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Court of Appeals No. 33352-3-III

Supreme Court No. 93800-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JONATHAN J. SPRAGUE, a married man,

Plaintiff/Appellant,

v.

SPOKANE VALLEY FIRE DEPARTMENT, a fire district; MIKE THOMPSON and LINDA THOMPSON, husband and wife, and the marital community composed thereof,

Defendants/Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENTS

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I. INTRODUCTION

Respondents are Spokane Valley Fire Department and Mike and Linda Thompson (collectively "SVFD"). Petitioner Mr. Jonathan J. Sprague ("Mr. Sprague") has asked this Court to review the decision from the Court of Appeals, Division III, which affirmed the trial court's summary judgment dismissal of Mr. Sprague's claims.

II. RESPONSE TO ISSUES PRESENTED FOR REVIEW

The recitation of the issues as proposed by Mr. Sprague is inaccurate. The issues which should be addressed, and were addressed by the Court of Appeals, are:

1. **Collateral Estoppel** – Under state law, factual determinations made by a Civil Service Commission are dispositive of subsequent collateral actions. Here, the SVFD Civil Service Commission determined Mr. Sprague was terminated for repeated violations of policy and orders, as well as insubordination, unrelated to religion. Are the Civil Service Commission's factual determinations "dispositive of all of [Mr. Sprague's] claims[?]" *Sprague v. Spokane Valley Fire. Dep't.*, 196 Wn. App. 21, 32, 381 P.3d 1259 (2016).

2. **Constitutionality of SVFD's policy** – State and Federal law permit a public employer to restrict the speech of its employees in order to maintain neutrality, neither advancing nor inhibiting religion. In this case, SVFD's implanted a posting policy that limits all non-department related speech, is viewpoint neutral, and rationally relates to SVFD's legitimate interest of remaining neutral in matters concerning religion. *Sprague*, 196 Wn. App. at 29-30, 381 P.3d 1259. Is SVFD's policy constitutional?

Each issue is discussed in detail below.

III. STATEMENT OF THE CASE

SVFD adopts and directs the Court to the Statement of the Case set forth in its Brief of Respondents filed with the Court of Appeals at pp. 4-11.

SVFD is a paramilitary structured organization. CP 181-182. While employed with SVFD, Mr. Sprague held the rank of Captain. CP 4. In the year leading up to his termination, Mr. Sprague repeatedly used his official SVFD email account to disseminate personal emails to other employees at their work email accounts. CP 153-155; 164-166; 172-196; 208-211. This conduct violated Department policies, including S&O #171. *See id.*

In accordance with S&O #171, Mr. Sprague was given orders from his superiors to discontinue the use of SVFD email for personal matters. CP 153-155; 164-166; 172-196; 208-211. Despite this order, Mr. Sprague continued to send personal emails to other firefighters at their business email addresses concerning his personal religious views in violation of S&O #171. *Id.*

SVFD utilized progressive discipline to encourage Mr. Sprague to stop violating policy and follow direct orders. CP 153-155; 164-166; 172-196; 208-211. Progressive discipline was unsuccessful; Mr. Sprague persisted

in violating policy and ignoring direct orders. *Id.* As a result, Mr. Sprague was terminated. CP 130.

Mr. Sprague appealed his termination to the Civil Service Commission. CP 133. On January 14, 2013, the Civil Service Commission conducted a full hearing under the authority of RCW 41.08.090. CP 63-96. The hearing was recorded by a court reporter. CP 63-96. Mr. Sprague was represented by counsel. CP 64. Mr. Sprague was present throughout the entire proceeding. His lawyer presented witnesses, cross-examined SVFD's witnesses, submitted exhibits, and made evidentiary objections. CP 63-96; 249-294. Mr. Sprague was permitted, and did, argue on his own behalf. CP 65-66. At the end of the hearing, Mr. Sprague was given one month to submit a post-hearing brief. CP 95. On February 14, 2013, Mr. Sprague submitted a twelve page post-hearing brief, which again advanced his arguments. CP 313-324.

The Commission affirmed that Mr. Sprague was terminated for repeated violations of policy and orders, as well as insubordination. CP 98-104. Mr. Sprague had a right to appeal to Superior Court under RCW 41.08.090; but failed to exhaust this remedy. Accordingly, the Civil Service proceeding became final on April 22, 2013. On February 4, 2014, Mr. Sprague filed the instant collateral action.

IV. ARGUMENT

A. The Civil Service Commission's factual determinations are "dispositive of all [Mr. Sprague's] claims."

"Collateral estoppel, or issue preclusion, bars relitigation of an issue in a subsequent proceeding involving the same parties." *Christensen v. Grant Cnty. Hosp. Dist. No. 1*, 152 Wn.2d 299, 306, 96 P.3d 957 (2004). Collateral estoppel is "well known to Washington law as a means of preventing the endless relitigation of issues already actually litigated by the parties and decided by a competent tribunal." *Reninger v. State Dept. of Corr.*, 134 Wn.2d 437, 449, 951 P.2d 782 (1998). Collateral estoppel "'prevent[s] a second litigation of *issues* between the parties, even though a different claim or cause of action is asserted.'" *Christensen*, 152 Wn.2d at 306, 96 P.3d 957 (emphasis in original) (quoting *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983)). It "promotes judicial economy," involves "principles of repose and concerns about the resources entailed in repetitive litigation," and "provides for finality in adjudications." *Id.* at 306-07, 96 P.3d 957.

A party against whom collateral estoppel is asserted must have had "a full and fair opportunity to litigate the issue in the earlier proceeding." *Christensen*, 152 Wn.2d at 307, 96 P.3d 957. There are four elements to collateral estoppel:

> (1) identical issues, (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.

Shoemaker v. City of Bremerton, 109 Wn.2d 504, 507, 745 P.2d 858 (1987) (quoting *Malland v. Dep't of Ret. Sys.*, 103 Wn.2d 484, 489, 694 P.2d 16 (1985)). When collateral estoppel is applied to administrative adjudications, there are three additional "factors" to consider: "(1) whether the agency acting within its competence made a factual decision; (2) agency and court procedural differences; and (3) policy considerations." *Id.* (quoting *State v. Dupard*, 93 Wn.2d 268, 275, 609 P.2d 961 (1980)).

The *Shoemaker* court determined *en banc* that the Civil Service Commission's hearing process satisfies the three additional factors for application of collateral estoppel. *Id.* at 508-511, 745 P.2d 858. The Court of Appeals correctly reasoned that Mr. Sprague "is collaterally estopped by the findings made in the un-appealed administrative proceedings [, which] makes it unnecessary to consider the challenge to the policy that he believes the department actually followed." *Sprague*, 196 Wn. App. at 30, 381 P.3d 1259.

In affirming the trial court's summary judgment dismissal, the Court of Appeals found that:

> The issue presented to the civil service commission—whether SVFD discriminated against Mr. Sprague because of religion—is the same issue presented at the heart of this action. The civil service commission action did end in a final decision. The parties are identical. There is no injustice in applying collateral estoppel in this circumstance. Mr. Sprague was the one who presented the issue to the commission; he had a full opportunity to present his case.

Id. at 31, 381 P.3d 1259 (underlining added). Consequently, the Court of Appeals concluded that the "factual findings concerning the department's true motivation for terminating Mr. Sprague's employment are dispositive of all of his claims in this action." *Id.* at 32, 381 P.3d 1259 (underlining added) (citing *Shoemaker*, 109 Wn.2d at 507-13, 745 P.2d 858).

The Civil Service Commission did not address the constitutionality of SVFD's policy, but rather, addressed the application of the policy, which is squarely within the competence of the Commission. RCW 41.08.090. RCW 41.08.090 empowers the Civil Service Commission to determine whether a firefighter was removed, suspended, demoted, or discharged in good faith and for cause based on legitimate reasons. In Mr. Sprague's case, the Commission exercised its statutory authority and made factual findings based upon the issues which Mr. Sprague brought before the Commission. It found that Mr. Sprague was terminated in good faith and for cause based on legitimate reasons unrelated to religion. CP 98-104.

The Civil Service Commission did not make legal conclusions; it made factual determinations based upon the issues which Mr. Sprague brought before it. *See id.* The Court of Appeals correctly found:

> We agree with Mr. Sprague that the commission's legal conclusions, such as its determination that its rulings complied with the First Amendment, are not subject to estoppel. Courts, not administrative agencies, determine whether the constitution has been complied with. However, *Shoemaker* confirms that a civil service commission factual finding can be given preclusive effect.

Sprague, 196 Wn. App. at 31, 381 P.3d 1259 (underlining added).

The long standing legal principal of collateral estoppel was properly applied by both the trial court and Court of Appeals in this case to prevent the relitigation of issues which have already been addressed and decided by a competent tribunal, the SVFD Civil Service Commission. *Christensen*, 152 Wn.2d 299, 96 P.3d 957; *Shoemaker*, 109 Wn.2d 504, 745 P.2d 858.

B. SVFD's policy is constitutional, but this issue does not need to be reviewed.

This Court need not address Mr. Sprague's constitutional claims as his claims are barred by the doctrine of collateral estoppel. *Christensen*, 152 Wn.2d 299, 96 P.3d 957; *Shoemaker*, 109 Wn.2d 504, 745 P.2d 858. "[C]ourts will not reach constitutional issues when a case can be decided on other grounds." *State v. Labor Ready, Inc.*, 103 Wn. App. 775, 782, 14

P.3d 828 (2000); *accord Pitzer v. Union Bank of California*,. 141 Wn.2d 539, 543, 9 P.3d 805 (2000). Because the issues raised by Mr. Sprague were previously and properly determined by the Civil Service Commission, the Court need not evaluate the constitutionality of SVFD's policy. RCW 41.08.090. Mr. Sprague's claims are barred in their entirety based upon collateral estoppel.

1. SVFD's email system is a non-public forum, thus, SVFD's policy must be, and is, viewpoint neutral.

The free exercise clause of the First Amendment to the United States Constitution provides that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

U.S CONST., AMEND I.

"'The constitution allows the regulation of protected speech in certain circumstances.'" *Herbert v. Washington State Pub. Disclosure Comm'n*, 136 Wn. App. 249, 259, 148 P.3d 1102 (2006) (quoting *City of Seattle v. Huff*, 111 Wn.2d 923, 926, 767 P.2d 572 (1989)). Under the First Amendment, speech in a *public* forum is subject to restrictions based upon "time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *City of Seattle v. Mighty Movers, Inc.*, 152 Wn.2d 343, 350, 96 P.3d 979 (2004) (quoting

Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983)). However, "[i]f the forum is determined to be nonpublic, the restriction is constitutional if it is reasonable in light of the purposes of the forum and is viewpoint-neutral." *Herbert*, 136 Wn. App. at 263, 148 P.3d 1102; *accord Knudsen v. Washington State Executive Ethics Bd.*, 156 Wn. App. 852, 864, 235 P.3d 835 (2010).

A governmental agency's "e-mail system [is] a nonpublic forum." *Knudsen*, 156 Wn. App. at 866, 235 P.3d 835; *Herbert*, 136 Wn. App. at 265, 148 P.3d 1102 ("the school mailbox and e-mail systems are nonpublic forums"). "A nonpublic forum is '[p]ublic property which is not by tradition or designation a forum for public communication.'" *Herbert*, 136 Wn. App. at 263, 148 P.3d 1102 (quoting *Perry*, 460 U.S. at 46). "The prohibition is on the use of facilities, not on [the] speech generally." *Herbert*, 136 Wn. App. at 258, 148 P.3d 1102. State e-mail systems are nonpublic forums as they "exist to facilitate communications for purposes of state business" and are not open to the public. *Knudsen*, 156 Wn. App. at 866, 235 P.3d 835.

Restrictions of speech in a nonpublic forum must be viewpoint neutral. *Herbert*, 136 Wn. App. at 263, 148 P.3d 1102. The restriction must not "intend[] to discourage one viewpoint and advance another." *Perry*, 460 U.S. at 49. An agency may restrict speech by limiting discussion on the

email servers to official business. *Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 711 (9th Cir. 2010) ("We assume the First Amendment would not prevent the district from restricting [use to official business].").

Mr. Sprague concedes that the SVFD email and bulletin board systems are non-public forums. CP 337, lines 10-11 ("Neither system is open to the public – they were accessible **only** by employees of SVFD") (emphasis in original). Under the nonpublic forum analysis, a restriction on speech must be "reasonable and viewpoint-neutral." *Herbert*, 136 Wn. App. at 265, 148 P.3d 1102. SVFD's policy is viewpoint neutral in that it prohibits all personal communications that are not related to official SVFD business. CP 106-114.

2. SVFD's policy does not violate Mr. Sprague's right to religious free exercise under the First Amendment of the United States Constitution.

Any law or policy that burdens religion is subject to two different levels of scrutiny under the free exercise clause. Laws which are generally applicable and burden religion are neutral, and thus are subject to rational basis review. *State v. Arlene's Flowers, Inc.*, 389 P.3d 543, 560 (2017) (citing *Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872 (1990)). Laws or policies which regulate conduct because of religious reasons are subject to strict scrutiny review. *Arlene's Flowers, Inc.*, 389

P.3d at 560 (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993)). A law is not neutral if "the object of [the] law is to infringe upon or restrict practices *because* of their religious motivation." *Id.* (quoting *Church of the Lukumi Babalu Aye, Inc.*, 508 U.S. at 533) (emphasis and alteration in original). Policies of governmental entities are analyzed under the same constitutional framework as codified laws. *See Alpha Delta Chi-Delta Chapter v. Reed*, 648 F.3d 790, 800 (9th Cir. 2011) (university policy decided under constitutional analysis); *see also Bradburn v. North Cent. Reg'l Library Dist.*, 168 Wn.2d 789, 802, 231 P.3d 166 (2010) (library policy decided under constitutional analysis).

Strict scrutiny may be applied to a policy that is otherwise neutral if the rule "adopts a patchwork of specific exemptions that conspicuously omits certain religiously motivated conduct." *Arlene's Flowers, Inc.*, 389 P.3d at 561. Such exemptions are "evidence that the government has deliberately targeted religious conduct for onerous regulation, or at the very least devalued religion as a ground for exemption." *Id.* (citing *Church of the Lukumi Babalu Aye, Inc.*, 508 U.S. at 544-46). A policy may also be found not to be generally applicable, and therefore subject to strict scrutiny, if it "permits individual exemptions but is then applied in a manner that is needlessly prejudicial to religion." *Id.* (citing *Lighthouse*

Inst. for Evangelism, Inc. v. City of Long Branch, 510 F.3d 253, 276 (3d Cir. 2007)).

Mr. Sprague concedes that SVFD's policy as written is constitutional. However, he suggests that SVFD's policy allows others to use the email system for personal purposes other than religion.

SVFD's policy is neutral and generally applicable as it restricts all personal communications and limits the use of SVFD email system to official business; there are no exceptions. CP 108. Thus, it is subject to rational basis review. *See Arlene's Flowers, Inc.*, 389 P.3d at 562.

3. SVFD has a legitimate interest in remaining neutral in matters concerning religion.

The United States Constitution, which applies to all governmental entities, requires government neutrality in matters concerning religion. U.S. CONST. AMEND. I. At the same time, the Free Exercise Clause recognizes an individual's liberty and independence concerning religious matters. *See id.* This presents a conflict for government entities who attempt to regulate the speech of their employees. *See Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 788 (1973). The United States Supreme Court has stated that "as a result of this tension, our cases require the State to maintain an attitude of 'neutrality,' neither 'advancing' nor 'inhibiting' religion." *Id.*

SVFD may limit religious expression in the workplace, if done in a constitutional manner. *See Clairmont v. Sound Mental Health*, 632 F.3d 1091, 1100 (9th Cir. 2011) (citing *City of San Diego v. Roe*, 543 U.S. 77, 80 (2004)); *see also Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, Will Cty., Ill.*, 391 U.S. 563, 568 (1968) (wherein the Supreme Court found that the government, in its capacity as an employer, has interests in regulating the speech of its employees). SVFD cannot thrust religious belief, or non-belief, upon anyone, including its own employees. *See Nyquist*, 413 U.S. at 788. It must remain neutral in the context of religion. *Id.* In order to achieve the constitutionally required neutrality, SVFD may impose limitations on religious expressions in the workplace. *See Pickering*, 391 U.S. at 568; *see also Smith v. Bates Tech. Coll.*, 139 Wn.2d 793, 812-13, 991 P.2d 1135 (2000); *Benjamin v. Washington State Bar Ass'n*, 138 Wn.2d 506, 519-20, 980 P.2d 742 (1999) (wherein this Court adopted and applied the *Pickering* balancing test in analyzing the public employee's free speech rights against the government's legitimate interests.)

The Ninth Circuit has found that while the State has an interest in not violating the Establishment Clause of the United States Constitution, the State also has a legitimate interest in curtailing the speech of its employees in certain circumstances. *See Berry v. Dept. of Social Services*, 447 F.3d

642, 646 (9th Cir. 2005) (citing *Pickering*, 391 U.S. 563); *see also Kumar v. Gate Gourmet, Inc.*, 180 Wn.2d 481, 502 n.31, 325 P.3d 193 (2014) (wherein this Court adopted *Berry* and found that in the religious accommodation context the risk of a public employer of violating the establishment clause is an undue hardship). In order for a governmental entity to curtail the speech of its employees, the restraint on the employee's speech must be balanced with "'the interests of the [employee] in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.'" *Berry*, 447 F.3d at 649 (quoting *City of San Diego v. Roe*, 543 U.S. 77, 82 (2004)). The government "'has a greater interest in controlling what materials are posted on its property than it does in controlling the speech of the people who work for it.'" *Berry*, 447 F.3d at 651 (quoting *Tucker v. State of CA Dept. of Ed.*, 97 F.3d 1204, 1214 (9th Cir. 1996)).

A government entity is further exposed under the Establishment Clause if the government coerces "'anyone to support or participate in religion or its exercise.'" *Marrero-Méndez v. Calixto-Rodríguez*, 830 F.3d 38, 44 (1st Cir. 2016) (quoting *Lee v. Weisman*, 505 U.S. 577, 587 (1992)). The "'government may not require an individual to engage in religious practices or be present in a religious exercise.'" *Marrero-*

Méndez, 830 F.3d at 47 (quoting *Anderson v. Laird*, 466 F.2d 283, 291 (D.C. Cir. 1972) (Bazelan, J., concurring)). Courts have found a violation of the Establishment Clause when a superior officer pressures a subordinate officer to conform with the principles of the superior officer's religious beliefs. *See Venters v. City of Delphi*, 123 F.3d 956, 970 (7th Cir. 1997); *see also Marrero-Méndez*, 830 F.3d at 48.

SVFD, as a fire department, implements a paramilitary command structure. CP 181-82. As such, SVFD executes orders in a hierarchical manner that requires employees to strictly follow a chain-of-command. *Id.* While employed with SVFD, Mr. Sprague held the rank of Captain. CP 4. As a Captain, Mr. Sprague took orders from those with a higher rank (Battalion Chief, Chief), but also issued orders to those subordinate to him (Lieutenant, Firefighter). Mr. Sprague's subordinates, who received Mr. Sprague's emails sent through his SVFD email address as a Captain for SVFD, did not have the authority to respond or react to a communication from a superior officer. CP 147-149; 153-155; 164-166; 172-196; 205-206; 208-211. As such, Mr. Sprague's actions are in violation of the Establishment Clause. *See Venters*, 123 F.3d at 970; *see also Marrero-Méndez*, 830 F.3d at 48.

SVFD's restriction on Mr. Sprague's speech was constitutional under *Pickering* as applied by *Berry*. Allowing Mr. Sprague to use SVFD email

to send religious emails and to post religious material on the bulletin boards would give the impression or appearance of a governmental endorsement of Mr. Sprague's religious messages. Such an endorsement would be unconstitutional. *Berry*, 447 F.3d at 651. Accordingly, Mr. Sprague was informed that he could not post materials on either the electronic or physical bulletin boards maintained by SVFD that had a religious message. CP 147-149; 153-155; 164-166; 172-196; 205-206; 208-211. Mr. Sprague deliberately ignored the lawful directive and continued to post religious materials on SVFD bulletin boards. CP 160-162; 168-170; 201. Mr. Sprague was informed that his conduct amounted to an unconstitutional endorsement of religion by SVFD. CP 147-149. He chose to continue to violate a lawful directive.

As Judge Lawrence-Berrey correctly stated in his concurring opinion: "SVFD successfully navigated between the Scylla of not respecting Mr. Sprague's free speech right and the Charybdis of exposing it to Establishment Clause liability by appearing to endorse a particular religious view." *Sprague*, 196 Wn. App. at 36, 381 P.3d 1259.

4. SVFD's policy is rationally related to SVFD's legitimate interest in remaining neutral in matters concerning religion.

SVFD's policy is constitutional. *See Arlene's Flowers, Inc.*, 389 P.3d at 562. The policy specifically states that:

> [t]he electronic system hardware is SVFD property and all messages composed, sent, or received on the system are SVFD property. Therefore, *the use of the electronic mail system is reserved solely for SVFD business and should not be used for personal business.*

CP 108 (emphasis added). The policy expressly and unequivocally states that the email system is "reserved solely for SVFD business." *Id.* All personal use, irrespective of topic, is excluded. *Id.*; CP 457. There are no exceptions to the policy. *See id.*

Mr. Sprague argues that SVFD had an "unwritten policy" which permitted personal emails, but that Mr. Sprague was singled out based upon his religious beliefs. As stated above, if an individual's use was *related* to SVFD business, the use was permissible. For instance, under SVFD's policy, Mr. Sprague could have sent an email stating that he needed shift coverage in order to attend an organizational (church, PTA, Boy Scouts, etc.) function; such an email is associated with SVFD business, *i.e.* making sure all shifts are covered, and is, therefore, permissible. Instead, Mr. Sprague included personal and non-business related messages and opinions in his emails in violation of S&O #171. CP 147-149; 151; 153-155; 157-158; 160-162; 164-166; 168-170; 172-196; 201; 203; 208-211.

Mr. Sprague was informed that his conduct amounted to an unconstitutional endorsement of religion by SVFD. CP 147-149. He was

also informed that SVFD could constitutionally limit his religious expressions in the workplace, specifically with regard to the religious emails and religious bulletin board postings. *Id.* SVFD never attempted to restrict Mr. Sprague's oral speech nor did it ever suggest it had the ability to do so. In fact, as early as January 9, 2012, Mr. Sprague was informed that he could use SVFD internet access to send personal emails using his personal email address. Specifically, SVFD stated:

> If you wish to send personal emails while on duty (if otherwise permitted under [SVFD] policy), you may do so using a personal email account (such as Hotmail, Gmail, Yahoo, or Comcast account). Using a personal email account, you may only send messages to other personal email accounts. You may not use a personal email account to send messages or solicitations to official SVFD accounts.

CP 147. Mr. Sprague did not use his personal email account to send his messages; instead, he continued to use his official SVFD email account to send his personal messages. CP 160-162; 168-170; 201. Prior to his termination, Mr. Sprague was again counseled that he could:

> post flyers or advertisements of local events, food drives, and meetings. The posting may contain information as to the organization, the place, the time/date, the contact information, and the event. These type of postings are acceptable for both the electronic and physical bulletin boards. For example, *you might post a notice that the Fellowship is meeting at a particular time and place, but the posting may not have religious content.*

CP 148 (emphasis added). In response to the lawful directive to cease using SVFD email for personal purposes, Mr. Sprague offered the following reasoning for his continued insubordination:

> I do not disobey your directives out of any disrespect or contempt as the Chief has said. Rather, I choose to obey my savior out of loyalty and love in response to his steadfast love for me. I have found his absolute authority to be matched only by his love, humility and sacrifice. Would any say those traits have characterized the leadership of Valley Fire these past two years? Perhaps if they had, more would obey out of love and confidence a true loyalty effect than from the fear and mistrust they have today. Make no mistake; part of my obedience to Jesus Christ is to obey the authority which he has established over me. I have done so with a clear conscience. It is this Board, I'm afraid, this Chief and others in his staff, who continue to violate the laws of this great land.

CP 129-130.

SVFD was constitutionally obligated to curtail the policy violating speech of Mr. Sprague in order to prevent the appearance that SVFD, a governmental entity, was endorsing religion. *See Berry*, 447 F.3d at 657. To do otherwise would have violated the Establishment Clause of the United States Constitution. *See id.* Mr. Sprague's actions, performed in his official capacity as Captain for SVFD, violated the Establishment Clause. *Id.* His actions had a non-secular purpose and the effect of furthering religion, as well as his own personal religious beliefs. His actions created the impression of excessive government entanglement with

religion. As a result, SVFD's limitation of Mr. Sprague's dissemination of religious content, while acting in his official capacity and utilizing public resources, was rationally related to a legitimate governmental interest to remain neutral in matters relating to religion.

The decision of the Court of Appeals should be affirmed.

V. CONCLUSION

Based upon the foregoing argument and authority, Spokane Valley Fire Department and Mike and Linda Thompson respectfully request this Court affirm the trial court's summary judgment orders as well as the decision of the Court of Appeals.

RESPECTFULLY SUBMITTED this 1st day of May 2017.

ETTER, McMAHON, LAMBERSON,
VAN WERT & ORESKOVICH, P.C.

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DECLARATION OF SERVICE

I, Kristie M. Miller, declare and say as follows:

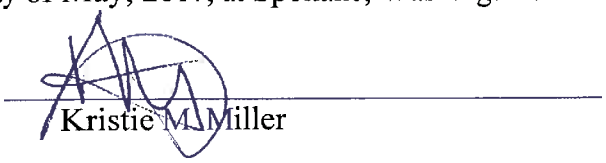
1. I am a citizen of the United States and resident of the State of Washington, over the age of 18 years, not a party to the above-entitled action, and am competent to be a witness herein. My business address is 618 W. Riverside Ave., Ste. 210, Spokane, Washington 99201-5048, and telephone number is 509-747-9100.

2. On May 1, 2017, I caused to be served SUPPLEMENTAL BRIEF OF RESPONDENTS on the individuals named below in the specified manner indicated.

Matthew C. Albrecht David K. DeWolf Albrecht Law, PLLC 421 W. Riverside Ave., Suite 614 Spokane, WA 99201	____ U.S. Mail ____ Hand-Delivered ____ Overnight Mail ____ Facsimile _X_ Email
George M. Ahrend Ahrend Law Firm, PLLC 100 East Broadway Avenue Moses Lake, WA 98837	____ U.S. Mail ____ Hand-Delivered ____ Overnight Mail ____ Facsimile _X_ Email

I declare under the penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 1st day of May, 2017, at Spokane, Washington.



Kristie M. Miller