IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ISRAEL ALVARADO, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	**Case No.: 8:22-CV-1149-WFJ-CPT**
	:	
LLOYD AUSTIN, III, et al.,	:	
	:	
Defendants.	:	
	:	

PLAINTIFFS' REPLY BRIEF

Defendants' Opposition to Plaintiffs' preliminary injunction ("PI") motion (the "Opp."), ECF 37, is a smokescreen designed to obscure the real legal issues and mislead the Court. They misstate Plaintiffs' arguments and fail to address important points that clearly tip the balance of factors in favor of granting an injunction to enforce Plaintiffs' constitutional rights.

I. DEFENDANTS' MISLEADING USE OF THE TERM "VACCINE"

Defendants do not deny that they changed, or ignored, the pre-Mandate definition of "vaccine." Defendants cite the military's long history of using vaccines to *immunize* the Services from diseases, *i.e.*, to prevent infection and transmission. *See, e.g.,* Opp. at 1, 25. Defendants deceptively assert "DOD added" COVID-19 vaccinations which do not immunize "to this long list of immunizations [that do immunize] already required for service members." *Id.*

at 1. Defendants refer to the COVID treatments as "vaccines" without acknowledging that the CDC radically expanded the definition of "vaccine" on September 1, 2021, just days the Mandate was issued on August 24, 2021, *see* Compl., ¶¶ 131-140, to enable the unlawful Mandates and to deceive the public.[1] Yet the mandated COVID-19 vaccines do not immunize, and as such, they are treatments that may not be mandated.

Defendants have not provided any scientific justification, or any explanation at all, for changing or ignoring their own pre-Mandate definitions in their response. But the reason is obvious: the COVID treatments do not make recipients immune or prevent transmission.[2] The mandated two-dose regimen provides "little, if any, protection" to the currently prevalent Omicron variant. ECF 39-2, ¶ 20; *see also* Ex. 1, Decl. of Dr. Jayanta Bhattacharaya,

[1] The Pfizer/BioNTech and Moderna COVID mRNA vaccines also do not satisfy the Department of Defense's ("DoD") own definition of "vaccine" and "vaccination" in the DoD regulation governing vaccinations, DoD Instruction 6205.02, "DoD Immunization Program" (July 23, 2019) ("DoDI 6205.02"). *See* Opp. at 3. DoDI 6205.02 defines "vaccination" as "[t]he administration of a vaccine to an individual for inducing ***immunity***," and "vaccine" as a preparation that (1) "contains one or more components of a ***biological agent*** or toxin," and (2) "induces a protective immune response ***against that agent*** when administered to an individual." *Id.* (emphasis added). The first and second clause establish an identity relationship between the "biological agent" administered (*i.e.*, mRNA) and "that agent" against which the vaccine "induces a protective immune response." The mRNA shots do not "contain" a single molecule of the COVID-19 virus; they are not the same as COVID-19 and therefore the mRNA shots are not vaccines under the DoD's own regulations.

[2] Like their definitions of "vaccine," "fully vaccinated" is a fluid term that changes as evidence piles up that the mandated two-dose regimen "offer[s] little if any protection" to the currently prevalent Omicron variant and sub-variants. ECF 39-2, ¶ 20. It is presumably for this reason that the more recent studies cited by Defendants on vaccine efficacy compared the protection against (not immunity to) Omicron for those who had received one or more boosters, rather than the mandated two-dose regimen. *See, e.g.,* ECF 39-1, ¶¶ 17-18, 20; 39-2, ¶¶ 17, 32, 39.

¶¶ 48-60 (discussing studies finding vaccines ineffective against Omicron). Thus, the Mandate cannot further a compelling government interest and is not the least restrictive means for furthering that interest.[3] *See infra* Section III.B.

II. THIS COURT HAS JURISDICTION.

A. Venue Is Proper in this District and Division.

Defendants incorrectly claim that venue is not proper. Opp at 11. First, Defendants are sued in their official capacity and reside in this Division. Two of the largest DoD Commands—Central Command and Special Operations Command—are headquartered at MacDill Air Base, in the Tampa Division. Second, two plaintiffs' homes of record are in this District. *See* Compl., ¶ 70 (Plaintiff Calger in Charlotte County and Hirko in St. John's County). This is a class action, and Rule 23 encourages citizens to consolidate claims against the same defendants for judicial efficiency. Third, the Tampa Division is the division "in which the action is most conveniently advanced," Local Rule 1.04(b), as several related actions were filed or are pending in this Division.[4]

B. The Court Has Subject Matter Jurisdiction.

This Court has jurisdiction under 28 U.S.C. §§1331 and 1346 and 42

[3] As discussed in the Complaint and PI Motion, Secretary Austin and other fully vaccinated and boosted senior military leaders caught COVID, isolated for a few days, were treated with highly effective therapeutics Defendants do not address and returned to work a few days later with no adverse effects to the Services. *See* ECF 38, ¶ 8.

[4] These actions include not just the *Navy SEAL 1* Proceeding before Judge Merryday, but also several additional individual and putative class actions before Judge Merryday, as well as cases filed with, or transferred to, Judge Barber.

U.S.C. § 2000-bb (the Religious Freedom Restoration Act). The Constitution itself provides a cause of action for Plaintiff chaplains' religious liberty claims.[5]

Defendants' argument about exhausting administrative remedies ignores the fact that, at the highest level, the DoD and Armed Services have adopted a policy of refusing to grant any religious accommodation requests ("RARs"). *See* Compl. ¶¶ 94-114 & *infra* Section III.B. Several courts have confirmed that service members are exempt from exhausting a sham RAR process that amounts to little more than "theater."[6] For the same reasons, Plaintiffs claims are ripe, *see* ECF 31 at 23-26, and Defendants' claims that they have not suffered any harms are erroneous, as set forth in Plaintiffs' supplemental declarations.[7]

C. Plaintiffs' Claims Are Justiciable.

Defendants claim courts cannot review decisions "challenging military assignment, training, schooling, promotion and other operational decisions ... are nonjusticable," Opp. at 16, is contrary to the very citations they quote.[8]

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[5] *See Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 295 (D.C. Cir. 2006) ("*CFGC*") (listing over a dozen cases where military chaplains raised Free Exercise and/or Establishment Clause claims were deemed justiciable).

[6] *U.S. Navy SEALs 1-26 v. Biden*, 2022 WL 34443, at * 1 & *6 (N.D. Tex. Jan. 3, 2022) ("*Navy SEALs 1-26*") (finding RAR process futile) *stay denied*, 27 F.4th 346, 349 (5th Cir. Feb. 28, 2022) (Where a service has "effectively stacked the deck against … exemptions," this is "sufficiently probative of futility").

[7] *See generally* Ex. 2 & Ex. 3 (table summarizing Plaintiff injuries and disciplinary actions).

[8] Defendants' claims regarding the non-justiciability of these issues instead rely Justice Kavanaugh's lone concurrence in *Austin v. Navy SEALs 1-26*, 142 S.Ct. 1301 (2022). There, the Supreme Court, in a three-sentence opinion simply limited the scope of the preliminary

Orloff v Willoughby, 345, U.S. 83 (1953) addressed a petition by a doctor drafted under the "Doctors Draft Act" claim he was entitled to a commission and assignment to a doctor's position. Orloff's refusal to fill out security clearance forms precluded his commissioning.[9] The Court held that failure to assign Orloff duties for which he was drafted, *i.e.*, a doctor, "would raise questions not only of bad faith but of unlawful discrimination." *Id.* at 88. The Court's admonition about judicial noninterference specifically referred to "*legitimate* Army matters", *id.* at 94 (emphasis added); operating contrary to the Constitution or law is not a *legitimate* matter, and it is in the Court's power to address constitutional violations in assignments and promotions.[10]

D. Plaintiffs Have Standing for § 533 Claims.

injunction granted but left in place the district court and the Fifth Circuit's findings that the plaintiffs' RFRA and First Amendment claims were justiciable, ripe, had a substantial likelihood of success and satisfied all other factors for a preliminary injunction.

[9] He lost at the district and circuit court levels who said the Army could do with him as they wished. *Id.* at 86-87. When the Court granted certiorari, "the parties changed positions as nimbly as if dancing a quadrille." *Id.* at 87. The Army confessed its error and assigned him "to medical duties in the treatment of patients within the psychiatric field" but, because he was a private, he was barred from "commissioned officers function[s],", and other restrictions relating to drugs due to "doubts about his loyalty[.]" *Id.* at 93.

[10] *See, e.g., Emory v. Secretary of Navy*, 819 F.2d 291, 294 (D.C. Cir.1987) ("Where it is alleged, as it is here, that the armed forces have trenched upon constitutionally guaranteed rights through the promotion and selection process, the courts are not powerless to act. The military has not been exempted from constitutional provisions that protect the rights of individuals. It is precisely the role of the courts to determine whether those rights have been violated.")(citation omitted). Moreover, the long line of military chaplain cases discussed in *CFGC* consistently treated as justiciable chaplains' claims that chaplain selection and promotion processes were unconstitutional.

Defendants erroneously claim that Plaintiffs lack standing to enforce § 533 and that § 533 does not create a private right of action. Opp. at 17-19.

Plaintiffs have constitutional standing for their § 533 claims for the same reason they have standing to bring their First Amendment claims, namely, they have been injured through Defendants' actions depriving them of constitutionally and statutorily protected religious liberties. First, Congress created § 533 to define and enforce Chaplains' constitutional rights to religious liberty and expressly directed Defendants to implement these regulations. Plaintiffs simply ask the Court to require DoD to enforce the statute and its regulations thereunder protecting Plaintiffs' First Amendment rights. Second, § 533 is a remedial statute that must be interpreted to achieve its remedial purpose. The Secretary's negative personnel actions against Plaintiffs violate the Free Exercise Clause, the Establishment Clause, and § 533's express prohibitions. DoD's unconstitutional message of hostility results in irreparable harm. *See infra* Section IV. This is an injury directly traceable to Defendants' actions, and inactions, that are redressable by this Court.[11]

[11] Plaintiffs also seek an order compelling Defendants to complete the DoD wide training of all levels of leadership through a training program on religious liberty issues for military leadership and chaplains. Plaintiffs have never received any training, nor were they informed that § 533 existed. *See, e.g.,* Ex. 2, Brown Decl., ¶ 8, Calger Decl., ¶ 6; Harris Decl., ¶ 8. If Defendants had complied with the congressional directive and issued regulations implementing these protections and required comprehensive training prior to the Mandate, it could have prevented Defendants' systematic violations of Plaintiffs' and other service members' religious liberties, as well as the dozens of similar lawsuits filed Nation-wide.

Section 533(b) creates a right of action because it simply defines and enforces military chaplains' First Amendment rights, consistent with their unique constitutional role. As such, the right of action is provided by the First Amendment. Defendants' retaliatory actions against Plaintiffs for exercising those rights results are also First Amendment violations. ECF 31 at 30-31. Defendants cannot rely on their defiance of Congress's commands and repeated failure to issue regulations fully protecting the rights for chaplains set forth in § 533. Plaintiffs sue to force DoD to follow its regulations.[12] Section 533, which is partly reflected in DoDI 1300.17, ¶¶ 1.2.b-c, "safeguard [Plaintiffs'] individual interests" which the requested injunction will protect.

III. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS.

A. Section 533 Claims

Defendants' arguments that the Mandate and their retaliatory actions against Plaintiffs do not violate § 533, Opp at 19-23, depend on defining "rite," "ritual," and "ceremony" in terms that fail to recognize the situations Congress sought to address, which was not limited to marriage. That context and binding First Amendment precedent make it clear that it is the chaplains, rather than the government, who define the scope of religious rites, rituals, or ceremonies.

[12] *See, e.g., Ft. Stewart Schs. v. FLRA,* 495 U.S. 641, 654 (1990) ("[T]he Army, no less than any other federal agency, is obligated to follow its own regulations"). When Defendants own regulations afford significant procedural protections, courts "have insisted on compliance." *U.S. v. Caceres*, 440 U.S. 741, 760 (1979); *id.* at 759 ("This Court has consistently demanded governmental compliance with regulations designed to safeguard individual interests").

Several Plaintiffs view the Mandate of this vaccine, developed using aborted babies, as a religious rite equivalent to child sacrifice.[13]

Defendants' speculation that there are major differences between the House, Ex. 4, and the Senate versions, Ex. 5, of the 2013 NDAA is incorrect. The Senate bill, S. 3526, was titled the "Military Religious Freedom Act of 2012"; Section 2 of the Senate bill, "Protection of Rights of Conscience of Members of the Armed Forces and Chaplains of Such Members" is the same title as Sec. 536 of House Report 4310. The language is almost identical, including the definition of a chaplain. While Congress's removal of the ban on homosexual activities in the military produced great turmoil, there were other issues causing division and friction in the military Chaplain Corps that the NDAA was supposed to fix.[14]

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[13] *See, e.g.,* Ex. 2, Alvarado Decl., ¶ 8 ("this pandemic has created a new religious sect," where "receiving the COVID-19 'jab' has become some sort of ceremony or an initiation rite or ritual."); Brown Decl., ¶ 9 ("the compulsion to take the Covid shot is equal to a religious rite. Given the reliance on child murder for the development and existence of these Covid shots, they are little more than child sacrifice for a benefit, a heinous practice of human sacrifice akin to the worship of Moloch abhorred by God in the Old Testament."); Shour Decl., ¶ 9 (discussing the "branch covidian" cult led by "Lord Fauci, the High Priest of covid," accompanied by hostility to traditional religion in favor "a new denomination of scientism."); Wine Decl., ¶ 8 (vaccination amounts to "public renunciation of … God" and "a religious rite or ritual being undertaken in allegiance to a false god.").

[14] The Associated Gospel Churches Perspective on Religious Liberty, *see* Compl., Ex. 5, identified some of those long simmering problems. This included the Air Force and Navy issuing regulations prohibiting "sectarian" prayers, chaplains being censured and punished for what they spoke or prayed, and having a Baptist service suppressed in Iraq in 2007. Defining a chaplain as a denominational representative was supposed to resolve many of those issues. *See* Ex. 6, Decl. of Arthur A. Schulcz. Section 533 has some components of the earlier NDAA draft language, but it is not limited to issues of human sexuality and its removal clearly shows the focus was on "religious liberty" including speaking at ceremonies or other functions.

First Amendment protections against compelled participation apply even for routine activities that the government considers wholly secular. Cases like *W. VA. State Board of Education v. Barnette,* 319 U.S. 624 (1943), address those with religious objections to a common secular ceremony like reciting the Pledge of Allegiance. Like this case, "Failure to conform is 'insubordination' dealt with by expulsion." *Id.* at 629. Jehovah Witnesses successfully challenged the rule under the First Amendments as burdening their religion.

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.

Id. at 639. There is no doubt Defendants have punished Plaintiffs in a manner that § 533 specifically prohibits. The Bible provides numerous examples where individuals are required to do something in public that becomes a test of their conscience and is thus prohibited by the First Amendment. *See* ECF 31 at 28-30. To decide what is an appropriate ceremony from a religious perspective requires DoD to take sides on religious issues, which is forbidden. Defendants forget the chaplain is the religious expert addressing a religious issue.

B. RFRA and Free Exercise Claims

First, Defendants have substantially burdened Plaintiffs' free exercise not only through the denial of RARs using a sham process that amounts to little more than "theater," *see generally* Opp at 32-34 & cases cited therein, but

also through removing them from the RAR process and religious review teams; reassignment or duty restrictions; and censoring their ministry and/or pressuring them to advise service members with religious objections in a manner contrary to their conscience. *See* Compl., ¶¶ 103 & 117.[15] Defendants' have not responded to, much less rebutted, these allegations, which are at the core of the unique free exercise claims that Plaintiffs chaplains assert.

Second, Defendants have unquestionably favored comparable secular activities over Plaintiffs' free exercise. Defendants cite to more updated statistics, *see* Opp at 5 (reproduced in Ex. 7-10), that are summarized below.

Service	RARs Submitted	RARs Approved	% RAR Approved	Med/Admin Approved	Secular vs. RAR
Air Force	9,139	109	1.2%	1,608	14.8:1
Army	7,701	19	0.25%	17,338	913:1
USMC	3,733	7	0.19%	602	86:1
Navy	4,235	43	1.0%	273	6.3:1
Total	**24,808**	**178**	**0.7%**	**19,821**	**111:1**

This data is even more damning than previous data provided in the Complaint. Even making the counter-factual assumption that the RARs are religious accommodations rather than disguised administrative exemptions, *see* Compl., ¶ 109, the Armed Services have granted ***more than 100 times more*** secular exemptions than RARs, and for the Army the ratio approaches 1000 times.

[15] This immediate retaliation triggered by the submission of an RAR, expression or religious objections or advising those with religious objections is similar to the conduct that the Court in *Navy SEALs 1-26* found to constitute violations of RFRA and First Amendment, namely, treating a service member as non-deployable upon submission of an RAR. *See Navy SEALs 1-26*, 2022 WL 34443, at *9-11.

Defendants also erroneously assert that religious accommodations are necessarily permanent, while medical exemptions are temporary. Opp at 27-28. All religious accommodations are time-limited.[16] Moreover, nearly all secular exemptions are temporary medical exemptions that are vaccine-specific and may be renewed until "an updated or new vaccine has been approved" that "the member can safely take." ECF 39-12, ¶ 13. Most Plaintiffs' religious objections are similarly vaccine-specific, in whole or in part, and several are willing to take an alternative FDA-approved vaccine to which they do not have religious objections. *See* Compl., ¶ 127.

Third, Defendants' have failed to meet their burdens of proof and persuasion to establish that their actions satisfy strict scrutiny.[17] Plaintiffs wish to highlight three points that are undisputed. First, no active-duty service

[16] *See, e.g.,* ECF 1-5, DOD Instruction 1300.17, ¶ 3.2.g.1(Sept. 1, 2020) ("an approved accommodation may be subject to review and recission, in whole or in part, at any time" based on change in circumstances). Each of the Armed Services contains similar time limitations in the service regulations implementing DODI 1300.17.

[17] Defendants appear to acknowledge, as they must, that their actions trigger strict scrutiny by their decision to devote the largest sections of their brief to this discussion. *See* ECF 39 at 23-32. Nearly all of the discussion in the brief and the attached declarations summarizes or cites to various studies or statistics that have no bearing on the salient issues here, namely, what are the relative risks posed or faced by vaccinated vs. unvaccinated service members due to the Omicron variant or sub-variants, and how are those risks mitigated by a two-dose regimen of the mRNA "vaccines" and/or natural immunity. The studies suffer from one or more of the following defects: (1) they address the past 2.5 year period, consider periods prior to the development of vaccines or vaccine deadlines, and/or the emergence of Omicron; (2) they are not limited to service members; (3) the time series statistics provided do not provide a breakdown of vaccinated vs. unvaccinated service members, in particular the Rans Declaration Table, *see* ECF 39-3 at 12-13 & Table; and/or (4) for nearly all recent studies that do address Omicron they consider the addition of one or more boosters, rather than the mandated two-dose regimen.

member, whether vaccinated or not, has died since November 2021 when the Omicron variant became prevalent. *See* ECF 39-3 at 12-13 & Table. This is the same time that mandate deadlines kicked in and active-duty vaccination rates reached or exceeded 98%. Second, the military has approved nearly 20,000 secular exemptions and less than 200 (or zero) religious accommodations, refuting any purported compelling interest in 100% vaccination. Third, the Pfizer CEO, the *New England Journal of Medicine*, and apparently Defendants acknowledge that, for the Omicron variant, natural immunity provides 50% protection, while the mandated two-dose regimen "offer[s] little, if any protection against [Omicron] infection."[18] demonstrating that the Mandate cannot further a compelling government interest.

C. Establishment Clause and No Religious Test Clause Claims.

Plaintiffs have shown DoD's retaliatory actions against Plaintiffs are a direct response to their objections to the Mandate. *See* ECF 31, Ex. 6 (Table summarizing § 533 Violations). Defendants' violations of § 533 are also violations of the Establishment Clause's foundational principle: "No person can be punished for entertaining or professing religious beliefs or disbeliefs."

[18] ECF 39-1, ¶ 20. *See also New COVID-19 Vaccine That Covers Omicron 'Will Be Ready in March,' Pfizer CEO Says* Yahoo!Finance (Jan. 10, 2022) (same from transcript of video interview with Pfizer CEO Albert Bourla), available at: https://finance.yahoo.com/video/covid-19-vaccine-covers-omicron-144553437.html(last visited July 17, 2022). *See also* Ex. 1, Dr. Bhattacharya Decl., ¶¶ 17-34 (discussing studies finding that natural immunity provides stronger and more durable protection against Delta and Omicron variants than vaccination); *id.*, ¶ 35 (noting that the United States government is an outlier in its refusal to recognize or consider the efficacy of natural immunity).

Everson v. Board of Ed., 330 U.S. 1, 16 (1947). Defendants' creation of a categorical RAR bar shows they are hostile to those who raise religiously based objections to the Mandate. It is also proof they have created a religious test violating the No Religious Test Clause[19] and well-established Establishment Clause precedent. Government must "be a neutral in its relations with groups of religious believers and non-believers; … State power is no more to be used so as to handicap religions than it is to favor them." *Id*. at 18. Defendants have not addressed the impact of granting zero RARs (or at best less than 1%), while granting more than 100 times more secular exemptions. This shows that religion is being treated differently, and the government's hostility to, and discrimination against, religious exercise violates the Establishment Clause just as much as the Free Exercise Clause.

III. PLAINTIFFS FACE IRREPARABLE HARM.

Several courts have already found that Defendants' No Accommodation Policy violates services members' free exercise rights under RFRA and the First Amendment, including two that have issued service-wide injunctions.[20]

[19] Defendants erroneously assert that the No Religious Test Clause applies only to oaths. *See* Opp at 36 n.7. This clause applies wherever there is a religious test (not an oath) for federal or state public service that prohibits one from serving based on their religion (or non-religion). *See generally McDaniel v. Paty*, 435 U.S. 618, 632 (Brennan, J., concurring).

[20] *See Navy SEAL 1 v. Austin,* 2022 WL 534459, at *19 (M.D. Fla. Feb. 18, 2022); *Air Force Officer*, 2022 WL 468799, at *12; *Navy SEALs 1-26*, 2022 WL 34443, at *18 (subsequently expanded to Navy-wide injunction March 28, 2022; *Doster v. Kendall*, 2022 WL 982299 (S.D. Ohio Mar. 31, 2022) (subsequently expanded to Air Force-wide TRO July 14, 2022).

The irreparable harm requirement is satisfied by alleging a violation of the Establishment Clause, and Section 533 because it enforces these rights, because the harm "occurs merely by virtue of the governments purported unconstitutional policy or practice," "governmental endorsement," or hostility, and it "occurs the moment the government action takes place." *CFGC*, 454 F.3d at 302. Involuntary injection of an unlicensed vaccine (or non-vaccine) is an irreparable harm. *See Doe v. Rumsfeld*, 297 F.Supp.2d 119, 135 (D.D.C. 2003).

IV. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR ISSUANCE OF A PRELIMINARY INJUNCTION.

While Defendants may characterize it as "interference from the judiciary," Opp. at 39, Plaintiffs simply ask that this Court perform its assigned role, and duty, to interpret and enforce constitutional rights and "to determine whether those rights have been violated." *Emory*, 819 F.2d at 294. Here, there is no conflict between the public's "exceptionally strong interest in national defense," Opp. at 38, which we all share, and Plaintiffs' constitutional rights. The most effective way to promote the public interest generally and the specific interest in strong national security is by requiring Defendants to respect the Constitutionally protected religious liberties.

Defendants' systematic violations of religious liberties are one of the greatest internal threats to national security this Nation has ever faced. Defendants' imposition and enforcement of an unlawful vaccine mandate, and

its arbitrary and selectively enforced No Accommodation Policy, threaten to purge hundreds of thousands of service members.[21] Every branch of the Armed Services is facing massive recruiting shortfalls, with the Army having reached only 40% of its FY22 target with less than three months left.[22] The purging of hundreds of thousands of highly trained, experienced, patriotic, and religious service members, and the massive, across-the-board recruiting shortfalls, are a direct result of Defendants' hostility to religion and violations of Constitutionally-protected religious liberties. The loss of current personnel and future recruits are so great that they many worry that they create a "long-term threat to the all-volunteer force,"[23] the foundation for our national defense.

IV. CONCLUSION

This Court should grant the relief requested in the Proposed Order.

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[21] The Armed Services have already separated over 6,000 service members (before the Air Force and Navy were enjoined from doing so), and their RAR policies almost certainly result in discharge of at least 25,000 who have submitted RARs. Just this month the Army has barred over 60,000 in the Army Reserve and National Guard from service or pay. *See* Allie Griffin, *Army Bars More Than 60K National Guards, Reservists from Service, Cutting Off Pay*, NY Post (July 8, 2022), available at: https://nypost.com/2022/07/08/army-cuts-pay-from-over-60k-unvaccinated-national-guard-reserves/ (last visited July 17, 2022).

[22] *See* Courtney Kube & Molly Boigon, *Every Branch of the Military is Struggling to Make its 2022 Recruiting Goals, Official Say*, NBCNews (June 27, 2022), available at: https://www.nbcnews.com/news/military/every-branch-us-military-struggling-meet-2022-recruiting-goals-officia-rcna35078 (last visited July 17, 2022).

[23] Tom Jurkowsky, *The Military Has a Serious Recruiting Problem – Congress Must Fix it*, The Hill (June 21, 2022) (*quoting* Sen. Thom Tillis (R-N.C.)), available at: https://thehill.com/opinion/national-security/3527921-the-military-has-a-serious-recruiting-problem-congress-must-fix-it/ (last visited July 17, 2022). *See also supra* note 22, Kube & Boigon ("2022 is the year we question the sustainability of the all-volunteer force").

Dated: July 18, 2022

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CERTIFICATE OF SERVICE

This is to certify that on this 18th day of July, 2022, the foregoing Plaintiffs' Reply Brief was e-filed using the CM/ECF system.

Respectfully Submitted,

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