

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

KNIGHTS OF COLUMBUS,)	
COUNCIL 694,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 3:24-cv-00363
)	
NATIONAL PARK SERVICE, ET AL.,)	
)	
<i>Defendants.</i>)	

**PLAINTIFF’S MOTION FOR A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiff Knights of Columbus, Council 694 (“the Knights”) respectfully moves this Court under Civil Rule 65 for a temporary restraining order and preliminary injunction against Defendants National Park Service (“NPS”), U.S. Department of Interior, and Superintendent Alexa Viets and Chief Ranger Aaron Scott in their official capacities.¹

As explained in the Knights’ brief in support, Defendants are unlawfully refusing to allow the Knights to hold their traditional Memorial Day event in the Poplar Grove National Cemetery, as they have done for generations. The Knights are likely to succeed on the merits of their claims, including that Defendants’ refusal violates the Religious Freedom Restoration Act and the Free Exercise Clause of the U.S. Constitution; the Knights will suffer irreparable harm absent a TRO and preliminary injunction; and both the balance of equities and the public interest favor a TRO and preliminary injunction.

¹ The Complaint also states claims under the Religious Freedom Restoration Act (RFRA) against Superintendent Viets and Ranger Scott in their personal capacities; those claims, however, are not the subject of the pending motion.

The Knights therefore seek an immediate temporary restraining order and preliminary injunction ordering Defendants to allow the Knights to continue their decades-long tradition of hosting a Memorial Day mass inside the Poplar Grove National Cemetery.

Dated: May 21, 2024

Respectfully submitted,
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* Application for admission *pro hac vice*
forthcoming

CERTIFICATE OF SERVICE

I certify that, on May 21, 2024, in addition to filing this motion on the docket through the Court's Electronic Court Filing system, I also caused a copy of the foregoing to be served via electronic mail on the following:

Teresa Garrity
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NATIONAL PARK SERVICE, ET AL.,)	
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<i>Defendants.</i>)	

**PLAINTIFF’S BRIEF IN SUPPORT OF MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff Knights of Columbus, Council 694 (“the Knights”), pursuant to L. Civ. R. 7(F), submits this brief in support of their motion for a temporary restraining order or preliminary injunction against Defendants National Park Service (“NPS”), U.S. Department of Interior, and Superintendent Alexa Viets and Chief Ranger Aaron Scott in their official capacities.¹

INTRODUCTION

Defendants refuse to allow the Knights to hold their traditional Memorial Day event in the Poplar Grove National Cemetery, as they have done for generations, because it involves a Catholic mass,² which is a “religious service” and therefore, they say, makes the event a prohibited “demonstration.” The Court should immediately enjoin that unlawful and unconstitutional burden on the Knights’ religious practice and allow them to resume their annual religious tradition.

¹ The Complaint also states claims under the Religious Freedom Restoration Act (RFRA) against Superintendent Viets and Ranger Scott in their personal capacities; those claims, however, are not the subject of the pending motion.

² The mass is a Catholic religious service that culminates in the celebration of the Holy Eucharist, which Catholics regard as “the source and summit of the Christian life.” *Catechism of the Catholic Church* § 1324.

For more than half a century, the Knights expressed their patriotism for the United States and appreciation and reverence for our Nation’s veterans by hosting an annual Memorial Day mass at Poplar Grove National Cemetery in Petersburg, Virginia. That suddenly changed last year, in 2023, when the NPS abruptly revoked permission for the Knights to continue their longstanding tradition of holding the annual Memorial Day mass inside the National Cemetery. Despite decades of allowing the commemoration, the NPS relied on a new 2022 policy memorandum from the Director of the National Park Service to conclude that the Knights’ solemn event would henceforth be categorized as a prohibited “demonstration” under NPS regulations because it is a “religious service.” NPS has taken the same view this year and has once again refused to permit the Knights to hold their annual Memorial Day mass *inside* the National Cemetery. Rather, NPS has stated that the Knights must hold their sacred mass, if at all, *outside* the cemetery on a patch of grass near the parking lot, which they have designated as a “First Amendment Area.” And when the Knights pointed out that NPS had permitted another Council to hold their annual Memorial Day mass inside the Andersonville National Cemetery in Georgia, NPS responded swiftly and harshly by *revoking* that permission. Banishing the Knights from the sacred ground of these National Cemeteries is not a reasonable alternative accommodation by any measure.

Defendants’ treatment of the Knights is unreasonable, unnecessary, and unconstitutional. By prohibiting the Knights from exercising their religious convictions and expressing their patriotism by praying for and honoring the fallen through a Catholic mass held inside the cemetery, NPS is misapplying its own regulations, unlawfully infringing on the Knights’ First Amendment rights and violating the Religious Freedom Restoration Act. And this treatment is causing irreparable harm to the Knights and those who wish to participate in their annual Memorial Day mass. The Government, by contrast, faces no harm from permitting the reverent Memorial Day

mass to occur within the National Cemetery, as it has for generations without incident. The public interest also strongly favors allowing the Knights to carry out their religious tradition without heavy-handed governmental interference.

Because **Memorial Day is Monday, May 27, 2024**, the Knights seek immediate preliminary relief that allows them to continue their decades-long tradition of hosting a Memorial Day mass in the Poplar Grove National Cemetery.

RELEVANT BACKGROUND

Founded nearly 150 years ago, the Knights of Columbus is a Catholic organization headquartered in Connecticut and comprised of approximately 16,000 local “councils” throughout the world. Compl. ¶¶ 6, 16; Tetreault Decl. ¶ 6.³ The organization’s mission is to promote charity, unity, fraternity, and patriotism. Compl. ¶ 17; Tetreault Decl. ¶ 6. “Patriotism,” in particular, “has been one of the four principles of the Knights of Columbus since . . . 1900.” Tetreault Decl. ¶ 10. As explained by the Knights: “We are proud of our devotion to God and country, and believe in standing up for both. Whether it’s in public or private, the Knights remind the world that Catholics support their nations and are amongst the greatest citizens.” Tetreault Decl. ¶ 10. To this end, councils throughout the United States regularly honor the country and its fallen soldiers by holding a special mass on Memorial Day. Compl. ¶ 18; Tetreault Decl. ¶ 13.

Council 694, located in Petersburg, Virginia, has hosted a Memorial Day mass inside the Poplar Grove National Cemetery every year (with few exceptions) since at least the 1960s, and likely longer. Compl. ¶ 20; Tetreault Decl. ¶ 15. During this period of over 60 years through 2022, NPS never objected to the Knights’ annual Memorial Day mass. To the contrary, on many

³ “Compl.” Refers to the Complaint, ECF No. 1, and “Tetreault Decl.” refers to the Declaration of Timothy M. Tetreault, filed contemporaneously with the Motion.

occasions, Park Rangers at Poplar Grove assisted with logistics. This was consistent with NPS's own manual, which provides:

National Cemeteries provide the setting for patriotic services and ceremonies honoring those thousands of veterans interred therein as well as those buried elsewhere. The principal occasions for such observances are Memorial Day and Veterans Day. . . . Each national cemetery superintendent has an opportunity *and a responsibility* to further exhibit community leadership by inspiring and encouraging a renewed public awareness of our deceased veterans on Memorial Day and Veterans Day.

NPS RM-61 § 3.10(B) (Nov. 4, 2011) (emphasis added).

All of this changed in 2023, when, for the first time, NPS revoked permission for the Knights to hold their annual Memorial Day mass inside the National Cemetery. Compl. ¶ 27; Tetreault Decl. ¶¶ 50–51. NPS informed the Knights that, under Policy Memorandum 22-01 (“Managing Special Events and Demonstrations in National Cemeteries”) (August 15, 2022), the annual Memorial Day mass would be treated as a “demonstration” and categorically prohibited within the National Cemetery. Compl. ¶ 36; Tetreault Decl. ¶ 50. NPS informed the Knights that they could, at best, be given a permit for the National Cemetery’s designated “First Amendment Area”—a field located by the parking lot and outside the cemetery walls (thus not on sacred ground), which is graded well below the cemetery itself and prone to flooding. Compl. ¶ 37; Tetreault Decl. ¶ 51. Guided by their sincerely held religious beliefs, the Knights have concluded that they cannot hold their annual First Amendment mass in the “First Amendment Area.” Compl. ¶ 39; Tetreault Decl. ¶¶ 53–54.

This year, Defendants have once again invoked Policy Memorandum 22-01 to prohibit the Knights from holding their annual Memorial Day mass inside the National Cemetery. Compl. ¶ 44; Tetreault Decl. ¶ 56. That decision is based on a new interpretation of old regulations—the exact same regulations that have been in place for nearly four decades. In 1986, NPS promulgated rules for National Cemeteries, codified in Part 12, Title 36 of the Code. As relevant here, a

“demonstration . . . is prohibited” in national cemeteries. 36 C.F.R. § 12.3. A “demonstration” is defined as “a demonstration, picketing, speechmaking, marching, holding a vigil or religious service, or any other like form of conduct that involves the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to attract a crowd or onlookers.” 36 C.F.R. § 12.3. NPS let the Knights hold their annual Memorial Day mass in the National Cemetery from 1986 to 2022 under these regulations.

Now, Defendants take the position that the annual Memorial Day mass is a “religious service . . . which is reasonably likely to attract a crowd or onlookers,” *id.*; that it is therefore a “demonstration” categorically prohibited from taking place in a National Cemetery under Policy Memorandum 22-01; and that NPS cannot allow it as an historically significant commemorative event, notwithstanding 36 C.F.R. § 12.4, which allows for “official commemorative events conducted for Memorial Day, Veterans Day and other dates designated by the superintendent as having special historic and commemorative significance to a particular national cemetery.” That view is wrong on many levels: (1) it is both substantively and procedurally wrong under the Administrative Procedure Act, Compl. ¶¶ 53–64; (2) it violates the Free Exercise Clause by prohibiting the event based on its religious nature and burdening the Knights’ religious exercise, Compl. ¶¶ 65–76; (3) it violates the Religious Freedom Restoration Act by imposing a substantial burden on the Knights’ religious exercise, Compl. ¶¶ 77–88; and (4) it violates the Free Speech Clause because it constitutes both content-based and viewpoint-based discrimination against religious speech, Compl. ¶¶ 89–99.

Defendants have invoked their misguided legal position again this year as justification for denying the Knights permission to hold their annual Memorial Day mass in the Poplar Grove National Cemetery. Compl. ¶ 44; Tetreault Decl. ¶ 56. The Knights first submitted their permit

application for this year's mass on March 8, 2024. Compl. ¶ 43; Tetreault Decl. ¶ 55. Almost two months later, on Thursday, May 2, 2024, Ranger Scott responded and told the Knights that their application was "incomplete" because it impermissibly requested permission to hold the mass inside the cemetery and because certain timing details were allegedly missing. Compl. ¶ 44; Tetreault Decl. ¶ 56. He plainly stated: "[T]he area that you are requesting to use is in contradiction to policy as we discussed last year." Tetreault Decl. ¶ 56; Compl., Ex. 5. On Thursday, May 9, 2024, Mr. Tetreault resent the permit application and reiterated the necessity of holding the mass in the National Cemetery:

[T]he location is important to us. It's our religious belief that the memorial service needs to be inside the cemetery itself, not outside the cemetery somewhere. That's why we've always had it there every year since at least the 1960s or before. I hope we can have it there again this year.

Tetreault Decl. ¶ 57; Compl., Ex. 5.

On Monday, May 13, 2024, undersigned counsel also sent a letter to Ranger Scott explaining that it would be consistent with NPS policy and established practice and urging him to reconsider his position. Compl., Ex. 6. The letter noted that, even under the new policy, another National Cemetery had granted permission for another Council of the Knights of Columbus to host their annual Memorial Day Mass in Andersonville National Cemetery in Georgia:

This coming Memorial Day, the Knights of Columbus will be hosting a mass in the Andersonville National Cemetery in Georgia. The mass is listed in the Memorial Day Weekend schedule on the Park Service website, see 2024 Memorial Day Weekend Schedule for Andersonville National Cemetery, <https://www.nps.gov/ande/planyourvisit/memorialdayobservance.htm> (last visited May 10, 2024), and the official Facebook page for the Andersonville National Historic Site, see <https://www.facebook.com/AndersonvilleNPS/> (last visited May 10, 2024). The Knights of Columbus hosted a mass in the same cemetery last year, as well, also under the new policy. See Andersonville National Historic Site hosts Memorial Day weekend events, <https://www.nps.gov/ande/learn/news/andersonville-national-historic-site-hosts-memorial-day-weekend-events.htm> (last visited May 10, 2024).

Compl., Ex. 6, at 2 n.2. The letter further explained that refusing the Knights a permit to hold their annual Memorial Day mass in the National Cemetery on the basis that it is a “religious service” and therefore constitutes a prohibited “demonstration” would violate the Free Exercise Clause of the First Amendment, the Religious Freedom Restoration Act (RFRA), and the Free Speech Clause of the First Amendment. Compl., Ex. 6, at 3–5. Because Memorial Day 2024 was fast approaching, counsel asked Ranger Scott to provide notice by no later than Friday, May 17, 2024, whether he intended to grant permission for the Knights to hold their annual Memorial Day mass in Poplar Grove National Cemetery. Compl., Ex. 6, at 6.

On Thursday, May 16, 2024, Ranger Scott sent Mr. Tetreault a letter and permit, doubling down on his position that any non-committal “religious service” is a prohibited “demonstration” that cannot be held in a National Cemetery:

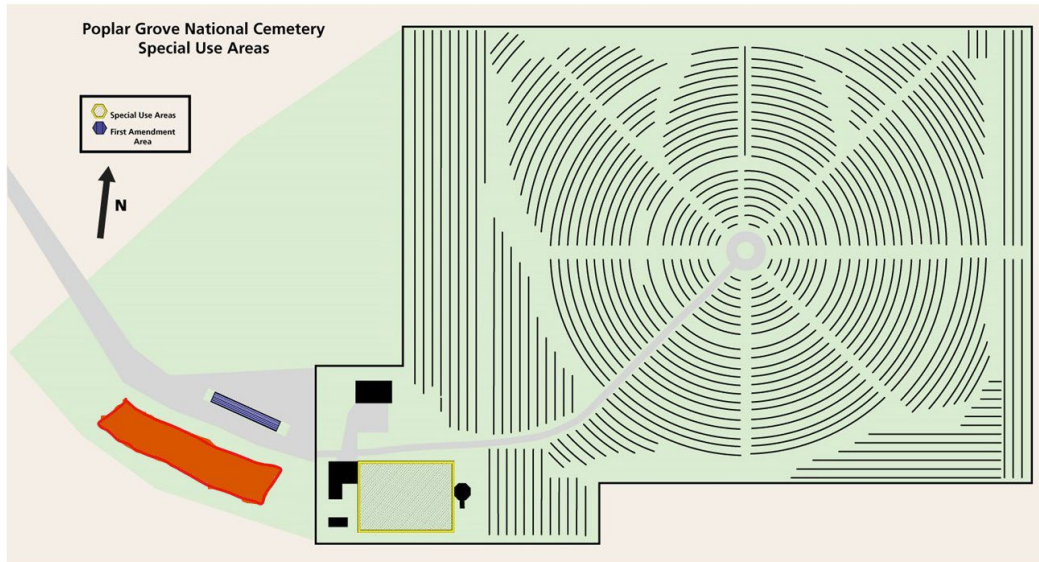
Attached for your review is a permit for which allows for the set-up of tents, tables, chairs, the use of a blue tooth speaker for your religious service on May 27, 2024, from 9:00 a.m. until 12:00 p.m. The permitted location is directly outside of the cemetery within proximity to the gravesites and is delineated on the map attached to the permit. This location is offered as a reasonable alternative to your requested location inside the cemetery as 36 CFR §12.4 prohibits demonstrations within the National Cemetery. NPS Policy Memorandum 22-01 clarifies this prohibition.

Compl., Ex. 7. While the letter purported to grant the Knights permit, in reality, Ranger Scott issued a *different* permit—one that was never sought—for the Knights to hold their annual Memorial Day mass *outside* the cemetery. Compl., Ex. 6. As the letter explained: “The permitted location is directly outside of the cemetery [and] is offered as a reasonable alternative to your requested location inside the cemetery[.]” Compl., Ex. 7. The alternative permit would allow the Knights to use the designated “First Amendment Area”:

The Permittee is authorized to use the following described lands or facilities in Petersburg National Battlefield (Park): Poplar Grove National Cemetery: The large grass field adjacent to the south of the main parking lot. (This area is outlined in red on the attached map.) The Permittee may use those lands or facilities only for

the following purpose: Memorial Day service, including Catholic Mass. This permit begins at 9:00 am on 5/27/2024 and expires at 12:00 pm 5/27/2024.

Compl., Ex. 6. That area is shown in red below:



Compl., Ex. 6. The Knights have not signed that permit because it is not the permit they requested.

The following day, on Friday, May 17, 2024, undersigned counsel received a letter from Teresa Garrity, Acting Regional Solicitor, responding to the May 13 letter. Compl., Ex. 9. The letter argues that the Knights' annual Memorial Day mass is a "religious service" that qualifies as a "demonstration" under NPS regulations and Policy Memorandum 22-01, and that, under Policy Memorandum 22-01, "[d]emonstrations within a national cemetery are prohibited 'without exception.'" Compl., Ex. 9, at 3. The letter also argues that refusing permission for the Knights to hold their annual Memorial Day mass inside the National Cemetery is consistent with the First Amendment and RFRA. Compl., Ex. 9, at 4–5. The letter also disclosed that, upon learning about the Andersonville mass from the May 13 letter, NPS had revoked permission for that mass to be held inside the National Cemetery:

You also note that KofC is also conducting a Mass inside the Andersonville National Cemetery in Georgia this year, arguing this was authorized after PM 22-01 took effect. NPS has indicated that upon learning of that event being authorized

inside the Andersonville National Cemetery in contravention of federal regulation and NPS policy, it is altering that permit to reflect that the KofC religious service may be held outside the cemetery boundary.

Compl., Ex. 9, at 3 n.4 (citation omitted).

The very next business day, on Monday, May 19, 2024, the Knights filed their complaint in this case. Compl., ECF No. 1. They are now promptly asking this Court to enter a temporary restraining order and/or preliminary injunction to ensure that they can hold their annual Memorial Day mass in the National Cemetery, as they have for generations.

ARGUMENT

The Knights are entitled to a temporary restraining order and preliminary injunction that allow them to hold their annual Memorial Day mass inside the Poplar Grove National Cemetery. The Knights meet all four of the relevant factors because (1) they are likely to succeed on the merits of their claims; (2) they are likely to suffer irreparable harm absent preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *See Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d 342, 346 (4th Cir. 2009) (citing *Winter v. Nat. Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008)), *vacated on other grounds by* 559 U.S. 1089 (2010); *see also SDSE Networks, Inc. v. Mathur*, No. 1:22CV1024, 2022 WL 18539944, at *3 (E.D. Va. Dec. 28, 2022) (“The standard for granting either a TRO or a preliminary injunction is the same.”).

I. The Knights Are Likely to Succeed on the Merits in Challenging NPS’s Refusal to Permit Them to Hold a Religious Service in the Poplar Grove National Cemetery

The Knights have raised several distinct claims here, but for purposes of securing preliminary relief, they need to show only that they are likely to succeed on *at least one*. *See, e.g., Kuriloff v. Innerscope Hearing Tech.*, No. 2:23CV270, 2023 WL 11277977, at *1 n.1 (E.D. Va. June 28, 2023) (citing *W. Indus.-N., LLC v. Lessard*, No. 1:12CV177 JCC/TRJ, 2012 WL 966028,

at *2 (E.D. Va. Mar. 21, 2012)). Here, the Knights are confident in the merits of all of their claims, but it should be most readily obvious that they are likely to succeed on their claims that Defendants' application of 36 C.F.R. § 12.3 and Policy Memorandum 22-01 to bar them from conducting a "religious service" in the National Cemetery—as they had previously done for generations—violates their right to religious free exercise under the First Amendment and the Religious Freedom Restoration Act (RFRA).

A. The Knights are likely to succeed on their RFRA claim.

The Knights are likely to succeed on their statutory RFRA claim. RFRA "operates as a kind of super statute, displacing the normal operation of other federal laws." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 682 (2020). It imposes a strict scrutiny standard on governmental actions that "substantially burden a person's exercise of religion." 42 U.S.C. § 2000bb-1(a); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705 (2014). The neutrality or general applicability of a government action or policy is irrelevant under RFRA. This strict scrutiny standard applies "even if the burden results from a rule of general applicability." 42 U.S.C. §§ 2000bb-1(a). That was the point of the statute: to respond to the Supreme Court's 1990 decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), which held that "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)," *id.* at 879; *see* 42 U.S.C. § 2000bb (RFRA preamble). RFRA, in fact, "did more than merely restore the balancing test used in the [pre-*Smith*] line of cases; it provided even broader protection for religious liberty than was available under those decisions." *Burwell*, 573 U.S. at 695 n.3.

Strict scrutiny, which "require[es] [the government] to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest[,] is the most

demanding test known to constitutional law.” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). “That standard ‘is not watered down’; it ‘really means what it says.’” *Tandon v. Newsom*, 593 U.S. 61, 65 (2021) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993)). It is a “focused inquiry” that “requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law ‘to the person’ – the particular claimant whose sincere exercise of religion is being substantially burdened.” *Burwell*, 573 U.S. at 726. It requires the courts to “‘loo[k] beyond broadly formulated interests’ and to ‘scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants.’” *Id.* at 726-27 (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006)). The compelling governmental interest itself must be an “interest[] of the highest order.” *Tandon*, 593 U.S. at 64–65 (quoting *Lukumi*, 508 U.S. at 546). And the least restrictive means requirement is likewise as demanding because, again, it means exactly what it says: the government must “show[] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y].” *Burwell*, 573 U.S. at 728.

i. Defendants have substantially burdened the Knights’ religious exercise.

It is the Knights’ sincere religious belief that they need to be within the cemetery for their Memorial Day mass and service, as memorialized in their resolution. Compl. ¶¶ 41–42 & Ex. 3; Tetreault Decl. ¶¶ 19–23, 53–54. As documented in their February 2024 resolution, the Knights sincerely believe that to pray most effectively for the fallen during the mass they must be within the cemetery when they pray, and that it inhibits their ability to pray if they are not in the cemetery. Compl., Ex. 3. They also sincerely believe that their service is to include the blessing for Visiting a Cemetery on Memorial Day, from the Book of Blessings of the Catholic church, *see* Tetreault Decl., Ex. A, which requires them to be in the cemetery. Compl., Ex. 3. Therefore, for the Knights

to be faithful to and act in accordance with their religious beliefs, it is imperative that their Memorial Day mass be held within the cemetery, as it has been since the 1960s or before. Holding a service outside the cemetery walls, down the hill, and out of sight of the vast majority of the gravesites simply does not provide a meaningful substitute. Compl. ¶ 84; Tetreault Decl. ¶ 57. In fact, prohibiting the Knights from holding their mass and service in the cemetery does not just burden their religious exercise – it forecloses it. That is a substantial burden on religious exercise by any definition. *See Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (“It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.”); 42 U.S.C. § 2000bb(b) (stating a “purpose” of RFRA was “to restore the compelling interest test as set forth in *Sherbert*”).

NPS resists the conclusion that, by kicking the Knights out of the National Cemetery based on the religious character of their activity, they imposed a substantial burden on the Knights’ religious practice. Last Friday, Acting Regional Solicitor Garrity wrote:

Although the KofC has held its Memorial Day Mass inside the Poplar Grove National Cemetery in prior years, it is not apparent that the NPS permit substantially burdens the exercise of religion, as evidently the ceremony can be performed elsewhere than in the Cemetery proper. In 2023, the NPS authorized the service in the same location and KofC signed that permit. However, KofC elected to hold the Mass at its Council Home on Boydton Plank Road. In addition, you acknowledge that services were held outside the Cemetery while it was under renovation for several years.

Compl., Ex. 9, at 5. But that argument rests entirely on a faulty premise: that the Knights held the same annual Memorial Day mass outside in prior years when they were not able to do so inside. That is not true. In the years when the National Cemetery was closed for renovations, the Knights understandably did not hold their annual Memorial Day mass. Being kept out by NPS policy that prohibits “religious service[s]” is an entirely different beast. And when Ranger Scott first imposed that policy last year, the Knights elected not to hold a mass in the offered “First Amendment Area”

and have concluded that they cannot do so consistent with their sincerely held religious beliefs. Compl. ¶ 39; Tetreault Decl. ¶ 54. The fact that the Knights chose to “cut their losses” by hosting a *different* event at a *different* location only speaks to their resilience; it does not undermine the notion that Defendants have substantially burdened their religious practice.

NPS also offers the *ipse dixit* that, “[e]ven if this regulation and policy do constitute a substantial burden on religious exercise, the NPS has considered the least restrictive means in crafting the approved permit.” Compl., Ex. 9, at 5 (citing *Jones v. Slade*, 23 F.4th 1124, 1144 (9th Cir. 2022)). But as explained below, Defendants’ treatment of the Knights and their annual Memorial Day mass fails the strict scrutiny standard even on cursory inspection. They cannot meet “the ‘exceptionally demanding’ least-restrictive means standard,” *Jones*, 23 F.4th at 1144 (quoting *Holt v. Hobbs*, 574 U.S. 352, 364 (2015); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014)), simply by asserting that they do.

ii. Defendants cannot satisfy strict scrutiny.

NPS policy, both on its face and as applied to the Knights’ annual Memorial Day mass, cannot possibly satisfy strict scrutiny. To satisfy RFRA, the government must show that prohibiting the Knights from holding their Memorial Day mass in the cemetery “is in furtherance of a compelling governmental interest [and] is the least restrictive means of furthering that compelling governmental interest.” *Burwell*, 573 U.S. at 705 (quoting 42 U.S.C. §§ 2000bb–1(a), (b)). It must prove that its interest is of the highest order, *Tandon*, 593 U.S. at 64–65, and that allowing the Knights’ mass in the cemetery harms that interest such that it lacks any means of achieving its interest other than prohibiting the Knights’ mass from being held in the cemetery. *Burwell*, 573 U.S. at 726–37, 728. Here, the NPS policy cites “a substantial government interest in maintaining a protected atmosphere in national cemeteries where individuals can quietly

contemplate and reflect upon the significance of the contributions made to the Nation by those interred.” Policy Memorandum 22-01 (citing NPS, *National Cemetery Regulations*, 51 Fed. Reg. 8976, 8977 (Mar. 14, 1986)). At this stage, the Knights do not need to litigate whether NPS’s asserted “substantial interest” is “compelling” for purposes of strict scrutiny; they too wish to promote an atmosphere of quiet contemplation and reflection in the National Cemetery which honors the contributions of those who are buried there.

But NPS’s treatment of religious services under Policy Memorandum 22-01 and of the Knights in this particular case cannot be squared with that stated interest—much less can Defendants show that their policy is the “least restrictive means” to further it. There is certainly no substantial difference between the Knights’ Memorial Day service and a graveside committal service in terms of their effect on quiet contemplation and reflection. And yet both NPS regulations and Policy Memorandum 22-01 make clear (as they should) that committal services are permitted in a National Cemetery. *See* Policy Memorandum 22-01, at 5; 36 C.F.R. § 12.3. Similarly, Defendants admit that the regulations mandating the prohibition of the Knights’ mass from the cemetery have been in place for almost 40 years. Compl., Ex. 9, at 2. The Knights’ Memorial Day service has been occurring in the cemetery every year for that entire time without incident or complaint. If the mass provided any impediment to Defendants’ stated interest it certainly would have presented itself before now.

The policy also “prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Kennedy*, 597 U.S. at 526 (quoting *Fulton*, 593 U.S. at 533). For example, it would be consistent with the policy to allow a pageant, a festival, a celebration, or even a parade within the cemetery as an official commemorative event on Memorial Day. 36 C.F.R. §§ 12.3, 12.4. Any one of those events would

do far more harm than the Knights' mass to the "protected atmosphere" Defendants allege as their reason for excluding the Knights' mass. The situation gets even more absurd. It would be consistent with the policy to allow as a Memorial Day commemorative event in the cemetery a *reenactment* of the annual Knights of Columbus Memorial Day mass held at Poplar Grove National Cemetery for generations based on its historical significance, *see* 36 C.F.R. § 12.3 (defining "special event" to include a "historical reenactment"); but to *conduct* the mass itself is a prohibited "demonstration" because it constitutes a "religious service," *id.* That absurdity does not satisfy the demands of strict scrutiny.

NPS has not offered any meaningful response. Acting Regional Solicitor Garrity's letter acknowledges that Ranger Scott characterized "the planned activity [as] being a religious service . . . to explain that such activities are a type of demonstration prohibited by regulation and policy." Compl., Ex. 9, at 4. But that just proves, rather than refutes, that the Knights activities are prohibited "because of their religious character." *Carson*, 596 U.S. at 780. She further writes that "[a]ll demonstrations – including secular ones – are barred from occurring within National Cemeteries to protect the atmosphere of solemnity, quiet contemplation and tranquility within this space." Compl., Ex. 9, at 4. But that fails to engage with the regulatory definition of "demonstrations," which arbitrarily pulls in "religious service[s]" like the annual Memorial Day mass that would not otherwise meet the common-sense definition of that word. It also fails to engage with the requirements of least restrictive means—a religious service like the annual Memorial Day mass is no more disruptive of "the atmosphere of solemnity, quiet contemplation and tranquility" than other permitted activity. Indeed, in the humble opinion of the Knights, their annual Memorial Day mass helps to contribute to the very atmosphere that NPS says it wishes to promote.

And that just highlights the tragic perversity of Defendants' conduct. According to Acting Regional Solicitor Garrity, "the only demonstration that the Park has a record of ever being allowed within the Cemetery is the KofC's religious service—there is no evidence that it has ever authorized a secular demonstration or service by another faith on Cemetery grounds." Compl., Ex. 9, at 4. In other words, in over three generations, the Knights may be the *only* citizens who have made it a point to honor "the significance of the contributions made to the Nation by those interred" at Poplar Grove National Cemetery. Policy Memorandum 22-01 (citing 51 Fed. Reg. at 8977). Consistent with the NPS's own manual, Defendants had "an opportunity and a responsibility to further exhibit community leadership by inspiring and encouraging" this sort of patriotic civic engagement. NPS RM-61 § 3.10(B). But no, the Knights are Catholic, and they want to hold a mass. Katy, bar the door.

RFRA requires far better from the federal government. Defendants' treatment of the Knights and their annual Memorial Day mass cannot satisfy strict scrutiny. Even if the interest expressed in the policy were found compelling, "[t]he least-restrictive-means standard is exceptionally demanding . . . and it is not satisfied here." *Burwell*, 573 U.S. at 728. NPS does not "lack[] other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the [Knights]." *Id.* The Knights, therefore, are "entitled to an exemption from the rule" under RFRA. *Id.* at 695.

The Knights are likely to succeed on their claim that Defendants are violating their rights under RFRA by refusing them permission to hold their annual Memorial Day mass in the National Cemetery.

B. The Knights are likely to succeed on their Free Exercise claim.

It is easy to find that the Free Exercise Clause claim is likely to succeed because Defendants cannot show that prohibiting the Knights' from holding their mass in the cemetery is neutral and generally applicable government action. Under current free exercise jurisprudence, government actions and "laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). Defendants, however, are prohibiting the Knights' activities "solely because of their religious character." *Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 780 (2022) (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017)). It is a firmly established constitutional principle that the "[g]overnment fails to act neutrally when it . . . restricts practices because of their religious nature." *Fulton*, 593 U.S. at 533.

Here, there can be no question that the Knights' annual Memorial Day mass is being prohibited from the National Cemetery due to its religious character. That is what Ranger Scott told them last year, Compl., Ex. 1, and again this year, Compl., Ex. 5. And that is also what Acting Regional Solicitor Garrity told counsel in her letter last Friday. Compl., Ex. 9, at 4. Defendants characterize the Knights' event as a prohibited "demonstration" because it involves a "religious service." That policy necessarily "imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny." *Trinity Lutheran*, 582 U.S. at 462 (citing *Lukumi*, 508 U.S. at 546).

Similarly, a "formal system of entirely discretionary exceptions" or a "formal mechanism for granting exceptions" renders government action or policy "not generally applicable." *Fulton*, 593 U.S. at 536, 537. "A [policy] is not generally applicable if it 'invite[s]' the government to consider the particular reasons for a person's conduct by providing 'a mechanism for

individualized exemptions.” *Id.* at 533 (quoting *Emp. Div., Dept. of Human Res. of Or. v. Smith*, 494 U.S. 872, 884 (1990)). Further, a policy is not generally applicable “if it prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Fulton*, 593 U.S. at 534.

As discussed above, Defendants’ policy allows an incredible amount of secular conduct that works against its purported interest of a solemn and quiet atmosphere, and does so far more severely than the Knights’ mass. The policy allows pageants, festivals, celebrations, and even parades, among other things. All of these are more damaging to the atmosphere of the cemetery than any mass the Knights have ever held. The policy would even allow an historical re-enactment of the first Knights of Columbus mass held in the cemetery, but not the mass itself. A re-enactment of the mass certainly would cause no more hindrance to Defendants’ purpose than the mass itself.

It is no answer for Defendants to argue they never have granted an exception to the prohibition. First, that ship has sailed. Defendants have been granting an exception to the Knights for almost 40 years now. Second, “[t]he creation of a formal mechanism for granting exceptions” itself “renders a policy not generally applicable, regardless whether any exceptions have been given.” *Id.* at 537. This is “because it ‘invite[s]’ the government to decide which reasons for not complying with the policy are worthy of solicitude— here, at the [Superintendent’s] ‘sole discretion.’” *Id.* (quoting *Smith*, 494 U.S. at 884). Under the Defendant’s policy, the Superintendent may designate a “special event” as an “official commemorative event” and permit it within the cemetery if he deems it has “special historic and commemorative significance” to the cemetery. Compl., Ex. 2, at 2. The policy is a textbook example of being not generally applicable.

As Defendants’ prohibit the Knights from holding their mass in the cemetery because of the service’s religious character, it is not neutral. Similarly, Defendants policy of permitting

secular conduct that undermines its interest in a way similar to that which the Knights' mass is alleged to do, it is not generally applicable. The policy also fails the general applicability standard because of the exceptions it allows. Defendants' prohibition and their policy must be both neutral and generally applicable to avoid the rigors of strict scrutiny. *Fulton*, 593 U.S. at 533. They are neither and therefore must meet the requirements of strict scrutiny, *see, e.g., id.* at 541-42, "the most demanding test known to constitutional law." *Flores*, 521 U.S. at 534. As demonstrated above, Defendants cannot meet that standard.

The Knights are thus likely to succeed on their claim that Defendants are violating the Free Exercise Clause by refusing them permission to hold their annual Memorial Day mass in the National Cemetery.

C. The Knights are also likely to succeed on their other claims.

The Knights have strong merits claims under the Administrative Procedure Act and the Free Speech Clause of the First Amendment as well. But as explained below, the Free Exercise Clause and RFRA claims simplify the issues before the Court and, under established Fourth Circuit precedent, obviate the need to conduct a searching inquiry on the remaining three prongs of the four-prong test for preliminary relief. The Knights recognize that this request for preliminary relief is being presented on a short timeline and thus that it might benefit the parties and the Court to keep the issues as focused as is reasonably possible. By focusing on the Free Exercise Clause and RFRA claims, however, the Knights do not mean to convey any lack of confidence in the merits of their remaining claims, or in their likelihood of success.

II. The Knights Will Suffer Irreparable Harm Absent Preliminary Relief.

The second factor—irreparable harm—weighs in favor of preliminary relief because it is black-letter law that "[t]he loss of First Amendment freedoms, for even minimal periods of time,

unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Leaders of a Beautiful Struggle v. Baltimore Police Dep’t*, 2 F.4th 330, 346 (4th Cir. 2021) (“Because there is a likely constitutional violation, the irreparable harm factor is satisfied.”). The inquiry can start and end there.

If the Knights do not obtain preliminary relief before this Monday, May 27, they will lose their ability to hold this year’s Memorial Day mass in the Poplar Grove National Cemetery. As *Elrod* and *Beautiful Struggle* establish, that is irreparable injury *per se*. That legal doctrine accords with Catholic doctrine, which holds that each mass, as a representation of Jesus Christ’s sacrifice on the Cross, has infinite value. Moreover, “a comparably irreparable injury applies to violations of RFRA,” *Singh v. Berger*, 56 F.4th 88, 109 (D.C. Cir. 2022), so it does not matter whether the Court rests its decision on the constitutional First Amendment claims or the statutory RFRA claim.

Because NPS’s refusal to allow the Knights to hold their annual Memorial Day mass in the National Cemetery violates their First Amendment rights and unlawfully burdens their free exercise of religion under RFRA, the irreparable harm factor is satisfied.

III. The Balance of the Equities and the Public Interest Favor the Knights.

The third and fourth factors—the balance of the equities and the public interest—also favor the Knights because the Government has no interest in infringing First Amendment rights, and the public has a strong interest in their protection. These two final prongs, “the balance of the equities and the public interest . . . merge when the Government is the opposing party.” *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022) (quotation marks omitted). And here they favor preserving the *status quo ante*—that is, allowing the Knights to hold their annual Memorial Day mass in the National Cemetery, as they have done for generations, until the Court can reach a final judgment on the merits of their claims.

Once again, Fourth Circuit precedent makes clear that these factors are readily satisfied when the plaintiff is likely to succeed on a constitutional claim. The Court of Appeals explained in *Beautiful Struggle* that “the balance of the equities favors preliminary relief because “[our] precedent counsels that “a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction.”” 2 F.4th at 346 (quoting *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 191 (4th Cir. 2013); in turn quoting *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002)). The Court of Appeals likewise reaffirmed the “well-established” principle “that the public interest favors protecting constitutional rights.” *Id.*; accord *Centro Tepeyac.*, 722 F.3d at 191; *Giovani Carandola*, 303 F.3d at 521. And as to the Knights’ RFRA claim, federal courts likewise recognize that “there is undoubtedly . . . a public interest in ensuring that the rights secured under . . . RFRA[] are protected.” *Tyndale House Publishers, Inc. v. Sebelius*, 904 F. Supp.2d 106, 130 (D.D.C. 2012).

CONCLUSION

The case for preliminary relief is simple: The Knights are likely to succeed on their claims that Defendants’ application of 36 C.F.R. § 12.3 and Policy Memorandum 22-01 to bar them from conducting a “religious service” in the National Cemetery—as they had previously done for generations—violates their right to religious free exercise under the First Amendment and the Religious Freedom Restoration Act (RFRA). And under settled Fourth Circuit precedent, that violation of the Knights’ free-exercise rights means that the remaining three factors (irreparable harm, balance of equities, and public interest) are all satisfied.

The Court should therefore grant the motion and enter an immediate temporary restraining order or issue a preliminary injunction allowing the Knights to continue their decades-long tradition of hosting a Memorial Day mass inside the Poplar Grove National Cemetery.

Dated: May 21, 2024

Respectfully submitted,
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* Application for admission *pro hac vice*
forthcoming

CERTIFICATE OF SERVICE

I certify that, on May 21, 2024, in addition to filing this brief on the docket through the Court's Electronic Court Filing system, I also caused a copy of the foregoing to be served via electronic mail on the following:

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