

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

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|-----------------------------|---|------------------------|
| LARRY H. DOMBROWSKI, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Civil Action No. _____ |
| |) | |
| FEDERAL AVIATION |) | VERIFIED COMPLAINT FOR |
| ADMINISTRATION, MARION C. |) | INJUNCTIVE RELIEF |
| BLAKEY, NORMAN Y. MINETA, |) | |
| FREDERICK T. WALKER, and |) | |
| DAWN R. H. VEATCH, In their |) | |
| Official Capacities, |) | |
| |) | |
| Defendants. |) | |

1. Comes now the plaintiff, LARRY H. DOMBROWSKI, and sues the FEDERAL AVIATION ADMINISTRATION ("FAA"), MARION C. BLAKEY, in her Official Capacity as Administrator, FAA, NORMAN Y. MINETA, in his official capacity as United States Transportation Secretary, FREDERICK T. WALKER, in his Official Capacity as Manager, Flight Standards Division for the Southern Region, and DAWN R. H. VEATCH, in her Official Capacity as Assistant, Flight Standards Division Manager for the Southern Region, and would state as follows:

I. NATURE OF THE ACTION

2. In this action, the Plaintiff seeks judicial review of the Defendants' violations of the First and Fifth Amendments to the United States Constitution, and the Religious Freedom Restoration Act 42 U.S.C. § 2000(bb).

3. The Plaintiff, an FAA employee, seeks equitable relief from a decision by the Defendants to suspend him without pay and transfer him because of his speech content and viewpoint, and his religious beliefs. As a result of this discriminatory, arbitrary and

capricious suppression of speech, the Plaintiff has been deprived of his constitutional and statutory rights of free speech and the free exercise of religion.

4. The Plaintiff seeks an order declaring this suppression of speech to be in violation of the rights to freedom of speech, as guaranteed by the First Amendment to the United States Constitution, due process and equal protection as guaranteed by the Fifth Amendment to the United States Constitution, and the Religious Freedom Restoration Act 42 U.S.C. § 2000(bb). In addition, the Plaintiff seeks an order directing the FAA to discontinue its policy and practice of censoring employee speech based on its viewpoint and content, and to allow him to make up the work time he lost as a result of Defendants' discipline of him based on this illegal policy and practice.

5. On May 4, 2006, the FAA issued a final agency decision denying the grievance Plaintiff filed concerning being disciplined for engaging in protected speech.

II. JURISDICTIONAL ALLEGATIONS

6. Plaintiff is an employee of the FAA who works in the Flight Standards Division. He currently resides in Birmingham, Alabama.

7. During the time when the events of this lawsuit took place, Plaintiff resided in Shepherdsville, Kentucky.

8. Defendant FAA is an agency of the United States Government, and its Flight Standards Division, Southern Region, is headquartered at 1701 Columbia Avenue, College Park, Georgia.

9. At the time the facts that are the basis of this lawsuit occurred, Defendant Walker was Manager, Flight Standards Division for the Southern Region.

10. Defendant Walker has since been transferred to another region.

11. Upon information and belief, Defendant Walker resides in Kansas City, Missouri.

12. At the time the facts that are the basis of this lawsuit occurred, Defendant Walker was responsible for implementing the FAA's policies regarding employee speech for employees in the Southern Region who work in the Flight Standards Division of the FAA.

13. Defendant Veatch is the Assistant Flight Standards Division Manager for the Southern Region. She is also the acting manager of the Southern Region.

14. Defendant Veatch is responsible implementing the FAA's policies regarding employee speech for employees in the Southern Region who work in the Flight Standards Division of the FAA.

15. Upon information and belief, Defendant Veatch resides in or around College Park, Georgia.

16. Defendant Blakey is the Administrator for the FAA.

17. Defendant Blakey is responsible for establishing and implementing the FAA's policies regarding employee speech for all FAA employees.

18. Upon information and belief, Defendant Blakey resides in or around Washington, DC.

19. Defendant Mineta is the United States Transportation Secretary.

20. Defendant Mineta is responsible for establishing and implementing the FAA's policies regarding employee speech for all FAA employees.

21. Upon information and belief, Defendant Mineta resides in or around Washington, DC.

22. Plaintiff is a Supervisory Aviation Safety Inspector in the Southern Region of the Flight Standards Division of the FAA.

23. Some of the facts that gave rise to this lawsuit occurred in College Park, Georgia.

24. At least one of the Defendants resides in College Park, Georgia.

25. Jurisdiction and venue in this Court are predicated on Title 28 U.S.C. § 1331(a), Title 28 U.S.C. § 1343, and Title 28 U.S.C. § 2201.

III. FACTUAL ALLEGATIONS

26. The FAA is a division of the Department of Transportation, a federal government agency.

27. The Flight Standards Division is a division of the FAA.

28. Plaintiff has 29 years of service as a Government employee, 18 of those years with the FAA.

29. Plaintiff's work performance is satisfactory and he was never disciplined until the instance that is the subject of this lawsuit.

30. Plaintiff has a sincerely held religious belief that his conversations regarding religious and moral issues such as homosexual behavior and marriage reflect biblical teaching.

Mr. Dombrowski's Conversation with Ms. Ogburn

31. On September 9, 2005, Mr. Dombrowski and his manager, Mr. Charles Whitlock, had a conversation with an Aviation Safety Inspector, Heather Ogburn in the break room at the workplace in Louisville, Kentucky.

32. Ms. Ogburn is not a supervisor.

33. Ms. Ogburn is not supervised by Mr. Dombrowski.

34. In that conversation, Ms. Ogburn mentioned that she was working through her church to donate an apartment for a family displaced by Hurricane Katrina.

35. Mr. Dombrowski and Mr. Whitlock both commended her for her plans.

36. Later that same day, Mr. Dombrowski was passing by Ms. Ogburn's office and they exchanged greetings.

37. During that conversation, Mr. Dombrowski asked Ms. Ogburn what church she attends, and she responded, "St. Luke's Episcopal."

38. Mr. Dombrowski stated that he was not familiar with that church.

39. Ms. Ogburn said it was just like the Catholic Church, but "very liberal."

40. She also said that the Episcopal Church ordains female and homosexual priests.

41. Ms. Ogburn then volunteered that her husband and mother-in-law (or possibly mother) believe that it is wrong to ordain homosexual priests.

42. Mr. Dombrowski said that he agreed with Ms. Ogburn's husband and mother-in-law (or possibly mother).

43. Ms. Ogburn then stated that she was not that knowledgeable about what the Bible says concerning homosexuals.

44. Mr. Dombrowski mentioned that the Old Testament (for instance the story of Lot) and the New Testament teach against homosexual behavior.

45. Ms. Ogburn indicated that one of her relatives is a homosexual and just thought he was born that way.

46. Mr. Dombrowski responded that his wife and daughter went to a church seminar on homosexual behavior. The seminar had guest speakers that were ex-homosexuals and it was their testimony that homosexuals are not born that way but choose this life style.

47. Ms. Ogburn then stated that if a homosexual preaches, the message will be the same. Mr. Dombrowski said that was possible, but asked how the homosexual would preach to children when it came to that subject.

48. Ms. Ogburn said that she did not know.

49. Mr. Dombrowski then noticed the time, and excused himself.

50. In the words of Ogburn, "Mr. Dombrowski left my cube on friendly terms and I have not had any conversations with him since." See September 15, 2005 Signed Statement of Ms. Ogburn (Attached as Ex. A).

51. Regarding the above-described conversation with Mr. Dombrowski, Ms. Ogburn stated, "I was not offended by his remarks and do not feel threatened nor am I concerned about any retaliation from Mr. Dombrowski. He has always been extremely helpful, courteous and professional and I enjoy working with him. This issue seems to have been blown out of proportion, and in my opinion, Mr. Domrowski [sic] did not make any disparaging remarks about any entity or person." Ex. A.

52. However, Ms. Ogburn did tell her supervisor, John Posey, about the conversation because she "was concerned that our conversation was not appropriate for the work place and that if somebody overheard it they might be offended." Ex. A.

Mr. Dombrowski's Conversations with Mr. Neuin

53. Jeffrey Neuin is an Aviation Safety Inspector and a union steward.

54. Mr. Dombrowski does not supervise Mr. Neuin.

55. Mr. Dombrowski did supervise Mr. Neuin during the eight month period of September 2004 to April 2005.

56. On several occasions, Mr. Neuin went to Mr. Dombrowski's office and made comments concerning religion.

57. Mr. Neuin and Mr. Dombrowski also went to lunch together once or twice where they may have discussed the issue of religion.

58. On one such occasion, Mr. Neuin said, "We have several different religions with in our office." Mr. Dombrowski responded by saying something to the effect of, "Which ones?"

59. Mr. Neuin invited Mr. Dombrowski to attend his church several times.

60. Mr. Neuin also placed religious literature on Mr. Dombrowski's desk. Some examples of this literature are attached as Ex. B.

61. On one occasion, Mr. Neuin and Mr. Dombrowski discussed a news story about a man that married several minor aged girls, and claimed to be Mormon. Mr. Dombrowski said something to the effect of, the man probably was not Mormon, but was a member of a cult.

62. Mr. Dombrowski never told Mr. Neuin that the Mormon religion is "nothing more than one big cult."

63. Mr. Neuin has accused Mr. Dombrowski of telling him that "the Mormon religion was nothing more than one big cult." See Unsigned Statement of Jeffrey Neuin (Ex. C).

64. Mr. Neuin was not offended by this alleged statement. See Ex. C.

65. Mr. Neuin is not Mormon, he is a Seventh Day Adventist.

66. Mr. Dombrowski does not make any negative comments about any religion or denomination in the workplace.

Defendants' Suspension and Reassignment of Mr. Dombrowski

67. As a result of the conversation he had with Ms. Ogburn, the conversations he had with Mr. Neuin, and possessing a pocket knife at work, Mr. Dombrowski was suspended without pay for 14 days and reassigned from Louisville, Kentucky to Birmingham, Alabama. See March 3, 2006 letter to Mr. Dombrowski from Defendant Veatch (Attached hereto as Ex. D).

68. Defendant Veatch's notice of discipline states the basis for the discipline of Mr. Dombrowski as follows: "On several occasions you engaged in conversations with non-supervisory employees about homosexuals and/or religion. During these conversations you expressed your views on these subjects and made comments that were inappropriate for the workplace. ... You, a supervisor engaged in conversations with non-supervisory employees where you made inappropriate comments and expressed stereotypical views."

69. Defendant Veatch's notice of discipline states that FAA's policy prohibiting stereotypical views is found in FAA Order 110.125A, relevant portions of which are attached as Ex. E.

70. The policy in FAA Order 110.125A also prohibits employees from expressing insulting or offensive views.

71. On March 20, 2006, Mr. Dombrowski sent a letter to Defendant Veatch explaining that his conversations with Ms. Ogburn and Mr. Neuin were appropriate for the workplace, and that he was not aware of the prohibition on having a pocket knife at work. See March 20, 2006 letter to Defendant Veatch from Mr. Dombrowski (Attached as Ex. F).

72. Mr. Dombrowski's March 20, 2006 letter also requested that the suspension and mandatory reassignment be dismissed. However, he volunteered to relocate to

Birmingham so long as it was not part of any discipline explained in Defendant Veatch's March 3, 2006 letter.

73. On April 6, 2006, Mr. Dombrowski's discipline was mitigated from 14 days of suspension without pay to 10 days because Defendant Veatch determined that he was not made aware of the prohibition on having a pocket knife at the work place. See April 6, 2006 letter to Mr. Dombrowski from Defendant Veatch (Attached as Ex. G).

74. On or about April 13, 2006, Mr. Dombrowski filed a grievance with Defendant Walker regarding the discipline set forth in Defendant Veatch's March 3, 2006 and April 6, 2006 letters.

75. Mr. Dombrowski met with Defendant Walker on May 3, 2006.

76. During the May 3, 2006 meeting, Mr. Walker told Mr. Dombrowski that he has no free speech rights in the government workplace.

77. On or about May 4, 2006, Mr. Walker informed Mr. Dombrowski that his discipline was further mitigated from 10 days to 7 days suspension and he would still be reassigned to Birmingham, Alabama. See May 4, 2006 letter from Mr. Walker to Mr. Dombrowski (Attached as Ex. H).

IV. LEGAL ALLEGATIONS

FIRST CLAIM FOR RELIEF Violation of the Free Speech Clause of the First Amendment to the United States Constitution

78. Plaintiff realleges all matters set forth in the preceding paragraphs and incorporates them herein.

79. Mr. Dombrowski's conversation with Ms. Ogburn regarding homosexual behavior addressed a matter of public concern.

80. Mr. Dombrowski's conversation with Ms. Ogburn about homosexual behavior was not part of his job responsibilities.

81. Mr. Dombrowski's conversations with Mr. Neuin about religion addressed a matter of public concern.

82. Mr. Dombrowski's conversations with Mr. Neuin about religion were not part of his job responsibilities.

83. Defendants' discipline of Plaintiff because of Plaintiff's speech viewpoint discriminates against the free expression of religious ideas, values, thoughts, viewpoints and opinions on the basis of the content of such expression.

84. The Defendants' policy and practice of prohibiting some religious viewpoints regarding homosexual behavior constitutes governmental interference with free speech activities protected under the First Amendment of the United States Constitution.

85. The Defendants' policy and practice of prohibiting supervisors from discussing religious beliefs with co-workers constitutes governmental interference with free speech activities protected under the First Amendment of the United States Constitution.

86. Employees are permitted to discuss the issues of homosexual behavior, marriage, and religion so long as they do so from a perspective that is not considered by Defendants to be stereotypical, offensive, or insulting.

87. Defendants have no compelling interest to justify their speech censorship.

88. At the time that the Defendants acted to discipline Mr. Dombrowski because of the viewpoint and content of his speech, as a matter of law, censorship of speech because of its religious viewpoint and content was clearly a violation of the First Amendment to the United States Constitution. The Defendants knew, or should have known, that their

discriminatory treatment of Mr. Dombrowski based on the religious content or perspective of his speech violated the First Amendment to the United States Constitution.

SECOND CLAIM FOR RELIEF
Violation of Equal Protection

89. Plaintiff realleges all matters set forth in the preceding paragraphs and incorporates them herein.

90. The Defendants have disciplined Plaintiff because of the content and viewpoint of his speech.

91. Similarly situated employees are permitted to discuss religion, marriage, and the issue of homosexual behavior so long as they do so from a perspective that is not considered by Defendants to be stereotypical, offensive, or insulting.

92. Therefore, similarly situated employees are not treated alike by the Defendants based upon a fundamental right.

93. Defendants have no compelling interest to justify this disparate treatment.

94. This unequal treatment constitutes a violation of the Plaintiff's equal protection rights as guaranteed by the Fifth Amendment of the United States Constitution.

THIRD CLAIM FOR RELIEF
Violation of Religious Freedom Restoration Act
42 U.S.C. § 2000(bb)

95. Plaintiff realleges all matters set forth in the preceding paragraphs and incorporates them herein.

96. Plaintiff has a sincerely held religious belief that his conversations regarding religious and moral issues such as homosexual behavior and marriage reflect biblical teaching.

97. Defendants disciplined Plaintiff for expressing his religious viewpoints regarding homosexual behavior and marriage.

98. This discipline placed and is placing a substantial burden on Plaintiff's free exercise rights.

99. There is no compelling state interest sufficient to justify the Defendants' discriminatory treatment of Plaintiff based upon his religious beliefs.

100. The Defendants' discipline of Plaintiff is not the least restrictive means to accomplish any asserted government interest and violates the Religious Freedom Restoration Act.

FOURTH CLAIM FOR RELIEF
Violation of the Due Process Clause of the
Fifth Amendment to the United States Constitution

101. Plaintiff realleges all matters set forth in the preceding paragraphs and incorporates them herein.

102. Defendants' policy of prohibiting stereotypical, offensive, or insulting views in conversations with co-workers about homosexual behavior, religion, and marriage is unconstitutionally vague. It is impossible to determine which speech is covered by this prohibition.

103. Defendants have interpreted and enforced this policy in an unconstitutional and discriminatory manner.

104. Because this policy sweepingly prohibits speech which is constitutionally protected, it is unconstitutionally overbroad.

105. Persons of common intelligence must necessarily guess at the meaning, scope, and application of this policy

106. This policy lends itself to discriminatory enforcement by government officials in an arbitrary and capricious manner.

107. This policy, on its face and as applied to discipline the Plaintiff is an unconstitutional violation of the Plaintiff's due process rights under the Fifth Amendment to the United States Constitution.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. That this Court enter a judgment declaring the Defendants' discipline of Plaintiff, to be an unconstitutional violation of the Plaintiff's free speech rights as guaranteed by the First Amendment to the United States Constitution, due process and/or equal protection rights as guaranteed by the Fifth Amendment to the United States Constitution, and the Religious Freedom Restoration Act;

B. That this Court enter a judgment declaring the Defendants' policy and practice of prohibiting supervisors from expressing disagreement with homosexual behavior, or from discussing "stereotypical," "insulting," or "offensive" views of religion and marriage with co-workers, to be, on its face and as applied, an unconstitutional violation of the Plaintiff's free speech rights as guaranteed by the First Amendment to the United States Constitution, equal protection and/or due process rights as guaranteed by the Fifth Amendment to the United States Constitution, and the Religious Freedom Restoration Act;

C. That this Court enter a permanent injunction prohibiting Defendants from continuing to illegally discriminate against the Plaintiff and other employees based on their religious speech, and speech expressing disagreement with homosexual behavior.

D. That this Court direct Defendants to remove the 7 day suspension of Plaintiff and involuntary reassignment from Plaintiff's file.

E. That this Court require Defendants to allow Plaintiff to make up, and be paid for through additional vacation days, the days he was suspended without pay due to the Defendants' wrongful suspension of him in violation of his Constitutional and statutory rights.

F. That this Court grant such other and further relief as to which the Plaintiff may be entitled, including court costs and reasonable attorney's fees, as provided by the Equal Access to Justice Act and RFRA.

Respectfully submitted this ___ day of June, 2006.

Attorneys for Plaintiff,

ALLIANCE DEFENSE FUND

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Dated: June _____, 2006

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. § 1746, I hereby declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Larry H. Dombrowski