

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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MICHAEL L. WEINSTEIN, CASEY M.
WEINSTEIN, PATRICK T. KUCERA,
ARIEL B. KAYNE, JASON A. SPINDLER,

Plaintiffs,

vs.

CIV-05-1064 JP/LAM

UNITED STATES AIR FORCE and
PETE GEREN, Acting Secretary of the
Air Force,

Defendants.

AMENDED COMPLAINT FOR VIOLATION OF CONSTITUTIONAL RIGHTS

COME NOW the Plaintiffs, by and through their attorneys of record, The Bregman Law Firm, P.C. (Sam Bregman and Eric Loman) and in support of their Amended Complaint for Violation of Constitutional Rights, states the following:

Parties and Jurisdiction

1. Plaintiff Michael L. Weinstein is a resident of Bernalillo County, New Mexico and a citizen and taxpayer of the United States of America.

2. Michael L. Weinstein is an honor graduate of the United States Air Force Academy ("Academy") and the parent of two active duty members of the United States Air Force ("USAF"), including one cadet currently at the Academy. Michael L. Weinstein is also the father and father-in-law of two recent Academy graduates, both of whom are currently on active duty with the USAF. As such, the actions and policies of the USAF affect Mr. Weinstein in a direct and cognizable fashion.

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3. Plaintiff Casey M. Weinstein is a 2004 graduate of the Academy and is currently a 2nd Lieutenant and an active member of the USAF and is a resident of New Mexico.

4. Plaintiff Patrick T. Kuccra is a 2004 graduate of the Academy and is currently a 2nd Lieutenant and an active member of the USAF and is a resident of Colorado.

5. Plaintiff Ariel B. Kayne is a 2004 graduate of the Academy and is currently a 2nd Lieutenant and an active member of the USAF and is a resident of Texas.

6. Plaintiff Jason A. Spindler is a 2004 graduate of the Academy and is currently a 2nd Lieutenant and an active member of the USAF and is a resident of New York.

7. Upon information and belief, the USAF is a branch of the United States Military and operates the Academy in Colorado Springs, Colorado.

8. Upon information and belief, Defendant Pete Geren is the Acting Secretary of the U.S. Air Force.

9. The USAF operates three bases in New Mexico, including Kirtland Air Force Base, which is located in Bernalillo County, New Mexico.

10. This action is based on violations of the United States Constitution and 42 U.S.C. § 1983, a federal statute.

11. Jurisdiction and venue are proper in this Court.

Factual Allegations

12. The staff and faculty of the Academy, in the interest of our future national security, molds our future leaders into outstanding young men and women into Air Force

officers with knowledge, character, and discipline; motivated to lead the worlds' greatest aerospace force in service to the nation.

13. Over the course of at least the last decade, a pattern and practice has developed at the Academy where senior officers and cadets have attempted to impose evangelical Christianity into arenas that are clearly United States Air Force venues in violation of the Establishment Clause of the First Amendment to the United States Constitution.

14. During a Basic Cadet Training session attended by a team of observers from the Yale Divinity School, one of the Air Force Academy chaplains (Major Warren Watties) led a protestant worship service in which he encouraged cadets to return to their tents and proselytize cadets who had not attended the service, with the declared penalty of not accepting this proselytization being to "burn in the fires of hell."

15. Cadets were encouraged by certain chaplains to "witness" to other cadets in an attempt to convert them to evangelical Christianity.

16. Cadets have additionally been coerced into non-secular prayers during mandatory or otherwise official events at the Academy.

17. In addition to coerced attendance at religious services and prayers at official events, members of the Permanent Party and upperclass cadet staff have encouraged or put pressure on classmates and underclass cadets to engage in religious practices generally, and most especially in evangelical Christian religious practices.

18. Continued violations of the Establishment Clause by the Air Force Academy are severe, systemic and pervasive, and have fostered discrimination and

harassment toward non-Evangelical Christian, non-Christian and non-religious cadets and Academy staff.

19. The discrimination and harassment toward non-Christian and non-religious cadets have been manifested within the Air Force Academy by numerous incidents of slurs directed at individual cadets who hold minority religion status or are Jewish or atheists. In addition, Christian cadets who wish to attend Christian religious services have been eligible for "non-chargeable passes" that do not count as regular leave. However, cadets who celebrate the Sabbath on other days of the week have not been able to obtain such non-chargeable passes to attend Saturday services off the Academy grounds.

20. Despite claims by the USAF that it has changed its policies regarding evangelizing at the Academy and throughout the entire USAF, USAF officials have made it clear that they have no intent to actually remedy the unconstitutional practices of the USAF.

21. Shockingly, as recently as July 12, 2005, Brig. General Cecil R. Richardson, the Air Force deputy chief of chaplains, had the audacity to say in an interview carried on the front page of The New York Times, **"We will not proselytize, but we reserve the right to evangelize the unchurched."**

22. Despite being repeatedly asked by Michael L. Weinstein to repudiate Brig. General Richardson's statement and to make a clear statement that this is not its policy, the United States Air Force and Defendant Geren have refused to do so, thereby ratifying this policy.

23. Upon information and belief, it is the unwritten policy of many evangelical chaplains to continue proselytizing and evangelizing cadets and staff at the United States Air Force Academy and members of the United States Air Force at large.

Count I – Violation of First Amendment Right to Freedom of Religion

24. Plaintiffs reallege the preceding Paragraphs as though fully set forth herein.

25. This cause of action is brought pursuant to the First Amendment of the United States Constitution and 42 U.S.C. § 1983.

26. By adopting a formal and informal policy of evangelizing, proselytizing and otherwise actively challenging the religions of its members, the USAF is violating the Establishment Clause of the First Amendment of the U.S. Constitution, as well as frustrating and hindering USAF members' right to freedom of religion.

27. Such violation has caused injury to Plaintiffs as well as other members of the USAF.

28. Plaintiffs are entitled to injunctive relief as well as the costs of this action and reasonable attorneys' fees.

Count II – Injunctive Relief

29. Plaintiffs reallege the preceding Paragraphs as though fully set forth herein.

30. Plaintiffs are entitled to the permanent injunctive relief that the USAF, Defendant Geren and its senior leadership adopt and adhere to the following policies:

a. No member of the USAF, including a chaplain, is permitted to evangelize, proselytize, or in any related way attempt to involuntarily convert, pressure, exhort or

persuade a fellow member of the USAF to accept their own religious beliefs while on duty.

b. The USAF is not permitted to establish or advance any one religion over another religion or one religion over no religion.

31. There is no remedy in law for the damages caused by the policies and conduct of the USAF.

WHEREFORE Plaintiffs respectfully request a judgment against Defendant giving appropriate injunctive relief, costs of this action, reasonable attorneys' fees, and any other relief that the Court deems just and proper.

Respectfully submitted,

THE BREGMAN LAW FIRM, P.C.

By: 

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