

No. 12-5218

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

PAUL CAMPBELL FIELDS,
Plaintiff-Appellant,

v.

CITY OF TULSA, ET AL.,
Defendants-Appellees.

**On Appeal from the United States District Court
For the Northern District of Oklahoma
Honorable Gregory K. Frizzell, Civil Case No. 11-cv-115-GKF-TLW**

**BRIEF OF AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL
LIBERTIES UNION OF OKLAHOMA AS *AMICI CURIAE* IN SUPPORT OF
DEFENDANTS-APPELLEES AND URGING AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

No *amici* have parent corporations or are publicly held corporations.

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STATEMENT OF *AMICI*

Interests of *Amici*

The American Civil Liberties Union (“ACLU”) is a nationwide, non-profit, non-partisan public interest organization of more than 500,000 members dedicated to defending the civil liberties guaranteed by the Constitution and the nation’s civil rights laws. The ACLU of Oklahoma is one of its state affiliates. For nearly one hundred years, the ACLU has worked to defend religious liberty, and has appeared before this Court in numerous cases involving religious freedom, both as direct counsel and *amicus curiae*.

In advancing its longstanding commitment to these fundamental rights, the ACLU strives to safeguard the two complementary protections of religious liberty: the vital right to religious belief and expression, and the guarantee that the government neither prefer religion over non-religion nor favor particular faiths over others. The ACLU, therefore, has a strong interest in the proper resolution of this case, and respectfully requests that this Court affirm the District Court’s grant of summary judgment in favor of Defendants-Appellees. Not only did the Defendants not violate any of Captain Fields’s rights, as the District Court correctly held, but any contrary holding is flatly barred by the First Amendment and would have grave consequences for religious liberty.

Authority to File *Amicus* Brief

Pursuant to Federal Rule of Appellate Procedure 29(a), *Amici* have obtained consent from all parties to file this brief.

Authorship and Funding of *Amicus* Brief

No party's counsel authored this brief in whole or in part. With the exception of *Amici*'s counsel, no one, including any party or party's counsel, contributed money that was intended to fund preparing or submitting this brief.

FACTS

In 2010, the Islamic Society of Tulsa learned of threats to its mosque and, in response, the Tulsa Police Department (“the Department”) provided protection for several months. *Fields v. City of Tulsa*, No. 11-cv-115-GKF-TLW, 2012 WL 6214578, at *1 (N.D. Okla. Dec. 13, 2012) (“Order”); Dep. of Siddiqui, Doc. 45-7, at 63:21-23, 64:6-10.¹ The following spring, the Islamic Society hosted a Law Enforcement Appreciation Day to show its gratitude and invited the Department, along with the Sheriff's Office, the district attorney's office, and the FBI. Order at *1; Dep. of Siddiqui, Doc. 45-7, at 64:5-6, 65:11-18, 20:13-18.

The Department participated in the event as part of its policy of community policing, which it has maintained for at least 23 years. Arb. Hr'g Tr. Vol. I, Doc. 45-2, at 58:12-17. Community policing is an integral component of the

¹ Citations to the record use the following format: a description of the document, the docket number of the document (“Doc.”), and the page at which the relevant information can be found.

Department's work and aims to build trust within the community and cultivate a "partnership between the community and the police department." *Id.* at 226:10-12. As Chief of Police Charles Jordan said when he announced the community-policing priority, the Department "can't operate effectively without community involvement." *Crime Watch: Interim Chief Prioritizes Community Policing*, Doc. 45-16, at ¶ 5. Deputy Chief of Police Alvin Daryl Webster similarly testified in the arbitration hearing, "if a police department simply addresses crime, then we feel in the Tulsa Police Department that we're only doing half of our job." *Arb. Hr'g Tr.* Vol. I, Doc. 45-2, at 56:23-57:1. The Department's "commitment to community policing doesn't know any kind of color boundary whatsoever," he added, explaining that "[w]e carry out community policing operations all over this town, with a whole variety of audiences." *Id.* at 57:17-20. Community-policing outreach events can be as small as "three or four people in a living room" to as large as "hundreds of people in large churches out east." *Id.* at 61:5-15.

As part of this community-policing commitment, from 2004 to 2011, the Department participated in more than 320 community outreach events that were either held at religious venues or hosted by religious organizations of a variety of faiths. *Id.* at 61:21-24; Order at *1. For example, members of the Department have been detailed to attend "community outreach events at the Jewish Community Center, churches in North Tulsa to reach out to African American residents, and

churches in East Tulsa to reach out to Hispanic residents.” Order at *2 (quoting Webster Interoffice Correspondence, Doc. 45-22, at 1-2). In this vein, the Islamic Society’s Law Enforcement Appreciation Day was “absolutely . . . an opportunity to build trust within the community.” Arb. Hr’g Tr. Vol. I, Doc. 45-2, at 63:14-16.

When an organization requests or invites the Department to attend a community event, the Department asks officers to volunteer for the duty. Webster Interoffice Correspondence, Doc. 45-22, at 1. If enough officers do not volunteer, however, the Department may order officers to attend. *Id.* After receiving no officer RSVPs for the Law Enforcement Appreciation Day, Deputy Chief Webster asked the three patrol division majors to “arrange for 2 officers and a supervisor or commander from each of your shops to attend at each of [the scheduled] times.” Order at *1-2 (quoting Maj. Harris E-mail, Doc. 45-12, at 1).

In issuing the directive, the Department went out of its way to ensure that officers would not be subjected to prayer, proselytizing, or other religious discussion. When he learned about the planned event, Deputy Chief Webster clarified with Islamic Society representatives that “officers might not be interested or willing to tour the mosque, might not be interested or willing to discuss anything having to do with the Islamic religion, and that the invitation should make any discussions of any topic discretionary upon the persons attending the event.” Dep. of Deputy Chief Webster, Doc. 45-3, at 28:23-29:7.

The invitation described the event as having a “Casual Come & Go Atmosphere” with a “Buffet of American & Ethnic Foods.” Law Enforcement Appreciation Day Invitation, Doc. 42-10, at 2. While guests were invited to tour the mosque or watch a prayer service, “the invitation made clear that officers need not tour the Mosque or discuss Islam to attend.” *Id.*; Order at *1; *see also* Dep. of Deputy Chief Webster, Doc. 45-3, at 107:6-108:3. Indeed, the Department directed that officers attend the event for approximately 30 minutes at 11:00 A.M., 1:30 P.M., or 4:30 P.M. to ensure that they would not have to be present during the 2:00-2:45 P.M. prayer service unless they chose to stay for it. Dep. of Deputy Chief Webster, Doc. 45-3, at 31:22-32:7.

Nevertheless, when Captain Paul Fields received the email directive to send two officers and a supervisor to the event, he refused. Order at *2; Captain Fields E-mail, Doc. 45-13, at 1. In an email to fourteen colleagues and supervisors, Fields stated that the directive to attend or to assign officers to attend was “in direct conflict with [his] personal religious convictions” and declared that he “intend[ed] not to follow this directive, nor require any of [his] subordinates to do so if they share similar religious convictions.” Order at *2 (quoting Captain Fields E-mail, Doc. 45-13, at 1).

In his deposition, Fields explained the nature of his religious objection:

As a Christian, I have a duty to proselytize my faith to people that are not of my faith. . . . I’m being compelled

to go to an event hosted by a group of people that are not of my faith, where they are going to be speaking about their faith openly, and I can't comment on that. That's the moral dilemma I have. They are not of my faith. They don't have the same beliefs I have as far as Jesus Christ. So I can't, in good conscience, sit mute and not say anything because that violates my religious conscience.

Order at *6 (quoting Dep. of Captain Fields, Doc. 42-28, at 63:3-25). He further testified that the only reason he does not feel compelled to proselytize routinely while on duty is because he does not "presume to know someone's religion" when responding to a call for service. Order at *3 (quoting Dep. of Captain Fields, Doc. 42-28, at 63:14-17).

Deputy Chief Webster responded to Fields's objections in a written interoffice memorandum, explaining that the Department cannot "pick and choose which belief systems we would associate ourselves with as an agency" because "there would be an issue of disparate treatment that would reflect dishonor upon us all and possibly subject [the Department] to liability." Webster Interoffice Correspondence, Doc. 45-22, at 2. Webster further emphasized that no one would be "required to participate or assist in any religious observance, make any expression of belief, or adopt any belief system." Order at *2 (quoting Webster Interoffice Correspondence, Doc. 45-22, at 3). Despite these assurances, Fields refused to follow orders.

At a subsequent meeting on February 21, 2011, Fields reported that no officers in his shift had volunteered to attend the event. Order at *3 (quoting Decl. of Captain Fields, Doc. 42-2, at ¶ 40). In fact, although Fields claimed to have recruited volunteers, according to his supervisors he had never done so, and there is no evidence that any individual under his command expressed religious objections to attending the event. Internal Affairs Investigation, Doc. 45-14, at 91-92, 109. When Fields again refused to comply with the directive, he was notified that he would be transferred to a different division while Internal Affairs investigated his conduct. Order at *3; Jordan Interoffice Correspondence, Doc. 45-29, at 1. Upon conclusion of the investigation in June 2011, Fields was suspended for two weeks without pay. Order at *3; Larsen Interoffice Correspondence, Doc. 45-36, at 2.

Captain Fields filed this lawsuit on February 23, 2011, alleging violations of his rights under the First and Fourteenth Amendments to the U.S. Constitution. After discovery, he moved for summary judgment and Defendants cross-moved for judgment on the pleadings and, in the alternative, for summary judgment. The District Court denied Fields's motion and granted Defendants' motion for summary judgment. Order at *1.

In its ruling, the District Court rejected Fields's claim that the order directing Fields and other shift supervisors to ensure that two officers and a supervisor

attended the Appreciation Day event was not neutral. Noting that Fields “misconstrue[d] the neutrality required,” the court explained that “[t]he order here applied neutrally and generally to all officers,” no individualized exceptions were authorized, and the order “did not single out officers of a certain religion.” Order at *6. The court concluded that the Department need only provide a “rational basis” for its action and that the “Department’s commitment to community policing” sufficed to meet that standard. *Id.* The court further held that “[t]he Establishment Clause does not bar [the Department] from directing Fields to identify officers to attend community policing events at religious locations or run by religious groups.” *Id.* at *8. The court also rejected Fields’s expressive-association and equal-protection claims. *Id.* at *7, *8-9.

SUMMARY OF ARGUMENT

Tulsa Police Captain Paul Fields makes the bold claim that the Free Exercise Clause confers on him the right to refuse, while on duty as a police officer, an assignment that brings him into contact with individuals he knows to be Muslim. According to Fields, he is entitled to refuse such an assignment because it would violate his belief that he must proselytize anyone who does not share his Christian faith. Moreover, Fields claims the right to refuse to appoint *other* officers to assignments that he finds (or they find) religiously objectionable. The Constitution does not permit—much less demand—such an outcome.

The Free Exercise Clause does not allow a police officer simply to ignore neutral, generally applicable orders that may conflict with the officer's personal religious beliefs. To hold otherwise would permit police officers to refuse to serve or assist citizens in a variety of circumstances that may implicate officers' faith. For example, an officer could refuse to provide a safety training seminar or police protection for an abortion clinic on the ground that she is religiously opposed to all abortions. Or an officer could reject orders to provide a police presence at a parade held by an anti-Semitic group because the group's views offend his faith.

The right claimed by Fields would extend even further: It would allow police officers to rebuff assignments *based on the faith of the people served*. Fields's proposed rule would permit him to ignore any order or assignment that would bring him or the officers in his command into contact with individuals who are ostensibly non-Christian. Based on this reasoning, Fields could decline, on religious grounds, any number of directives, including orders that he respond (or appoint others to respond) to crimes or emergencies at mosques, temples, or other houses of worship.

The Free Exercise Clause plainly does not require the Tulsa Police Department to subordinate important interests like community policing to officers' personal religious beliefs, especially when those beliefs would permit an officer to discriminate, in his or her official capacity, against members of certain faiths.

Indeed, the Establishment Clause forbids it: Government officials, including police officers, cannot discriminate among faiths in providing services or benefits to members of the public.

Here, as part of the Department's prioritized community-policing initiative, Captain Fields was given a neutral, generally applicable order to appoint two officers and a supervisor or himself to attend a law enforcement appreciation event. Attending officers were not required to take part in religious discussion or even be present at the mosque when a prayer service was held. The Department's directive was thus fully consistent with the Free Exercise Clause and the Establishment Clause of the First Amendment, and the District Court's grant of summary judgment in favor of Defendants-Appellees should be affirmed.

ARGUMENT

I. THE FREE EXERCISE CLAUSE DOES NOT ENTITLE A POLICE OFFICER TO REFUSE AN ASSIGNMENT BECAUSE IT CONFLICTS WITH HIS PERSONAL RELIGIOUS BELIEFS.

Captain Fields has no free-exercise right to refuse neutral, generally applicable assignments simply because they may conflict with his personal religious beliefs. As this Court has explained, government action "that is religion-neutral and generally applicable does not violate the Free Exercise Clause even if it incidentally affects religious practice." *Thiry v. Carlson*, 78 F.3d 1491, 1496 (10th Cir. 1996) (citing *Emp't Div., Dep't of Human Res. v. Smith*, 494 U.S. 872 (1990)).

Here, the contested “order requested [that] Fields ensure [that] two officers and a supervisor attend the Appreciation Day event.” Order at *6. The District Court properly found that the order “applied neutrally and generally to all officers; it did not single out officers of a certain religion. . . . [and] the Department gave no individualized exemptions.” Order at *6. The challenged directive, therefore, “need only be rationally related to a legitimate governmental interest to survive a constitutional challenge.” *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 649 (10th Cir. 2006).

The attendance directive for the community outreach event was, without question, rationally related to a legitimate governmental interest. Community policing has been a priority for the Tulsa Police Department for more than two decades, and engagement with the community in a proactive manner is an integral component of an officer’s duties and responsibilities. *See supra* pp. 2-4. To fully achieve its law enforcement goals, the Department needs to build trust with members of the community so that they come forward with information about crimes, cooperate during investigations, and reach out to law enforcement officials to resolve disputes instead of acting as vigilantes. *See* *Indiv. Def.’s Mot. for J.*, Doc. 45, at 8; *see generally* Michael D. Resig, *Community and Problem-Oriented Policing*, 39 *CRIME & JUST.* 1, 4-7 (2010). The Law Enforcement Appreciation Day—which was held to thank law enforcement for protecting the Islamic Society

from anti-Muslim threats—was an opportunity for the Department to meet with a minority community group in a casual and positive setting. The Department reasonably wanted to ensure that attendance was sufficient and that officers from all shifts were present, and the challenged directive ensured a minimum turnout by Department officials.

Moreover, the Department’s refusal to exempt Fields from ordering his subordinates to attend the Law Enforcement Appreciation Day was rationally related to the Department’s legitimate interest in preventing the administrative nightmare that would ensue if police officers were permitted to refuse assignments in this manner. The U.S. Court of Appeals for the Seventh Circuit has observed that setting this precedent would be unworkable for police departments: “Juggling assignments to make each compatible with the varying religious beliefs of a heterogeneous police force would be daunting to managers and difficult for other officers who would be called on to fill in for the objectors.” *Endres v. Ind. State Police*, 349 F.3d 922, 924-25 (7th Cir. 2003) (holding that refusal to reassign a police officer who objected—based on his Baptist beliefs that gambling is sinful—to his designation as a Gaming Commission agent, and subsequent termination of his employment for insubordination, did not “violate[] the free exercise clause of the first amendment, as *Smith* understands that clause”). This is especially true where, as here, the assignment may be “unpopular.” *See id.* at 925. “Excusing

officers from the risk of unpopular assignments would create substantial costs for fellow officers who must step in, as well as the police force as an entity.” *Id.*

Setting such a precedent here would be even more alarming because the religious exemption claimed by Fields would permit him to accept or reject assignments based on the faith of those citizens who are being served or seeking assistance. Fields essentially demands the right to reject any assignment during which he will come into contact with people who do not ostensibly share his faith, because it violates his religious belief that he has an obligation, even while on duty, “to proselytize to people that aren’t of [his] faith.”² Order at *3; *supra* pp. 5-6.

In his deposition, Fields tried to limit the troubling implications of this remarkable demand by explaining that he would not feel compelled to proselytize in most cases because he does not “presume to know someone’s religion” and,

² Notably, Fields does not claim that the Department must accommodate his religious objections by allowing him to proselytize others while on duty. Nor could he: It is well settled that government employees do not have a free-exercise right to proselytize people they serve and that allowing them to do so would violate the Establishment Clause. *See, e.g., Grossman v. S. Shore Pub. Sch. Dist.*, 507 F.3d 1097, 1099 (7th Cir. 2007) (“Teachers and other public school employees have no right to make the promotion of religion a part of their job description and by doing so precipitate a possible violation of the First Amendment’s establishment clause.”); *Berry v. Dep’t of Social Servs.*, 447 F.3d 642, 650-1 (9th Cir. 2006) (holding that Department of Social Services restriction barring social worker from discussing his religious beliefs and praying with clients did not violate employee’s free-speech or free-exercise rights and was reasonable because “avoiding an Establishment Clause violation may be a compelling state interest”); *Knight v. Conn. Dep’t of Pub. Health*, 275 F.3d 156, 166 (2d Cir. 2001) (“[B]oth Knight and Quental promoted religious messages while working with clients on state business, raising a legitimate Establishment Clause concern. This permits the state to place a slight burden on appellants’ speech: Knight and Quental may not share their religious beliefs with clients while conducting state business.”).

therefore, “[i]t doesn’t enter into the question when [he is] providing a police call for service.” Order at *5 (quoting Dep. of Captain Fields, Doc. 42-28, at 63:14-17). In other words, Fields’s request to be exempted from an assignment because of his religious beliefs about proselytizing would apply only if he knows, or becomes aware of, the differing religious beliefs held by particular individuals or groups served by the Department.

But this is hardly the limiting principle that Fields suggests: He could be aware or become aware that he is serving people who do not share his faith in any number of circumstances and, as a result, invoke his religious beliefs to decline those assignments. By Fields’s own logic, for example, he could have refused an assignment placing him on the mosque police-protection detail that gave rise to the Islamic Society’s decision to host the Law Enforcement Appreciation Day; such an assignment surely would have required him to come into contact with individuals he knew to be Muslims. Similarly, under the precedent that Fields seeks to set, he could reject an assignment to guard a Sikh Temple that has been targeted for violence, or refuse to provide a police presence at a war protest organized by religious groups and featuring Buddhist speakers or speakers of any non-Christian faith. He could decline to give a presentation on safety and crime prevention to students at a Catholic school or to conduct foot patrols of a neighborhood with a large Orthodox Jewish population. He could refuse to come to the aid of an

injured woman wearing a hijab.³ And, if the Department had granted the exemption requested by Fields in the case at hand, it would have set a precedent that would not only allow him to refuse personal contact with people of other faiths while on duty, but would also enable him to decline orders that he appoint his subordinates to take on such assignments, as he did here.

These types of exemption claims are at odds with the oath Fields took to “obey the lawful orders of [his] superior officers,” Appellant’s Opening Br. at 6, and “protect the rights, lives, and property of all citizens” *Oath of Office*, TULSA POLICE DEPARTMENT, *available at* <https://www.tulsapolice.org/join-tpd/oath-of-office.aspx> (last visited Apr. 11, 2013). The Department has a legitimate interest in “hold[ing] police officers to their promise to enforce the law without favoritism . . . without regard to their . . . social, political, or religious beliefs.” *Endres*, 349 F.3d at 927 (“Firefighters must extinguish all fires, even those in places of worship that the firefighter regards as heretical. Just so with police.”). By doing so, the Department protects against “the loss of public confidence in governmental protective services [that occurs] if the public knows that its protectors are at liberty to pick and choose whom to protect.” *Rodriguez v. City of Chicago*, 156 F.3d 771, 779 (7th Cir. 1998) (Posner, J., concurring). It also

³ It is of no moment whether an officer abandons his duties and discriminates against citizens when responding to an emergency call or when engaged in community outreach. As Deputy Chief Webster explained, “there is no distinction between performing our lawful duties in a reactive manner (call response) and doing so in a proactive manner (community outreach).” Order at *2 (quoting Webster Interoffice Correspondence, Doc. 45-22, at 2).

satisfies an interest of an even higher, compelling order—complying with the Constitution, which, as discussed below in Part II, forbids police officers from discriminating against those they serve based on religion.

Under these circumstances, as the District Court correctly found, there is simply no violation of Fields’s rights under the Free Exercise Clause. *See, e.g., Endres*, 349 F.3d at 927 (“His claim under the free exercise clause is incompatible with *Smith* . . .”); *Ryan v. U.S. Dep’t of Justice*, 950 F.2d 458, 461 (7th Cir. 1991) (ruling, in challenge to discharge of FBI agent who refused—based on his Catholic beliefs—to investigate groups that destroy governmental property in opposition to violence, that “any argument that failure to accommodate Ryan’s religiously motivated acts violates the free exercise clause of the first amendment is untenable”); *see also, e.g., Rodriguez*, 156 F.3d 772 (rejecting police officer’s Title VII claim based on police department’s alleged failure to accommodate his religious objections to guarding an abortion clinic); *id.* at 779 (Posner, J., concurring) (noting that a police officer “is not entitled to demand that his police duties be altered to conform to his view any more than a . . . firefighter is entitled to demand that he be entitled to refuse to fight fires in the places of worship of religious sects that he regards as Satanic”). Like the plaintiff in *Endres*, Fields “has made a demand that it would be unreasonable to require any police or fire department to tolerate.” 349 F.3d at 927.

II. THE DEPARTMENT'S RESPONSE TO CAPTAIN FIELDS'S REFUSAL TO CARRY OUT HIS ASSIGNMENT WAS CONSISTENT WITH THE ESTABLISHMENT CLAUSE.

The Establishment Clause prohibits the government from discriminating among faiths in providing services or benefits. *See Larson v. Valente*, 456 U.S. 228, 244 (1982) (“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”); *Awad v. Ziriax*, 670 F.3d 1111, 1127 (10th Cir. 2012) (enjoining state constitutional amendment that singled out Islamic law (*i.e.*, “Sharia law”) for disfavor, holding that because “[t]he First Amendment mandates governmental neutrality between religion and religion,” the government “may not adopt programs or practices . . . which aid or oppose any [one] religion,” and acknowledging that “[t]his prohibition is absolute.”) (quoting *Larson*, 456 U.S. at 246)). Accordingly, the Department must serve all individuals and groups of every religious tradition without discriminating against or favoring any particular faith:

That is, after all, an obligation both state law and the Constitution fasten on the police. If police and fire departments must enforce the law and protect potential victims free of religious favoritism, then they may insist that all members of their forces (volunteers rather than conscripts) do their parts in fulfilling this duty. “[P]ublic protectors such as police and firefighters must be neutral in providing their services.”

Endres, 349 F.3d at 926 (quoting *Shelton v. Univ. of Med. & Dentistry*, 223 F.3d 220, 228 (3d Cir. 2000)). *Accord Price-Cornelison v. Brooks*, 524 F.3d 1103,

1110 (10th Cir. 2008) (“Although there is no general constitutional right to police protection,” under the Equal Protection Clause, “the state may not discriminate in providing such protection.”) (quoting *Watson v. City of Kansas City*, 857 F.2d 690, 694 (10th Cir. 1988)). Barring Fields or any officer from accepting or rejecting assignments *based on the faith of those who will be served* is thus plainly consistent with, and indeed required by, the Department’s obligations under the Establishment Clause. *See, e.g., Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 706-07 (1994) (“Petitioners’ proposed accommodation singles out a particular religious sect for special treatment, and whatever the limits of permissible legislative accommodations may be, . . . it is clear that neutrality as among religions must be honored.”) (internal citations omitted).

Fields argues in his opening brief that the challenged order violates the Establishment Clause because the event would involve “religious content and religious activities, including proselytizing.” Appellant’s Opening Br. at 9. But Fields was required only to appoint two officers and a supervisor to attend, not go himself. *See supra* p. 4 (citing Order at *1-2). The District Court expressly held that “no reasonable jury could find Fields was personally ordered to attend the Law Enforcement Appreciation Day event . . . because the directive at issue permitted him to assign others to attend rather than attend himself.” Order at *1. In addition,

there is no evidence that his subordinates objected on religious grounds to attending. *See supra* p. 7.

More importantly, it was undisputed that attendees did not have to tour the mosque, observe any prayer service, or participate in any discussion of religion. *See supra* pp. 4-6; Order at *2. Fields's argument, therefore, lacks any factual basis. Rather, as Fields admitted during his deposition, it was his alleged need to proselytize those who do not share his religious beliefs that formed the basis for his claim that he could not attend or appoint others to attend the event. In this context, it is clear that the attendance directive and the Department's discipline of Fields for his insubordination were consistent with the Establishment Clause.

Public employees do not surrender all free-exercise rights in the context of their employment. When carrying out their duties, however, they cannot claim the right to act (even if religiously motivated) in a manner that would transgress fundamental constitutional principles like the Establishment Clause's guarantee that public employees will not use the religious beliefs of those they serve as a basis for discrimination.

It is hard to think of a context in which it is more important to protect and sustain these constitutional values than a police department, which often serves the most vulnerable members of the community. These individuals and groups rely on police officers for safety and assistance, and do so with the understanding that they

will receive that aid regardless of their faith. *See Rodriguez*, 156 F.3d at 779 (Posner, J., concurring) (“The public knows that its protectors have a private agenda; everyone does. But it would like to think that they leave that agenda at home when they are on duty—that Jewish policemen protect neo-Nazi demonstrators, that Roman Catholic policemen protect abortion clinics, that Black Muslim policemen protect Christians and Jews. . . .”).

CONCLUSION

For all foregoing reasons, *Amici* respectfully suggest that this Court should affirm the District Court’s holding that the directive requiring Fields to appoint two reporting officers and a supervisor or himself to attend an event hosted by the Islamic Society did not violate his rights under the Free Exercise Clause or the Establishment Clause and should affirm the grant of Defendants-Appellees’ motion for summary judgment.

Respectfully submitted this 22nd day of April, 2013,

/s/ Daniel Mach

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 32(a)(7) that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(d) because this brief contains 4,875 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), as calculated by the word-counting function of Microsoft Office 2010, and because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word in 14-point Times New Roman.

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DATED: April 22, 2013

/s/ Daniel Mach

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I hereby certify that on April 22, 2013, I electronically filed the foregoing *amici curiae* brief with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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