

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

PAUL CAMPBELL FIELDS,

Plaintiff,

v.

CITY OF TULSA; CHARLES W. JORDAN,  
individually and in his official capacity as Chief  
of Police, Tulsa Police Department; and ALVIN  
DARYL WEBSTER, individually and in his  
official capacity as Deputy Chief of Police, Tulsa  
Police Department,

Defendants.

Case No. 11CV-115-GKF-TLW

**PLAINTIFF'S BRIEF IN  
OPPOSITION TO THE  
INDIVIDUAL DEFENDANTS  
MOTION FOR JUDGMENT**

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## INTRODUCTION

The “motion for judgment” filed by Defendants Jordan and Webster (“Defendants”) (Doc. 45) fails to provide any legal analysis of the substantive claims at issue.<sup>1</sup> The only issue addressed by Defendants is the issue of qualified immunity, which Plaintiff will respond to here.

In sum, Defendants’ motion should be summarily denied, and for the reasons set forth below and for those in Plaintiff’s opposition to the City’s “motion for judgment” and in support of Plaintiff’s motion for summary judgment (Doc. 42), this court should grant judgment in Plaintiff’s favor on all claims as to liability.

## STATEMENT OF UNDISPUTED MATERIAL FACTS

Plaintiff’s brief in support of his motion for summary judgment sets forth the undisputed material facts in this case and the evidence to support those facts.<sup>2</sup> (Doc. 42). Plaintiff responds here to Defendants’ assertion of “undisputed facts” as follows:

1. Plaintiff admits that the Tulsa Police Department is an entity of the City, and thus, the City is liable for its actions. (Jordan Dep. at 9-10 [Doc. 42-24]; *see also* Fields Decl. at ¶¶ 9, 50 [Doc. 42-2], Dep. Exs. 17, 18 [Docs. 16, 17]).
2. Plaintiff objects to Defendants’ assertion that the Tulsa Police Department is a “paramilitary organization” in that this is not a relevant or a material fact.

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<sup>1</sup> Defendants seek to “bootstrap” their motion with Defendant City of Tulsa’s (“City”) separately filed “motion for judgment.” (*See* Defs.’ Br. at 15) (incorporating the City’s motion). Defendants should not be permitted to do this for at least two reasons: (1) the local rules permit the parties to file just one motion for summary judgment, absent permission from this court, *see* LCvR56.1(a), which Defendants did not obtain; and (2) Defendants are circumventing the local rules by filing what amounts to a single brief that is 41 pages long (Defendants’ brief is 22 pages, and it includes the required statement of facts, but it does not address the substantive claims. The City’s brief is 19 pages, and it does not include the required statement of facts, but it does include an analysis of the legal claims). *See* LCvR7.2(c) (“No brief shall be submitted that is longer than twenty-five (25) typewritten pages without leave of Court.”).

<sup>2</sup> The majority of evidence cited by Plaintiff and referred to by docket number is already part of the record. Additional exhibits, where noted, have been filed in support of this opposition.

3. Plaintiff admits that Defendant Jordan is the Chief of Police and further asserts that he makes policy for the City in that capacity. (Jordan Dep. at 9-10 [Doc. 42-24]; *see also* Fields Decl. at ¶¶ 9, 50 [Doc. 42-2], Dep. Exs. 17, 18 [Docs. 16, 17]).

4. Plaintiff does not dispute these facts, but objects to the assertion that Defendant Jordan's employment with the State Department is relevant or material to the issues in this case.

5. Plaintiff does not dispute these facts, but objects to the assertion that Defendant Jordan is a Methodist in that it is not relevant or material as to whether his actions violated the Constitution.

6. Plaintiff does not dispute these facts.

7. Plaintiff does not dispute this fact, but objects to the assertion that it is relevant or material as to whether Defendant Webster violated the Constitution.

8. Plaintiff does not dispute these facts.

9. Plaintiff does not dispute these facts.

10. Plaintiff does not dispute these facts.

11. Plaintiff does not dispute these facts.

12. Plaintiff does not dispute these facts and further asserts that he was one of the officers providing police "protection" because, unlike the "Law Enforcement Appreciation Day" hosted by the Islamic Society ("Islamic Event"), *providing police protection* is a law enforcement function and not religious proselytizing. (Fields Decl. at ¶¶ 15-21 [Doc. 42-2]; Fields Dep. at 60-63, 66-70 [Doc. 42-28]; *see* ¶¶ 86-89, 133-36, *infra* [setting forth facts and evidence showing that the Islamic Event involved religious proselytizing]).

13. Plaintiff does not dispute these facts, and further asserts that the "services" provided were police services. (*See also* ¶ 12 above).

14. Plaintiff does not dispute that Sheryl Siddiqui testified as indicated, but further asserts that the “something” she did for the police (*i.e.*, the Islamic Event) was an Islamic proselytizing event. (*See* ¶¶ 86-89, 133-36, *infra*).

15. Plaintiff does not dispute that Ms. Siddiqui believed that she was directed by her Islamic faith to hold the Islamic Event and that, in addition to being “thankful,” her Islamic faith demands that she proselytize non-Muslims, such as Plaintiff, as part of the Islamic “dawa” mission. (*See* ¶¶ 86-89, 133-36, *infra*).

16. Plaintiff asserts that the flier for the Islamic Event speaks for itself. (Fields Decl. at ¶ 23 [Doc. 42-2], Dep. Ex. 8 [Doc. 42-9]; Webster Dep. at 38 [Doc. 42-25]).

17. Plaintiff does not dispute the fact that Defendant Webster testified as indicated. However, Plaintiff asserts that *despite* Defendant Webster’s admitted concerns about the *religious* nature of the event, he did not change the content of the event or how it was advertised. (Webster Dep. at 29-31 [Doc. 45-3]). Plaintiff further asserts that despite knowing that this event would involve religious content, Defendants did not reach out to the hosts of the Islamic Event to inform them that they should not engage in religious discussions with the officers or try to proselytize them, and Defendants admit that there was nothing preventing the Muslim hosts from proselytizing the officers during the Islamic Event (Jordan Dep. at 45 at Ex. 9),<sup>3</sup> and in fact, proselytizing did occur, (*see* ¶¶ 133-35, *infra*).

18. Plaintiff asserts that the Islamic Event flier speaks for itself. (*See* ¶ 16, *supra*).

19. Plaintiff disputes this assertion for several reasons and based on undisputed facts: (1) whether someone attending the event would feel compelled to eat any of the food provided is not

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<sup>3</sup> For ease of reference, Plaintiff is numbering his exhibits consecutively, beginning with the exhibits filed in support of his motion for summary judgment. Consequently, the next exhibit for Plaintiff is Exhibit 9, which is attached to this opposition.

relevant or material; (2) with regard to (1), if an officer had an allergy associated with eating the food provided, *he would be granted an exemption from the event, but Plaintiff was punished for seeking a religious exemption*; (3) the flier did not present the mosque tours as optional and Major Harris' email made it clear that this event was a "Mosque Tour"; (4) as the undisputed record shows, it was not possible to avoid the mosque tours or the religious proselytizing that occurred at this event; (5) the Islamic Event was part of the "dawa" mission of the Islamic Society; (6) the Islamic Event was not voluntary for Plaintiff; and (7) making the Islamic Event mandatory for Plaintiff and punishing him for objecting on religious grounds violated Plaintiff's sincerely held religious beliefs. (*See* ¶¶ 82-140, *infra* [setting forth the evidence in support of Plaintiff's counter assertion]).

**20.** Plaintiff does not dispute that Defendants proposed various times for attending the event. However, Plaintiff asserts that proselytizing occurred at the Islamic Event and officers did observe religious worship services. (*See* ¶¶ 86-89, 133-36, *infra*).

**21.** Plaintiff does not dispute these facts.

**22.** Plaintiff asserts that Defendant Webster's email speaks for itself. (Doc. 45-10).

**23.** Plaintiff does not dispute these facts.

**24.** Plaintiff asserts that Defendant Webster's email speaks for itself. (Doc. 45-11; *see also* ¶¶ 93-95, *infra*).

**25.** Plaintiff does not dispute these facts.

**26.** Plaintiff does not dispute that he responded via email to Defendant Webster's order regarding the Islamic Event and further asserts that his email speaks for itself. (Doc. 45-13; *see also* ¶¶ 96-100, *infra*).

**27.** Plaintiff objects to this assertion because it misrepresents the record citation that is



referenced, it does not cite to any testimony or direct statement from Plaintiff (in fact, it appears to be testimony from Defendant Webster about a separate document), and it misrepresents the record in that Plaintiff's religious objections were based on his beliefs. (*See* ¶¶ 91, 92, 99 *infra*).

**28.** Plaintiff objects to the relevance and materiality of the email cited by Defendants. Plaintiff further objects to Defendants' assertion of fact in that it is a misrepresentation. As the email itself makes clear, Plaintiff's objection was based on the fact that someone was assigning officers under his command to an activity without checking with him first. That is "leadership 101." (Doc. 45-15). Moreover, as Defendants acknowledge here, a proper "community policing event" has an agenda to discuss crime and crime statistics. (*See* ¶¶ 45-51, *infra*).

**29.** Plaintiff does not dispute the fact that no one from the shift that he *formerly* commanded attended the Islamic Event held on March 4, 2011. At that time, Major Harris was the responsible officer (Plaintiff was punitively transferred on February 21, 2011), yet she was not punished for not having officers attend the Islamic Event from this shift. (Jordan Dep. at 66-67 at Ex. 9; Jordan Arbitration Test. at 353 at Ex. 10).

**30.** Plaintiff does not dispute that the City has a community policing policy.

**31.** Plaintiff disputes the relevance and materiality of the fact that Drew Diamond introduced community policing to the City.

**32.** Plaintiff does not dispute that Defendant Jordan is responsible for the community policing policy on behalf of the City.

**33.** Plaintiff objects to the consideration of the *PoliceOne.com* article in that it is hearsay.

**34.** Plaintiff objects to this factual assertion in that it is incomprehensible.

**35.** Plaintiff does not dispute that Defendant Jordan is responsible for the community policing policy on behalf of the City and that he considers it a priority.

**36.** Plaintiff does not dispute that the Tulsa Police Department Mission Statement provides what is stated.

**37.** Plaintiff does not dispute that this is a portion of the testimony of Defendant Webster and further asserts that it provides no basis for violating Plaintiff’s constitutional rights.

**38.** Plaintiff does not dispute that this is a partial quotation from Defendants’ “Partnership in Policing” policy and further asserts that this policy speaks for itself. (Doc. 45-19).

**39.** Plaintiff does not dispute that building trust with the community is an aspect of the Tulsa Police Department’s mission. Plaintiff further asserts that ensuring that officers are not retaliated against for exercising their First Amendment rights is an important aspect of building trust within the department and thus promoting the department’s mission. In fact, it is department policy. (Fields Decl. at ¶ 56 [Doc. 42-2], Dep. Ex. 23 [Doc. 42-18]).

**40.** Plaintiff does not dispute that building trust is an accepted purpose of a *legitimate* community policing event and further asserts that the Islamic Event was not such an event. (Wells Decl. at ¶¶ 1-13 at Ex. 11; Fields Supp. Decl. at ¶ 4 at Ex. 12; ¶¶ 86-89, 133-36, *infra*).

**41.** Plaintiff does not dispute the fact that legitimate community policing events have been held throughout the City.

**42.** Plaintiff does not dispute that there are likely trust issues that exist in minority communities as well as in other communities in the City.

**43.** Plaintiff does not dispute that Defendant Webster was offering his opinion on police department “burden[s]” associated with going the “extra mile to establish trust with minority communities,” but Plaintiff objects to the consideration of this self-serving opinion.

**44.** Plaintiff does not dispute that this is a partial quotation from Defendants’ “Partnership in Policing” policy and further asserts that this policy speaks for itself. (Doc. 45-19).

45. Plaintiff does not dispute that *legitimate* community policing events have been held in the past and further asserts that the Islamic Event was not such an event. (Wells Decl. at ¶¶ 1-13 at Ex. 11; Fields Supp. Decl. at ¶ 4 at Ex. 12; ¶¶ 86-89, 133-36, *infra*).

46. Plaintiff does not dispute that *legitimate* community policing events have been held in the past and attended by officers of “all ranks and levels” and further asserts that the Islamic Event was not such an event. (Wells Decl. at ¶¶ 1-13 at Ex. 11; Fields Supp. Decl. at ¶ 4 at Ex. 12; ¶¶ 86-89, 133-36, *infra*).

47. Plaintiff does not dispute that Defendants have accepted in the past requests for *legitimate* community policing events to be held at “religious venues or from religious organizations” but further asserts that none of these events involved an invitation to watch a worship service, hear presentations on religious beliefs, or tour a religious sanctuary, such as a mosque, aside from the Islamic Event. (Jordan Dep. at 40-41 [Doc. 42-24]; *see also* Wells Decl. at ¶¶ 1-13 at Ex. 11; Fields Supp. Decl. at ¶ 4 at Ex. 12; ¶¶ 86-89, 133-36, *infra*).

48. Plaintiff does not dispute that Defendants have responded in the past to requests for *legitimate* community policing events that were held at “religious venues or were sponsored by religious organizations” but further asserts that none of these events involved an invitation to watch a worship service, hear presentations on religious beliefs, or tour a religious sanctuary, such as a mosque, aside from the Islamic Event. (Jordan Dep. at 40-41 [Doc. 42-24]; *see also* Wells Decl. at ¶¶ 1-13 at Ex. 11; Fields Supp. Decl. at ¶ 4 at Ex. 12; ¶¶ 86-89, 133-36, *infra*).

49. Plaintiff objects to Defendant Webster’s self-serving assertion, which is inadmissible opinion evidence. Plaintiff further asserts that this opinion is contrary to the undisputed facts. (Wells Decl. at ¶¶ 1-13 at Ex. 11; Fields Supp. Decl. at ¶ 4 at Ex. 12; ¶¶ 86-89, 133-36, *infra*).

50. Plaintiff does not dispute that a *legitimate* law enforcement appreciation day that does not

violate the Constitution may provide “an opportunity to build trust with the community.”

**51.** Plaintiff does not dispute that a *legitimate* law enforcement appreciation day may “further the rules and regulations, statement of vision and the [City’s community policing policies],” but further asserts that the Islamic Event was not such an event. (Wells Decl. at ¶¶ 1-13 at Ex. 11; Fields Supp. Decl. at ¶ 4 at Ex. 12; ¶¶ 86-89, 133-36, *infra*).

**52.** Plaintiff does not dispute that Defendant Jordan testified as indicated but objects to this assertion in that it is an inadmissible, self-serving opinion, and Plaintiff further objects in that the assertion is not relevant or material as to whether Defendants violated the Constitution.

**53.** Plaintiff does not dispute these facts but further asserts that they are not relevant or material and are more prejudicial than probative. Fed. R. Evid. 401 & 403.

**54.** Plaintiff disputes these facts in that they are contrary to the record. Defendants made no religious accommodations and rejected the only one requested by Plaintiff: to make the Islamic Event voluntary. Moreover, contrary to this self-serving assertion, the undisputed record evidence demonstrates: (1) Plaintiff had a sincerely held religious belief in that he objected to the order making the Islamic Event mandatory on religious grounds (Defendants do not dispute the sincerity of Plaintiff’s beliefs); (2) Defendants could have accommodated Plaintiff’s religious beliefs by (a) making the event voluntary or (b) providing an exemption to Plaintiff; (3) Defendants did not accommodate (or provide an exemption for) Plaintiff’s religious beliefs; instead, Defendants severely punished Plaintiff for making a religious objection; and (4) Defendants had no compelling or legitimate reason for not accommodating (or providing an exemption for) Plaintiff’s religious objection. Indeed, within days of punitively transferring Plaintiff, Defendants made the Islamic Event voluntary for the entire police department, and the department was able to satisfy its objectives. (*See* ¶¶ 80-140, *infra*).

55. Plaintiff does not dispute these facts.
56. Plaintiff asserts that his email response speaks for itself. (Doc. 45-23).
57. Plaintiff objects to the relevance and materiality of these facts, and he further asserts that his email speaks for itself. (Doc. 45-24).
58. Plaintiff asserts that his email response speaks for itself. (Doc. 45-25).
59. Plaintiff asserts that these facts are neither material nor relevant, that the statements in the email are inadmissible hearsay, and that the email speaks for itself. (Doc. 45-26).
60. Plaintiff asserts that these facts are neither material nor relevant, that the statements in the email are inadmissible hearsay, and that the email speaks for itself. (Doc. 45-27).
61. Plaintiff asserts that these facts are neither material nor relevant and that the decision of the court in *Armbruster v. Cavanaugh* speaks for itself. (Doc. 45-27).
62. Plaintiff asserts that Defendant Webster's email speaks for itself. (Doc. 45-28).
63. Plaintiff does not dispute these facts.
64. Plaintiff does not dispute these facts and further asserts that Defendant Jordan, as the Chief of Police, is responsible for officer discipline on behalf of the City. (Jordan Dep. at 10 [Doc. 42-24]; *see also* Fields Decl. at ¶¶ 9, 50 [Doc. 42-2], Dep. Exs. 17, 18 [Docs. 16, 17]).
65. Plaintiff disputes these facts. Defendants punitively transferred Plaintiff, and this punishment was inconsistent with other similarly situated officers of his rank in that he was punitively transferred for invoking his constitutional rights. (Harris Dep. at 36-38 [Doc. 42-27]).
66. Plaintiff asserts that the document speaks for itself (Doc. 45-31), and that policies can be discriminatorily applied, as in this case. (Harris Dep. at 36-38 [Doc. 42-27]).
67. Plaintiff asserts that the document speaks for itself (Doc. 45-31), and that policies can be discriminatorily applied, as in this case. (Harris Dep. at 36-38 [Doc. 42-27]).

68. Plaintiff does not dispute the *fact* that an IA investigation was conducted by Captain Breashears. (Doc. 45-14). Plaintiff objects to this court considering the content of the “Internal Affairs Investigation” (Doc. 45-14) in that it contains objectionable hearsay. Plaintiff further asserts that he was officially notified on March 10, 2011, of the following purpose for this investigation: “You are hereby notified that Chief Chuck Jordan has requested IA to conduct an administrative investigation in regards to your refusal to attend and refusal to assign officers from your shift, who shared your religious beliefs, to attend the ‘Law Enforcement Appreciation Day’ on March 4, 2011, at the Tulsa Peace Academy.” (Fields Decl. at ¶ 46 [Doc. 42-2], Dep. Ex. 16 [Doc. 42-15][emphasis added]).

69. Plaintiff objects to this court considering the content of the “Internal Affairs Investigation” (Doc. 45-14) in that it contains objectionable hearsay.

70. Plaintiff objects to this court considering the content of the “Internal Affairs Investigation” (Doc. 45-14) in that it contains objectionable hearsay. Plaintiff further asserts that Defendant Jordan admits that Plaintiff did not violate his oath of office, (Jordan Dep. at 90 [Doc. 42-24]), which requires Plaintiff to point out unlawful orders, (Jordan Dep. at 15 [Doc. 42-24]; *see also* Fields Decl. at ¶ 6 [Doc. 42-2]), which he did.

71. Plaintiff does not dispute the fact that he sent an email objecting to the unlawful order to his chain of command and he further asserts that (1) the email speaks for itself (Doc. 45-13); (2) he sent the email after discussing the order with Major Harris and getting her approval to send the email (*see* ¶¶ 96-98, *infra*); (3) there are no rules or regulations specifying how an objection to an unlawful order should be brought to the attention of the chain of command (Jordan Dep. at 21-25 at Ex. 9); and (4) Plaintiff’s email notification to his chain of command of his objection to the unlawful order was proper, (Harris Dep. at 69-71 at Ex. 13 [testifying that the email was

proper because “he got my permission”]; *see also* Wells Decl. at ¶ 12 at Ex. 11).

**72.** Plaintiff asserts that his email speaks for itself, (Doc. 45-13, 33), and he further asserts that his email was sent to the appropriate individuals in his chain of command and to those who should be notified of his religious objection, such as human resources personnel, legal, and the police union. (*See* Harris Dep. at 70-71 at Ex. 13; *see also* Wells Decl. at ¶ 12 at Ex. 11).

**73.** Plaintiff does not dispute the fact that Newson6.com ran a story about the incident and further asserts that this fact is not relevant or material as to whether Defendants violated Plaintiff’s constitutional rights, particularly since Defendants admit that Plaintiff made no statements to the press. (Jordan Dep. at 93-96 [Doc. 42-24]; Harris Dep. at 94-95 [Doc. 42-27]).

**74.** Plaintiff does not dispute this fact.

**75.** Plaintiff does not dispute this fact and further asserts that this fact is not relevant or material as to whether Defendants violated Plaintiff’s constitutional rights, particularly since Defendants admit that Plaintiff made no statements to the press. (Jordan Dep. at 93-96 [Doc. 42-24]; Harris Dep. at 94-95 [Doc. 42-27]).

**76.** Plaintiff denies this fact and objects to this court considering the hearsay statement of Ibrahim Hooper from the Council on American-Islamic Relations. Plaintiff further asserts that Defendants’ statement of fact is contradicted by Defendants prior sworn testimony in that the department’s objectives were met by the event. (*See* ¶ 132, *infra*).

**77.** Plaintiff does not dispute this fact.

**78.** Plaintiff does not dispute the fact that “Deputy Chief Larsen recommended a 160 hour (4 week) unpaid suspension.” However, Plaintiff disputes the fact that “Deputy Chief Webster did not participate or make any recommendation regarding the ultimate discipline to be imposed on Plaintiff,” as evidenced by Defendants’ statement of fact at ¶ 79 and by the fact that Defendant

Webster supported the punishment of Plaintiff throughout. (*See* ¶¶ 109, 115-25, *infra*).

**79.** Plaintiff does not dispute the fact that Defendant Jordan, on behalf of the City, punished Plaintiff for making his religious objection to the order. (*See* ¶¶ 115-25, *infra*).

In addition, Plaintiff asserts the following undisputed facts:

**80.** Pursuant to his sworn oath, Plaintiff has a duty to point out unlawful orders. (Jordan Dep. at 15 [Doc. 42-24]; *see also* Fields Decl. at ¶ 6 [Doc. 42-2]).

**81.** Plaintiff did *not* violate his oath in this matter and was thus not punished for that. (Jordan Dep. at 90 [Doc. 42-24]).

**82.** Friday is the “holy day” or “Sabbath” for Islam and that is why this day was chosen for the Islamic Event. (Fields Decl. at ¶ 12 [Doc. 42-2]; Siddiqui Dep. at 75-76 [Doc. 42-26] [acknowledging that it is a “special day” for Islam and testifying that this day was chosen to give officers “the option to stay for the prayer,” noting that “most of the officers [choose] to stay”]).

**83.** Similar to every other “appreciation” event hosted by a religious organization or held at a religious place of worship for at least the past *thirty years*, the Islamic Event, as announced at the January 25, 2011 staff meeting, was voluntary. (Fields Decl. at ¶ 13 [Doc. 42-2]; *see also* Jordan Dep. at 40-41 [Doc. 42-24] [acknowledging that no similar event was ever mandatory in his thirty-plus years on the police department]; Wells Decl. at ¶¶ 1-13 at Ex. 11).

**84.** Unlike many of these other “appreciation” events, the Islamic Event was *advertised* as involving religious content and religious activities, including proselytizing. (Fields Decl. at ¶¶ 14, 23 [Doc. 42-2], Dep. Ex. 8 [Doc. 42-9]; Wells Decl. at ¶¶ 1-13 at Ex. 11).

**85.** The Islamic Event was not “community policing.” (Wells Decl. at ¶¶ 1-13 at Ex. 11; Fields Supp. Decl. at ¶ 4 at Ex. 12).

**86.** Plaintiff, who understands Islam and its “dawa” mission (“the call” or “invitation” “to



Islam”), knew that this event would involve proselytizing that was contrary to his Christian faith.<sup>4</sup> (Fields Decl. at ¶¶ 15-21 [Doc. 42-2]; Fields Dep. at 60-63, 66-70 [Doc. 42-28]; Siddiqui Dep. at 53 [Doc. 42-26] [acknowledging that Islam considers Jesus to be merely a prophet]).

**87.** According to the Islamic Society’s constitution, which is publicly available, “The aims and purposes of [the Islamic Society] shall be to serve the best interest of Islam in the greater Tulsa area including the Tulsa city and its satellite towns in northeastern Oklahoma, so as to enable Muslims to practice Islam as a complete way of life.” (Fields Decl. at ¶ 17 [Doc. 42-2], Dep. Ex. 39 [Doc. 42-21]; Siddiqui Dep. at 54-55 [Doc. 42-26] [testifying that the “aim and purpose” of the Islamic Society is “to promote the goals of Islam” during “outreach programs”]).

**88.** To carry out its mission, including its “dawa” mission, the Islamic Society “shall” work “in cooperation with ISNA [Islamic Society of North American]” to “carry out Islamic programs and projects within the guidelines of the Quran and Sunnah.” (Siddiqui Dep. at 22, 23, 58, 59, 61, 62 [Doc. 42-26], Dep. Ex. 39 [Doc. 42-21]; *see also* Fields Decl. at ¶ 18 [Doc. 42-2]).

**89.** The “dawa” mission of the Islamic Society, including its goal of “disseminating Islamic knowledge,” was promoted by the Islamic Event. (Siddiqui Dep. at 61, 62 [Doc. 42-26]; *see also* Fields Decl. at ¶¶ 14-18 [Doc. 42-2]. Exs. 39, 43 [Docs. 21, 22]).

**90.** Plaintiff is prohibited from proselytizing his faith while in uniform. (Jordan Dep. at 37

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<sup>4</sup> A public webpage on “How to become Muslim” (*available at* <http://isgoc.com/aboutislam/howtobecomemuslim/index.htm>, last visited on Sep. 1, 2012) that purports to be from the Islamic Society of Greater Oklahoma City and the Islamic Society of Tulsa and that lists Sheryl Siddiqui as the “[o]utreach director” quotes the Quran as follows: “Islam is the universal message of God to mankind, and Muhammad (peace be upon him) is the final and last messenger of God. Our creator will not accept any other way of life as He Himself asserts: ‘*If anyone desires a religion other than Islam* (submission to Allah-(God)) *never will it be accepted of Him.*’ (The Qur’an 3:85).” (Fields Decl. at ¶ 16 [Doc. 42-2], Dep. Ex. 43 [Doc. 42-22] [emphasis added]). Plaintiff understands that this is a fundamental precept of the Islamic “dawa” mission; a mission that the Islamic Society promotes through its “outreach programs,” (Fields Decl. at ¶ 16 [Doc. 42-2]), such as the Islamic Event, (*see* ¶¶ 87-89, *supra*).

[Doc. 42-24]; *see also* Fields Decl. at ¶ 19 [Doc. 42-2]).

**91.** Making the Islamic Event mandatory placed Plaintiff in a moral dilemma that violated his religious beliefs. (Fields Decl. at ¶¶ 15-21 [Doc. 42-2]; Fields Dep. at 60-63, 66-70 [Doc. 42-28]).

**92.** It would violate Plaintiff's conscience and his religious beliefs to order any of his subordinates to attend the Islamic Event who share Plaintiff's religious beliefs. (Fields Decl. at ¶ 20 [Doc. 42-2]; Fields Dep. at 60-63, 66-70 [Doc. 42-28]).

**93.** On February 17, 2011, Plaintiff received an email from Major Harris that had the subject line, "Tour of Mosque – March 4." The email stated, in relevant part, "We are directed by DCOP [Deputy Chief of Police] to have representatives from each shift—2nd, 3rd, and 4th to attend [the Islamic event]." (Fields Decl. at ¶ 24 [Doc. 42-2], Dep. Ex. 9 [Doc. 42-10]).

**94.** This email contained a directive (*i.e.*, order) from Defendant Webster. (Fields Decl. at ¶ 25 [Doc. 42-2], Dep. Ex. 9 [Doc. 42-10]; Jordan Dep. at 48 [Doc. 42-24] [admitting that the directive was an order]).

**95.** Per the order, attendance at the Islamic Event was no longer voluntary. (Fields Decl. at ¶ 26 [Doc. 42-2]; Jordan Dep. at 48, 50, 51 [Doc. 42-24]; Harris Dep. at 48 [Doc. 42-27]).

**96.** After receiving the email with the mandatory order from Defendant Webster, Plaintiff met with Major Harris to discuss the order. (Fields Decl. at ¶ 27 [Doc. 42-2]).

**97.** Plaintiff advised Major Harris that the order was unlawful based on his personal religious beliefs and convictions. (Fields Decl. at ¶ 28 [Doc. 42-2]; Harris Dep. at 73-74 [Doc. 42-27]).

**98.** With the approval of Major Harris, Plaintiff responded to the order by email. (Fields Decl. at ¶¶ 29-30 [Doc. 42-2], Dep. Ex. 10 [Doc. 42-11]; Harris Dep. at 69-71 at Ex. 13).

**99.** In his response, Plaintiff stated that he believed the order was "an unlawful order, as *it is*

*in direct conflict with my personal religious convictions*, as well as to be conscience shocking.”

He concluded, “Please consider this email my official notification to the Tulsa Police Department and the City of Tulsa that I intend not to follow this directive, nor require any of my subordinates to do so *if they share similar religious convictions*.” (Fields Decl. at ¶¶ 30-31 [Doc. 42-2], Dep. Ex. 10 [Doc. 42-11] [emphasis added]).

**100.** Plaintiff sent his response to Major Harris and copied his chain of command. (Fields Decl. at ¶¶ 32, 33 [Doc. 42-2], Dep. Ex. 10 [Doc. 42-11]).

**101.** On February 18, 2011, Defendant Webster sent an interoffice correspondence to Plaintiff by email that requested Plaintiff to reconsider his position and warned him of the consequences for not doing so. (Fields Decl. at ¶ 34 [Doc. 42-2], Dep. Ex. 31 [Doc. 42-20]).

**102.** Plaintiff again told Defendants that he could not comply with the mandatory order based on his religious beliefs and convictions. (Fields Decl. at ¶ 35 [Doc. 42-2]).

**103.** As a result of Plaintiff’s refusal to compromise his religious beliefs, Defendant Webster ordered Plaintiff to appear in Defendant Jordan’s conference room on Monday, February 21, 2011 for a meeting. (Fields Decl. at ¶ 36 [Doc. 42-2]).

**104.** Plaintiff complied, and the meeting was held. (Fields Decl. at ¶¶ 36, 37 [Doc. 42-2]).

**105.** Representatives from the City, including representatives from Human Resources and the Legal Department, were present at this meeting. (Fields Supp. Decl. at ¶ 2 at Ex. 12).

**106.** During this meeting, Plaintiff again explained to Defendants that he believed the order was unlawful and that he could not, in good conscience, obey the order or force officers under his charge who shared his religious beliefs to obey it. (Fields Decl. at ¶ 37 [Doc. 42-2]).

**107.** Defendants understood that Plaintiff would have no objection if the Islamic Event was voluntary. (Jordan Dep. at 52 [Doc. 42-24]; *see also* Harris Dep. at 74, 107 [Doc. 42-27]).

**108.** Defendants understood that Plaintiff's objection to the order was based on his religious beliefs. (Jordan Dep. at 54-55 [Doc. 42-24]; Fields Decl. at ¶¶ 30, 31 [Doc. 42-2], Dep. Ex. 10 [Doc. 42-11]).

**109.** During the February 21, 2011 meeting, which Plaintiff recorded, Defendant Webster asked Plaintiff whether he sought volunteers, and Plaintiff responded, "Yes, I have." Defendant Webster then asked, "Okay, and the response?" to which Plaintiff responded, "Is zero." Defendant Webster then stated, "Alright. And so that makes this fairly easy. Are you prepared to designate two officers and a supervisor or yourself to attend this event?" Plaintiff responded, "No." Defendant Webster then stated, "If ordered?" Plaintiff responded, "No, Chief, I am not." Defendant Webster then stated, "Okay," and referred to Defendant Jordan, stating, "Is there anything else you'd like to add, Chief?" to which Defendant Jordan stated, "No, sir." Plaintiff then reiterated that he had no objection if the event was made voluntary and that to make it mandatory violated his religious convictions. (Fields Decl. at ¶ 40 [Doc. 42-2]).

**110.** Moments after reasserting his religious objection, Defendant Webster served Plaintiff with a prepared order signed by Defendant Jordan transferring him to the Mingo Valley Division and with a notification that Defendants were initiating an IA investigation for his failure to obey an order. (Fields Decl. at ¶¶ 41, 42 [Doc. 42-2], Dep. Exs. 11, 12 [Docs. 42-12, 13]).

**111.** Prior to being punitively transferred, Plaintiff was the shift commander for 26 officers and 5 supervisors. (Fields Decl. at ¶ 44 [Doc. 42-2]).

**112.** Major Harris admitted the following during the IA investigation: "[I]f . . . somebody had some deep, deep, deep religious conviction, and as long as there was no crime that they needed to investigate, there's no need for me to force this [*i.e.*, Islamic Event] on anybody." (Harris Dep. at 113-14 [Doc. 42-27], Dep. Ex. 48 [Doc. 42-23]; Fields Decl. at ¶¶ 47, 49 [Doc. 42-2]).

**113.** Upon her review of the IA investigation, Major Harris recommended that the allegations against Plaintiff not be sustained. (Harris Dep. at 19-20 [Doc. 42-27]).

**114.** As a result of her unwillingness to sustain the recommendations of the IA investigation, Major Harris was subjected to retaliation. (Harris Dep. at 18-20, 26 [Doc. 42-27]).

**115.** On June 9, 2011, Defendants officially punished Plaintiff for invoking his religious objection to the order by suspending him without pay for 80 hours/10 days, subjecting him to the possibility of “more severe disciplinary action, including dismissal,” prohibiting him from being considered for future promotion for at least one year, and making his temporary transfer permanent. (Fields Decl. at ¶ 50 [Doc. 42-2], Dep. Exs. 17, 18 [Docs. 42-16, 17]).

**116.** The City approved the punishment. (Fields Supp. Decl. at ¶ 3, Dep. Ex. 19, at Ex. 13).

**117.** The personnel orders setting forth Plaintiff’s punishment and transfer are a permanent part of Plaintiff’s record. (Fields Decl. at 51 [Doc. 42-2]).

**118.** As further punishment, Plaintiff was assigned to the “graveyard” shift. (Fields Decl. at ¶ 52 [Doc. 42-2]).

**119.** Plaintiff’s “Sworn-Employee Performance Evaluation” states, “Captain Fields was disciplined during this rating period for refusing to attend and refusing to direct that officers attend a law enforcement appreciation day at a local mosque.” (Fields Decl. at ¶ 54 [Doc. 42-2], Decl. Ex. 1A [Doc. 42-3][emphasis added]).

**120.** Defendants retaliated against Plaintiff for exercising his constitutional rights. (Harris Dep. at 118 [Doc. 42-27]).

**121.** Defendants’ actions altered the terms and conditions of Plaintiff’s employment, which also violated the City police department’s policy prohibiting retaliation for exercising First Amendment rights. (Fields Decl. at ¶ 56 [Doc. 42-2], Dep. Ex. 23 [Doc. 42-18]).

**122.** Defendants admit that Plaintiff had a deeply held religious belief opposing the order to attend the Islamic Event. (Jordan Dep. at 74-75 [Doc. 42-24] [testifying that he “absolutely” believed Plaintiff’s religious objection was sincere (emphasis added)]; Harris Dep. at 17-18, 73 [Doc. 42-27]; Webster Dep. at 20 [Doc. 42-25] [acknowledging Plaintiff’s right to invoke a religious objection to his order and not questioning the sincerity of Plaintiff’s objection]).

**123.** Because Plaintiff had a deeply held religious conviction opposing the order, he had a right to object to that order. (Harris Dep. at 17 [Doc. 42-27]; Webster Dep. at 20 [Doc. 42-25]).

**124.** Plaintiff was the top performing shift commander in his division prior to being punitively transferred for invoking his constitutional rights. (Harris Dep. at 40 [Doc. 42-27]).

**125.** Defendants have yet to replace the shift commander position that became vacant once Defendants punitively transferred Plaintiff. (Harris Dep. at 40-41 [Doc. 42-27]).

**126.** Major Harris would not have made attendance at the Islamic Event mandatory. (Harris Dep. at 48 [Doc. 42-27]).

**127.** On February 22, 2011, the day following Plaintiff’s punitive transfer, Major Harris made the Islamic Event voluntary for Plaintiff’s former shift. (Harris Dep. at 77, 94 [Doc. 42-27]).

**128.** Major Harris was not punished for failing to follow the mandatory order. (Jordan Dep. at 66-67 at 9; Jordan Arbitration Test. at 352-53 at Ex. 10).

**129.** On February 24, 2011, Defendant Webster made the Islamic Event voluntary for the entire department. (Fields Decl. at ¶ 55 [Doc. 42-2], Dep. Ex. 13 [Doc. 42-14]; Harris Dep. at 93-94 [Doc. 42-27]).

**130.** Pursuant to the policy and practice of the City police department, a division commander could excuse an officer from the Islamic Event if he raised a medical objection or some other non-religious grounds for not attending. (Harris Dep. at 51-53 [Doc. 42-27]).

**131.** The City’s policy and procedure for addressing religious objections by police department employees is one in which case-by-case inquiries are made such that there is an individualized assessment of the reasons for the relevant conduct that invites consideration of the particular circumstances involved in the particular case. (Jordan Dep. at 77 [Doc. 42-24]; *see also* Fields Decl. at ¶ 33 [Doc. 42-2]; Webster Dep. at 108-09 [Doc. 42-25] [testifying that the department accommodates officers’ religious beliefs “when possible . . . so long as we could do so consistent with fulfilling the mission of the police department”]).

**132.** The mission of the City police department was fulfilled by making the Islamic Event voluntary. (Webster Dep. at 108-09 [Doc. 42-25]; Jordan Dep. at 59 at Ex. 9).

**133.** The Islamic Event promoted the religion of Islam. (Burrell Decl. at ¶ 3 [Doc. 42-29]; Ballenger Decl. at ¶¶ 4-8 [Doc. 42-30]; Siddiqui Dep. at 45-53 [Doc. 42-26]).

**134.** During the Islamic Event, the Muslim hosts discussed Islamic religious beliefs; they discussed Mohammed, Mecca, why Muslims pray, how they pray, and what they say when they are praying; they showed the officers a Quran; and they showed the officers Islamic religious books and pamphlets that were for sale and encouraged the officers to purchase them. (Burrell Decl. at ¶ 3 [Doc. 42-29]; *see also* Siddiqui Dep. at 45-53 at [Doc. 42-26]; Ballenger Decl. at ¶¶ 4-8 [Doc. 42-30]).

**135.** Officers were present during the Islamic worship services and were photographed by the media observing these services. (Burrell Decl. at ¶ 4, Ex. A, [Doc. 42-29]).

**136.** The Islamic Society posted a photograph of police officers sitting at a table with members of the mosque and below the photograph was written, “Discover Islam Classes for Non-Muslims.” (Fields Decl. at ¶ 57 [Doc. 42-2], Dep. Ex. 24 [Doc. 42-19]).

**137.** Defendant Jordan testified that he “would not be surprised” that the Islamic Society

posted photographs of the Islamic Event. (Jordan Dep. at 128 [Doc. 42-24]).

**138.** Defendant Jordan admitted that the photograph of the officers sitting at a table with members of the mosque (Dep. Ex. 24 [Doc. 42-19]) “would certainly imply that our officers were there taking classes.” (Jordan Dep. at 128 [Doc. 42-24]).

**139.** Plaintiff was punished for making a religious objection to the mandatory order. (Fields Decl. at ¶ 50 [Doc. 42-2], Dep. Exs. 17, 18 [Doc. 42-16, 17]).

**140.** Defendants punished Plaintiff because he had a religious objection based on his Christian beliefs that involved Islam. Defendant Jordan testified, “I can’t have a police department where everybody refuses to give – to interact with Muslims because they say it’s their religious reasons.” (Jordan Arbitration Test. at 351 at Ex. 10).

## ARGUMENT<sup>5</sup>

### I. Qualified Immunity Standard.

Qualified immunity does not protect a defendant against claims for declaratory and injunctive relief, for claims brought against him in his official capacity, nor does it apply to claims against a municipality, such as the claims advanced against the City. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 841, n.5 (1998) (noting that qualified immunity is unavailable “in a suit to enjoin future conduct [or] in an action against a municipality”); *Cannon v. City & Cnty. of Denver*, 998 F.2d 867, 876 (10th Cir. 1993) (stating that “there is no qualified immunity to shield the defendants from claims” for “declaratory and injunctive relief”); *see also Hall v. Tollett*, 128 F.3d 418, 430 (6th Cir. 1997) (“Qualified immunity shields defendant from personal liability, but it does not shield him from the claims brought against him in his official capacity.”);

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<sup>5</sup> Insofar as the court permits Defendants to incorporate arguments from the City’s “motion for judgment” into their brief, Plaintiff hereby incorporates his responses to those arguments as well.



*Presbyterian Church (U.S.A.) v. United States*, 870 F.2d 518, 527 (9th Cir. 1989) (“Qualified immunity . . . does not bar actions for declaratory or injunctive relief.”).

Moreover, government officials are protected from personal liability for money damages and thus enjoy qualified immunity only “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). However, “[t]his is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in light of pre-existing law the unlawfulness must be apparent.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987) (internal citation omitted).

To defeat a claim of qualified immunity, Plaintiff must show: “(1) that [Defendants’] actions violated a constitutional or statutory right and (2) that the right was clearly established at the time of [Defendants’] unlawful conduct.” *Stearns v. Clarkson*, 615 F.3d 1278, 1282 (10th Cir. 2010) (quotations and citation omitted). The court may decide “which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances” of the particular case. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

Once Plaintiff makes this showing, Defendants “must show that there are no material factual disputes as to whether [their] actions were objectively reasonable in light of the law and the information [they] possessed at the time. . . . At all times during this analysis, [this court] evaluate[s] the evidence in the light most favorable to the nonmoving party [*i.e.*, Plaintiff].” *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1300 (10th Cir. 2004).

“The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” *Saucier v. Katz*, 353 U.S. 194, 202 (2001). “In order for the law to be clearly

established, there must be a Supreme Court or Tenth Circuit decision on point, *or* the clearly established weight of authority from other courts must have found *the law* to be as the plaintiff maintains.” *Stearns*, 615 F.3d at 1282 (quotations and citation omitted) (emphasis added). Indeed, as noted by the Tenth Circuit, “We have *never said that there must be a case presenting the exact fact situation at hand* in order to give parties notice of what constitutes actionable conduct. Rather, we require parties to make *reasonable applications of the prevailing law to their own circumstances*.” *Murrell v. Sch. Dist. No. 1, Denver, Colo.*, 186 F.3d 1238, 1251 (10th Cir. 1999) (emphasis added).

## **II. Defendants Are Not Entitled to Qualified Immunity.**

As demonstrated more fully in Plaintiff’s brief in support of his motion for summary judgment (Doc. 42) and in his opposition to the City’s “motion for judgment,” Plaintiff has established that Defendants violated his clearly established constitutional rights. And as demonstrated in these briefs and further below, Plaintiff’s rights were clearly established at the time of Defendants’ unlawful conduct such that Defendants do not enjoy qualified immunity.

Indeed, apparently conceding that they lack qualified immunity for the majority of Plaintiff’s claims, Defendants only argue for qualified immunity as to Plaintiff’s Establishment Clause claim, citing “the unique implications of the Establishment Clause on both sides of the equation.”<sup>6</sup> (Defs.’ Br. at 17; *see also id.* at 18-20 [citing only Establishment Clause cases]).

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<sup>6</sup> This demonstrates at least a modicum of prudence in that the right to be free from punishment, discrimination, and retaliation for exercising a right protected by the First Amendment was clearly established on February 21, 2011. *See, e.g., Ctr. for Bio-Ethical Reform, Inc. v. City of Springboro*, 477 F.3d 807, 824 (6th Cir. 2007) (denying qualified immunity because “Supreme Court decisions . . . recognize that government actions may not retaliate against an individual for the exercise of protected First Amendment freedoms” and thus concluding that “the ‘contours of the right’ to be free from retaliation were thus abundantly clear”) (internal quotations and citation omitted). Additionally, as controlling Tenth Circuit case law demonstrates, Defendants do not enjoy qualified immunity as to Plaintiff’s free exercise claim because “the law is clearly

While there is certainly much debate over what the Establishment Clause jurisprudence should be (*see* Defs.’ Br. at 18-20 [citing cases criticizing *Lemon*]), there is unquestionably “a clearly established weight of authority” addressing such claims. Indeed, “[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982); *see also Commack Self-Service Kosher Meats, Inc. v. Weiss*, 294 F.3d 415, 425 (2d Cir. 2002) (holding that the government violated the Establishment Clause because it suggested a “preference for the views of one branch of Judaism”).

The U.S. Supreme Court “has made clear that, when evaluating the effect of government conduct under the Establishment Clause, we must ascertain whether ‘the challenged governmental action is *sufficiently likely to be perceived*’” as an endorsement or disapproval of an individual’s “religious choices.” *Cnty. of Allegheny v. A.C.L.U.*, 492 U.S. 573, 597 (1989) (citations omitted) (emphasis added).

As Justice O’Connor explained in *Lynch v. Donnelly*, 465 U.S. 668 (1984):

Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message.

*Id.* at 688 (O’Connor, J., concurring) (emphasis added). When determining whether the challenged government action has the “impermissible effect of communicating a message of

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established that if a governmental requirement burdening a religious practice is not neutral or generally applicable, it is subject to strict scrutiny,” and “[i]t was clearly established by the Supreme Court that if a defendant has in place a system of individualized exemptions, it must extend that system to religious exemptions or face strict scrutiny review.” *Axson-Flynn*, 356 F.3d at 1300-01 (denying qualified immunity defense on a free exercise claim); *Shrum v. City of Coweta*, 449 F.3d 1132, 1145 (10th Cir. 2006) (denying qualified immunity defense to an assistant chief of police on a free exercise claim and noting that “it was clearly established that non-neutral state action imposing a substantial burden on the exercise of religion violates the First Amendment”).

governmental endorsement or disapproval of religion,” the court views the evidence “through the eyes of an objective observer.” *Am. Atheists, Inc. v. Duncan*, 637 F.3d 1095, 1119 (10th Cir. 2010) (internal quotations and citations omitted). As the Tenth Circuit observed,

[G]overnments may not make adherence to a religion relevant *in any way* to a person’s standing in the political community. And actions which have the effect of communicating governmental endorsement or disapproval, *whether intentionally or unintentionally*, make religion relevant, *in reality or public perception*, to status in the political community.

*Id.* at 1119 (internal punctuation, quotation, and citations omitted) (emphasis added).

Here, the facts demonstrate that Defendants ordered Plaintiff to attend (and to order officers who shared his religious beliefs to attend) the Islamic Event, which was advertised as including, and in fact did include, religious proselytizing. Never has the Tulsa Police Department ordered officers to attend an event hosted by a religious organization at a religious place of worship (here, a mosque) that included invitations to tour the religious sanctuary, observe religious worship services, and receive presentations on religious beliefs. (See Jordan Dep. at 40-41 [Doc. 42-24]). Law enforcement appreciation events, particularly those sponsored by religious organizations or held at a religious place of worship, have always been voluntary. When Plaintiff raised a *religious* objection to this event based on his sincerely held Christian beliefs, he was summarily transferred, subjected to an IA investigation, placed on the “graveyard” shift, and suspended without pay for two weeks.

This public event was advertised as promoting and it in fact did promote Islam.<sup>7</sup> During the Islamic Event, which was purposely held on Islam’s “holy day,” the Muslim hosts discussed

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<sup>7</sup> Despite knowing that this event would involve religious content, Defendants did not reach out to the hosts of the Islamic Event to inform them that they should not engage in religious discussions with the officers or try to proselytize them, and Defendants admit that there was nothing that would have prevented the Muslim hosts from proselytizing the officers during the Islamic Event. (See ¶ 17, *supra*).

Islamic religious beliefs; they discussed Mohammed, Mecca, why Muslims pray, how they pray, and what they say when they are praying; they showed the officers a Quran; and they showed the officers Islamic religious books and pamphlets that were for sale and encouraged the officers to purchase them. Officers were present during the Islamic worship services and were photographed by the media observing these services. The Islamic Society posted a photograph of police officers sitting at a table with members of the mosque and below the photograph was written, “Discover Islam Classes for Non-Muslims.” Defendant Jordan testified that he “would not be surprised” that the Islamic Society posted photographs of the event. Defendant Jordan admitted that the photograph of the officers sitting at a table with members of the mosque “would certainly imply that our officers were there taking classes.” And finally, Defendant Jordan made it clear that Defendants punished Plaintiff (and refused to offer him an accommodation or religious exemption) because his objection to the order was based on the fact that his Christian faith clashed with Islam (*See* ¶ 140, *supra* [*“I can’t have a police department where everybody refuses to give – to interact with Muslims because they say it’s their religious reasons.”*])).

In sum, controlling case law makes clear that a reasonable observer would conclude that Defendants’ actions conveyed the impermissible message of approval of Islam and disapproval of Plaintiff’s Christian beliefs. Consequently, Defendants do not enjoy qualified immunity.

### CONCLUSION

Plaintiff respectfully requests that the court deny Defendants’ motion, grant his motion for partial summary judgment, and enter judgment in his favor on all claims as to liability.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 7, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: None.

AMERICAN FREEDOM LAW CENTER

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