

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

American Atheists, Inc...*et el*

CASE NO:

PLAINTIFFS

v.

The City of Jacksonville, Florida *et al*

DEFENDANTS

PLAINTIFFS' FIRST AMENDED COMPLAINT

The Plaintiffs, American Atheists, Inc. and Mark W. Butler file this action pursuant to 42 U.S.C. § 1983 seeking injunctive relief, damages and attorney fees, and for their cause of action state as follows:

Jurisdictional Allegations

1. This cause of action arises under the U. S. Constitution, particularly, but not limited to, the Establishment Clause of the First and Fourteenth Amendments thereto, and pursuant to 42 U.S.C. § 1983 *et. seq.* and 42 U.S C. § 1988.

2. Subject matter jurisdiction over this cause of action is pursuant to 23 U.S.C.§§1331.1343, 1367, and 2201.

3. The Plaintiff, American Atheists, Inc. (hereinafter American Atheists) is, and has been at all times pertinent to this cause of action, a non-profit corporation lawfully incorporated under the laws of the State of Texas and is therefore a citizen of the United States. The Plaintiff American Atheists is a volunteer organization active in protecting the First Amendment constitutional rights of Atheists who are Florida citizens. American Atheists has, and will continue to have, citizens of Florida, some of whom are residents of Jacksonville, Florida, among its members.

4. The Plaintiff, Mark W.Butler is, and has been at all times pertinent to this cause of action, a citizen of the United States and as such is subject to the rights, privileges and /or immunities granted him under the U.S. Constitution and the First Amendment. The Plaintiff, Mark W.Butler at all times pertinent to this cause of action is and has been a resident of the State of Florida, the City of Jacksonville and Duval County.

.5. Based on the facts alleged herein in ¶'s 3 and 4 venue is proper pursuant to 28 U.S.C. § 1391.

6. At all times pertinent to this cause of action the Plaintiffs' American Atheists and Mark W. Butler, as citizens of the United States have all the rights, privileges and /or immunities secured by the Constitution of the United States including the right to be free from the State of Florida establishing, supporting or otherwise sponsoring a religious prayer meeting in violation of the First Amendment to the U.S. Constitution or in officially preferring and endorsing religious belief over non belief.

Factual Allegations

7. August 12, 2006 Mayor John Peyton, Sheriff John Ruthford, Council President Michael Corrigan and the Members of the Jacksonville City Council held, endorsed, sponsored and conducted a prayer rally in their official capacities as government officials using taxpayer dollars to pay for said prayer meeting. Church choirs sang, Pastor Stovall Weems, among others, lead prayers in which all Defendants participated as individuals and in their official capacities as government officials endorsing one religion over non religion and at all times material hereto paid for the event, endorsed it and participated in it in their official capacities and as individuals.

8. The people stated in ¶ 7 are, and at all times pertinent to this cause of action, were government officials and in their official capacities as government officials and acted in

that capacity by inviting the public to “A Day of Faith” stating in an invitation to the Public they are “Arming Our Prayer Warriors”. They, in their official capacities as government officials and individually, invited members of “every worship center and faith organization” stating our faith is our greatest strength. A copy of said invitation is attached hereto, and incorporated by reference as fully as if set forth verbatim herein, as Plaintiffs ‘Exhibit 1. The Defendants named in ¶7 had religious leaders from Harvest Dome Church, Celebration Church and The Greater Grand AME Church join in prayer with them in their official capacities in a City building funded completely with tax dollars to the exclusion of other nonsecular groups and with out any neutral policy that included nonsectarian groups to also use the facility for a similar purpose. The Defendants named herein paid for bus service to pick up members of specific churches so these people could attend the prayer meeting but did not provide buses to nonsecular groups. The Defedant, the City, through the named defendants in their official capacities, spent an estimated \$100,000.00(one hundred thousand dollars) to promote a religious event without then offering to pay for other similar events for non secular groups and without establishing a neutral policy to establish procedures so non secular groups could hold similar events. The defendant Mayor Peyton said “changing lives through prayer and connecting with children to help keep them on the right path is the goal of the event.”

9. By their actions as stated in ¶’s7-8 the Defendants, in their official capacity as government officials and individually, have acted with the ostensible and predominant purpose of advancing religion over no religion and in giving official approval to religious citizens over irreligious citizens, all in violation of the Establishment Clause of the First Amendment as having been incorporated to the states and their subdivisions through the

Fourteenth Amendment, and as a direct and proximate cause of their actions, have violated, and will continue to violate, the rights of the Plaintiffs, American Atheists and Mark W. Butler.

10. The Plaintiffs', American Atheists and Mark W. Butler, pursuant to the First Amendment to the U.S. Constitution, as applied to the State of Florida and its subdivisions by the Fourteenth Amendment, have the right to be free from any violation of the Establishment Clause of the First Amendment and have been irreparably harmed by their government officials using tax money to sponsor a religious event and an unconstitutional prayer rally on August 12, 2006.

11. Based on the allegations stated in ¶s 3, 4, 6, 7, 8, 9, and 10 the Plaintiffs', American Atheists and Mark W. Butler, pursuant to 42 U.S.C. § 1983 *et seq.*, are entitled to damages for the violation of their constitution rights. In addition the Plaintiffs' American Atheists and Mark W. Butler are entitled to attorney fees pursuant 42 U.S.C. § 1988.

WHEREFORE, The Plaintiffs' American Atheists and Mark W. Butler demand relief as follows:

1. A judgment against the Defendants individually, and in their official capacities as the City of Jacksonville officials, for compensatory and punitive damages in an amount to be determined by a jury and pursuant to 42 U.S.C. § 1983, and;

3. Attorney fees and costs allowable by the applicable rules and pursuant to 42 U.S.C. § 1988, and;

4. A trial by jury on all issues so triable, and;

5. Any and all relief, both legal and equitable, to which the Plaintiffs are entitled by all applicable law whether prayed for herein or not.

Respectfully Submitted,

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and Attorney for the Plaintiffs
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 8, 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: Cindy A. Laquidara at CindyL@coj.net Scott

D.Makar at SMakar@coj.net and Thomas M. Beverly at Beverly@coj.net ,Attorneys for the Defendants.

Lisa A.Lovingood

Trial Attorney for the Plaintiffs