

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No. 1:11-cv-00247-REB**

**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.**

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**PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

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PLEASE TAKE NOTICE THAT THE PLAINTIFFS, R. DAVID MULLIN, JOHN DOE #1, JOHN DOE #2, JOHN DOE #3, JOHN DOE#4, THE MILITARY RELIGIOUS FREEDOM FOUNDATION, a corporate entity, by and through counsel David A. Lane of Killmer, Lane & Newman, LLP, hereby submit PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION enjoining Defendant's imminent violations of the First Amendment to the United States Constitution.

1. Defendant will imminently violate Plaintiffs' First Amendment rights by holding an officially sponsored and sanctioned Prayer Luncheon at the United States Air Force Academy, in violation of the Establishment Clause of the First Amendment.

2. This violation has no remedy in the law. But for injunctive relief, the Constitutional violations alleged in the Complaint will occur. Injunctive relief is thus warranted as the only method to prevent

this imminent future violation. *United States v. Oregon State Medical Soc.*, 343 U.S. 326, 333 (1952)(all that is needed for a cause of action for relief by injunction is a real threat of future violation or a contemporary violation of a nature likely to continue or recur).

3. Plaintiffs in a First Amendment case must satisfy four conditions to obtain a preliminary injunction and show: (1) they will suffer irreparable harm unless the injunction issues; (2) there is a substantial likelihood Plaintiffs will ultimately prevail on the merits; (3) the threatened injury to Plaintiffs outweighs any harm the proposed injunction may cause the opposing party; and (4) the injunction would not be contrary to the public interest. *American Civil Liberties Union v. Johnson*, 194 F.3d 1149, 1155 (10th Cir. 1999).

4. As detailed in Plaintiffs' Brief in Support of Motion for Preliminary Injunction, submitted simultaneously herewith, each of the elements necessary to obtain a preliminary injunction is present in this action. That brief is incorporated into this pleading as though set forth fully herein.

5. D.C.COLO.LCIVR 7.1(A) Certification. Undersigned counsel has conferred with counsel for the Defendant. Ms. Jamie L. Mendelson, [Jamie.mendelson@usdoj.gov](mailto:Jamie.mendelson@usdoj.gov), and Ms. Amy Padden [amy.padden@usdoj.gov](mailto:amy.padden@usdoj.gov) will be representing the Defendant in this matter. They are at present uncertain regarding their position on this motion but plan to expeditiously file a response.

6. It is specifically requested by undersigned counsel that this matter be set for a preliminary injunction hearing on Friday, February 4, 2011 if this is convenient to this Honorable Court. Undersigned counsel will be in a criminal jury trial on the 2<sup>nd</sup> and 3<sup>rd</sup> and will be leaving the country on a federal court appointed death penalty mitigation investigation on a case filed in Detroit, at midnight on the 4<sup>th</sup> for nine days. If the hearing is set for next week, undersigned counsel's law partner can certainly conduct the hearing, however counsel does not wish to impose that burden upon him if this meets with this Court's approval. Having the hearing on the 4<sup>th</sup> will also permit the losing party to undertake an appeal of this Court's ruling.

WHEREFORE, Plaintiffs respectfully request that this Court grant the Motion for Preliminary Injunction, and grant such further relief as is just and proper.

Respectfully submitted this 1<sup>st</sup> day of February, 2011.

KILLMER, LANE & NEWMAN, LLP

*s/David A. Lane*

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ATTORNEY FOR PLAINTIFFS

#### **CERTIFICATE OF SERVICE**

I hereby certify that on February 1, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses or I have emailed the Complaint and all pleadings to:

***Jamie L. Mendelson***

***Amy Padden***

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Killmer, Lane & Newman, LLP

*s/ David Lane*

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