numerous organizations that wrote letters of objection to the Prayer Luncheon, Mr. Cannon referred to this invitation as the "10th Air Base Wing's invite." He further refers to the event as "USAFA's Prayer Luncheon."

29. Further promotion of the event is being carried on by the Air Force Academy Association of Graduates (AOG), technically a private non-profit organization, but one that maintains an official partnership with and endorsement by the Academy that includes its facilities

being located on the grounds of the Academy. The AOG invitation to the Prayer Luncheon contains the Chaplain Corps, 10th ABW, and Air Force Academy emblems. The AOG's invitation was, in fact, sent to cadets at the AFA.

30. The stocking and sale of keynote speaker Lt. McClary's book "Living Proof" for the book signing to take place immediately following the event is being done by the Academy Base Exchange (BX), not the chapel.

31. Lt. McClary's book contains statements that are purely religious in nature and it is expected that his speech at the Prayer Luncheon will follow suit as per past speeches he has given. For example, Lt. McClary, referring to his experiences with chaplains in Vietnam, writes:

Looking back, I would say a chaplain serving in the combat area should pray with every man before he gets on the helicopter and find out how he stands with the Lord. Plenty of chaplains wanted to ride the chopper and watch my men jump out, but none of them ever witnessed to me about the Lord. Perhaps they thought I was Christian because of my high moral standards. I almost went to hell with high moral standards.

32. This book is distributed by the BX, and the endorsed by the Academy, the 10th ABW, the AOG, and the Air Force Academy Support Squadron. Arguably, the endorsement and distribution of this book by the BX, the Academy, the 10th ABW, the AOG, and the Air Force Academy Support Squadron, is nothing short of federal government endorsement of and promotion of a book advocating religion in the face of a violation of military policy that military chaplains are not permitted to promote a particular religion to all service members.

33. It is nothing short of federal government endorsement and promotion of a book advocating the brand of Christianity espoused by Lt. McClary who is the keynote speaker for the Prayer Luncheon.

34. The AOG invitation advertises the book signing, and states that McClary's book is available at the BX. The flyer attached to the 10th ABW email also advertises the book signing, contains an image of the book, and states that the books are available at the BX. Lt. McClary is known to engage in proselytizing in his military speaking appearances.
35. The invitations for this prayer event were sent out by AFA command personnel on official AFA emails. Brigadier General Dana Born, the AFA Dean of Faculty, mentioned and endorsed the Prayer Luncheon the event during an official AFA briefing, as did Defendant Lieutenant General Michael Gould during what is known as his Superintendent's Call.
36. The net result of the official AFA imprimatur on this event is to foster the correct belief among Plaintiffs as well as numerous other AFA personnel that command endorses this event. This has led to a perception by Plaintiffs and numerous others at the Academy that in order to insure that their Air Force careers proceed in a favorable trajectory, they are expected to attend the Prayer Luncheon and that their careers may suffer if they fail to attend even though attendance is “voluntary.”

STATEMENT OF CLAIMS

First Claim for Relief FIRST AMENDMENT – ESTABLISHMENT CLAUSE

37. All statements of fact contained in this Complaint are hereby incorporated into this claim as though set forth fully herein.
38. The AFA is an institution wholly owned and controlled by the government of the United States.
39. The First Amendment to the United States Constitution states in relevant part “Congress shall make no law respecting an establishment of religion...”

40. In sponsoring, organizing, advertising and generally adopting the Prayer Luncheon, the Defendant Commander of the AFA has used his governmental authority and promoted, elevated, endorsed and favored religion over irreligion.
41. By making a fundamentalist Christian the keynote speaker at this event, the Government has promoted, elevated, endorsed and favored Christianity over all other religions.
42. The Prayer Luncheon has no secular purpose and is designed solely to promote religion at the Air Force Academy through prayer.
43. The promotion, elevation, endorsement and favoring of religion in this fashion has an inherently coercive effect upon subordinates or non-believers to fear that their failure to believe as the Defendant commander believes may reasonably be expected to cause career damage to them.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants, and award them all relief as allowed by law and equity, including, but not limited to, the following:

Appropriate equitable relief including but not limited to prospective injunctive relief, declaratory and other injunctive remedies;

Attorney's fees and costs; and

Any other relief this Court deems just and proper..

Dated this 31st day of January, 2011.

Killmer, Lane & Newman, LLP

s/David A. Lane

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