

No. 22-10645-DD

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

NAVY SEAL 1, et al.,

Plaintiffs–Appellees,

v.

SECRETARY OF THE UNITED STATES DEPARTMENT OF DEFENSE, et al.,

Defendants–Appellants.

On Appeal from the United States District Court
for the Middle District of Florida

In Case No. 8:21-cv-02429-SDM-TGW before the Honorable Steven D. Merryday

**PLAINTIFFS–APPELLEES’ MOTION FOR ORAL ARGUMENT ON
DEFENDANTS–APPELLANTS’ TIME-SENSITIVE MOTION
FOR STAY PENDING APPEAL OR, IN THE ALTERNATIVE, FOR
SUPPLEMENTAL BRIEFING ON *AUSTIN V. NAVY SEALS 1-26***

Mathew Staver
Anita Staver
Horatio G. Mihet
Roger K. Gannam
Daniel J. Schmid
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
(407) 875-1776
court@lc.org

Attorneys for Plaintiffs–Appellees

NAVY SEAL 1, et al. v. SECRETARY OF THE UNITED STATES
DEPARTMENT OF DEFENSE, et al.

**PLAINTIFFS–APPELLEES’
CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Plaintiffs–Appellees hereby certify that the following individuals and entities are known to have an interest in the outcome of this case (pseudonymous Plaintiffs–Appellees are listed separately at the end for purposes of redaction and sealed filing):

Avallone, Zachary A.	Macik, Thomas More
Boynton, Brian M.	Mast, Jr., Richard L.
Carmichael, Andrew E.	Merryday, Hon. Steven D.
Carroll, Sarah	Mihet, Horatio G.
Clark, Sarah J.	Porcelli, Hon. Anthony E.
Coppolino, Anthony J.	Powell, Amy E.
Dover, Marleigh D.	Ross, Casen B.
Enlow, Courtney D.	Scarborough, Charles W.
Gannam, Roger K.	Schmid, Daniel Joseph
Haas, Alexander K.	Staver, Mathew D.
Handberg, Roger B.	Sturgill Jr., Lowell V.
Harrington, Sarah E.	Wilson, Hon. Thomas G.
Liberty Counsel, Inc.	

(Pseudonymous Plaintiffs–Appellees begin on next page.)

NAVY SEAL 1, et al. v. SECRETARY OF THE UNITED STATES
DEPARTMENT OF DEFENSE, et al.

Pseudonymous Plaintiffs–Appellees

██████████ LIEUTENANT, USCG	██████████ TECHNICAL SERGEANT, USAF
████████████████████ CADET, USAF	████████████████████ NAVY COMMANDER SURFACE WARFARE OFFICER, USN
██████████ SENIOR CHIEF PETTY OFFICER, USN	████████████████████ MAJOR, USMC
████████████████████ NAVY CHIEF WARRANT OFFICER, USN	████████████████████ LIEUTENANT COLONEL 2, USMC
████████████████████ LCDR PILOT, USCG	████████████████████ RESERVE LIEUTENANT COLONEL 1, USAF
██████████ PILOT, USCG	████████████████████ CHIEF WARRANT OFFICER 3, USMC
████████████████████ SECOND LIEUTENANT, USMC	████████████████████ MASTER SERGEANT SERE SPECIALIST, USAF
████████████████████ CHAPLAIN, USN	████████████████████ NAVY SEAL 1, USN
████████████████████ CAPTAIN 2, USMC	████████████████████ LANCE CORPORAL 2, USMC
████████████████████ RESERVE LIEUTENANT COLONEL, USMC	████████████████████ CAPTAIN 3, USMC
██████████ NAVY EOD OFFICER, USN	

NAVY SEAL 1, et al. v. SECRETARY OF THE UNITED STATES
DEPARTMENT OF DEFENSE, et al.

████████████████████
NAVY SEAL 2, USN

████████████████████
CHAPLAIN, USAFA

██████████
CAPTAIN, USMC

████████████████████
FIRST LIEUTENANT, USMC

████████████████████
LANCE CORPORAL 1, USMC

████████████████████
ARMY RANGER, USA

████████████████████
NATIONAL GUARDSMAN,
VAARNG

████████████████████
RESERVE LIEUTENANT
COLONEL 2, USAF

████████████████████
LIEUTENANT COLONEL 1,
USMC

████████████████████
COLONEL, FINANCIAL
MANAGEMENT OFFICER,
USMC

████████████████████
COLONEL, USAF

No publicly traded company or corporation has an interest in the outcome of
this case.

/s/ Daniel J. Schmid
Daniel J. Schmid
Attorney for Plaintiffs–Appellees

**PLAINTIFFS–APPELLEES’ MOTION FOR ORAL ARGUMENT ON
DEFENDANTS–APPELLANTS’ TIME-SENSITIVE MOTION
FOR STAY PENDING APPEAL OR, IN THE ALTERNATIVE, FOR
SUPPLEMENTAL BRIEFING ON *AUSTIN V. NAVY SEALS 1-26***

Plaintiffs–Appellees, pursuant to Fed. R. App. P. 27(e) and 11th Cir. R. 27-1(f), hereby move this Court for an Order scheduling oral argument on Defendants–Appellants’ Time-Sensitive Motion for Stay Pending Appeal, or, in the alternative, to permit supplemental briefing on *Austin v. Navy SEALS 1-26*. In support thereof, Plaintiffs–Appellees show unto the Court as follows:

1. On February 2, 2022, the district court issued a temporary restraining order (R67), pending a hearing on the motion for preliminary injunction (R60) for Plaintiffs–Appellants Navy Commander Surface Warfare Office and Lieutenant Colonel 2.
2. Despite the district court’s admonition concerning the limited scope of its preliminary injunction, Defendants–Appellants pray unto this Court for the “extraordinary remedy” that “operates on the judicial proceeding itself . . . before the legality of that action has been conclusively determined.” *Nken v. Holder*, 556 U.S. 418, 428 (2009). Because Defendants–Appellants seek such an extraordinary remedy, Plaintiffs–Appellees respectfully submit that oral argument will aid this Court in the determination of the significant issues presented by Defendants–Appellants’ Motion.

3. The issues presented in Defendants-Appellants' Motion are of paramount importance to Navy Commander, Lieutenant Colonel 2, Plaintiffs-Appellees, and the public in general. For, "[i]f the defendants can retaliate at will and with impunity against a RFRA claimant, the reason for RFRA is eviscerated and the explicit congressional purpose of RFRA is wholly thwarted." (R133 at 3.). As the district court noted, "the public has no interest in tolerating even minimal infringements on Free Exercise," and "the enforcement of a federal statute serve[s] the public interest almost by definition." (R122 at 45 (quoting *League of Women Voters of Fla. v. Browning*, 853 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012)).)

4. Indeed, there is an extraordinary question of public importance at issue here, namely whether the public interest is best served

by punishing, separating, and discharging that same stated number of skilled and experienced personnel, notwithstanding the time, energy, and money expended to train those servicemembers and necessarily spent again to locate, recruit, and train a successor, including the cost of the successors' acquiring similar experience and the deficit in fitness and readiness experienced in the interim.

(R40 at 33.)

5. Because of the extraordinary nature of the remedy Defendants-Appellants seek and because of the tremendous public importance of the issues presented in the instant matter, Plaintiffs-Appellees respectfully submit that this Court would benefit from oral argument on the pending Motion, and request that this

Court schedule oral argument on Defendants-Appellants' Time-Sensitive Motion for Stay.

6. In the alternative, and due to the limited nature of the presentation Plaintiffs-Appellees could make in their supplemental authority letter under Fed. R. App. P. 28(j), Plaintiffs-Appellees respectfully request that this Court order the Parties to submit supplemental briefing on the impact of the Supreme Court's decision in *Austin v. Navy Seals 1-26* (U.S. Mar. 25, 2022).

/s/ Daniel J. Schmid

Mathew Staver
Anita Staver
Horatio G. Mihet
Roger K. Gannam
Daniel J. Schmid
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
(407) 875-1776
court@lc.org

Attorneys for Plaintiffs-Appellees

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This document complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A). Not counting the items excluded from the length by Fed. R. App. P. 32(f), this document contains 473 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6). This document has been prepared using Microsoft Word in 14-point Times New Roman font.

/s/ Daniel J. Schmid
Daniel J. Schmid
Attorney for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on this March 28, 2022, I electronically filed the foregoing Motion for Oral Argument on Defendants-Appellants' Time-Sensitive Motion for Stay with this Court. Service will be effectuated on all counsel of record via the Court's CM/ECF system.

/s/ Daniel J. Schmid
Daniel J. Schmid
Attorney for Plaintiffs-Appellants