IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

GENERAL CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS and GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS,	)	
Plaintiffs,	)	
v.	)	Case No.: 1:06-cv-01207
WALTER MCGILL d/b/a CREATION SEVENTH DAY ADVENTIST CHURCH *et al.,*	)	
Defendant.	)	

OBJECTION TO REPORT AND RECOMMENDATION

Lucan Chartier, acting *pro se*, respectfully objects to proposed sanctions and order of contempt contained in the Report and Recommendation filed by Magistrate Judge Edward G. Bryant with this Court on December 23, 2010.

Basis of Objection

1. The Religious Freedom Restoration Act of 1993 (42 U.S.C. § 2000bb)

In 1993 Congress passed the Religious Freedom Restoration Act (hereafter referred to as the "RFRA"), re-instating the test first established in *Sherbet v. Verner* (374 U.S. 398) regarding religiously motivated conduct that places an individual at odds with an otherwise generally applicable law. While the Supreme Court ruled that the RFRA could not be applied to the States in *City of Boerne vs. Flores* (521 U.S. 507), that same Court has continued to uphold its applicability to Federal law in cases such as *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal (*546 U.S. 418*)*, under which Trademark law distinctly falls.

a. Applicability

According to Sec. 2(b)(2) of the act, the RFRA may be cited "to provide a claim or defense to persons whose religious exercise is substantially burdened by government." It is undeniable that the incarceration of Mr. Chartier in direct response to his religiously motivated actions constitutes a "substantial burden by the government."

Further, Sec. 3(c) states that "a person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government."

A government is further defined under Sec. 5(1) to indicate "a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, a State, or a subdivision of a State." That the District Court is within this category is unquestionable. It is also clear that Plaintiffs, acting under the "ongoing authority" granted them by the Court to remove and dispose of the signs and materials Mr. Chartier has replaced, are acting under the "color of law."

That Mr. Chartier did not object to the prior Report and Recommendation of June 24, 2010 should not be taken as an indication of acquiescence or waiver of right to object presently. The prior R&R made no specifications of specific sanctions, and as such, the governmental burden proposed in the current R&R was entirely absent. Further, no ruling on the prior R&R or notification of contempt proceedings was ever served upon Mr. Chartier, thus failing to meet the requirement of a "religious burden."

b. Grounds for Objection

It is self-evident that the First Amendment does not provide that religious conviction alone, when at odds with a law, is proper grounds for that law to be rendered inapplicable. As the Court properly pointed out in *Reynolds v. United States* (98 U.S. 145), such a view would lead to a state of affairs where every man would become a law unto himself, and the most absurd and dangerous actions would be carried forth under the guise of religious liberty. Chief Justice Waite's hypothetical example of a man who claims that his religion requires human sacrifice serves as an apt and powerful illustration of this principle.

Yet it is equally self-evident that the mere existence of a law does not immunize it from coming under close scrutiny when religious convictions are at stake. If the mere existence of a law justifies its imposition on any religious convictions to the contrary, then the First Amendment itself must be considered superfluous, and all persecution in any age, so long as it was under the cover of a supposedly neutral law, must be considered to be

justified. This is, obviously, a preposterous position, yet it is the inevitable conclusion of the reasoning set forth in the Report and Recommendation presently pending before this Court.

It is uncontested that the religious conviction of Mr. Chartier to use the name "Creation Seventh Day Adventist" in conjunction with his worship, ministry, and religious writings is a sincerely held belief. While the Report and Recommendation before this Court contains many attempted arguments against the Biblical validity of that belief, the sincerity with which it is held has not been called into question. Mr. Chartier in no manner objects to explaining and defending his convictions in the appropriate setting; yet as Judge Bryant rightly pointed out, the Court can have no part in doctrinal disputes. Whether or not Judge Bryant agrees or disagrees with the Scriptural exegesis of Mr. Chartier is immaterial, and frankly, an entirely inappropriate discussion for a judicial proceeding – particularly when such discussion is likely to constitute an unhealthy prejudice on the part of the Judge recommending sanctions.

Regardless of Judge Bryant's views on the religion of Mr. Chartier, the Constitution does not provide for the protection of free exercise of religion so far as that religion is deemed valid and worthy in the eyes of the Court. Preventing such a consideration is, in fact, among the primary purposes of the Separation clause. Rather, the Constitution – and the RFRA – provide for the protection of the free exercise of religion, whether that religion is Christianity, Islam, Judaism, or even Satanism. Thus, while the Scriptures presented by Judge Bryant are highly questionable in their application[1], even were Mr. Chartier to concede his religion to be outside of Scripture entirely, it would be immaterial to the matter at hand; namely, whether he is entitled to the right to practice that religion, and specifically that portion which requires the use of the name "Creation Seventh Day Adventist."

That Mr. Chartier holds this belief is beyond question. Despite this, Judge Bryant affirms as follows:

> "Mr. Chartier still has the freedom to practice [his] own religious beliefs and may form churches from South McNairy County, Tennessee to Africa and back again, so long as their church name is different and distinguishable from the Plaintiff Church."

Mr. Chartier disputes two issues of material fact in the above statement.

i. The name "Creation Seventh Day Adventist" is different and distinguishable from the Plaintiff Church.

[1]Judge Bryant's inclusion of the full text of Matthew 22:21 is particularly questionable, as it stipulates that those of the Christian faith are to "render unto Caesar the things which are Caesar's, and to God the things that are God's." It is quite apparent that religion and the name of that religion – particularly one that is believed to have been given by God Himself - are categorically among "the things that are God's."

The fact that not one piece of evidence has been submitted to show actual confusion over the nearly 20 year existence of the Creation Seventh Day Adventist Church as a distinct organization testifies clearly to this. Mr. Chartier has never identified the Creation Seventh Day Adventist Church as being the "Seventh-day Adventist Church," a part of the "General Conference of Seventh-day Adventist," the "SDA Church," or any of the names in use or registered by the Plaintiff Church. While the Court has ruled that confusion hypothetically may arise, the fact remains that the evidence shows the respective names to be clearly different and distinguishable.

ii. Judge Bryant appears to either ignore or outright disregard the repeatedly affirmed fact that Mr. Chartier's religion **requires** him to use the name "Creation Seventh Day Adventist" as a part of his worship and religious observances. This is uncontested. It is therefore an abject falsehood that Mr. Chartier is "free to practice his religious beliefs," because one of those beliefs is that he must use the name under dispute. What Judge Bryant is effectively saying is that Mr. Chartier may practice his religion, as long as he doesn't actually practice his religion. The question may rightly be posed as to exactly how many points of religious conviction a Court may require a man to violate before he is finally considered to be unable to practice his religion freely. The only appropriate answer is one, and only one.

That Mr. Chartier's religion requires him to use the name of his faith – Creation Seventh Day Adventist – is beyond dispute. Further, the Court has acknowledged this[2], yet has issued orders forbidding him from doing precisely what his religion requires, has granted Plaintiffs authority to disrupt his ability to comply with this portion of his religion, and now is considering sanctions for his continued practice of that specific aspect of his religion which the Court finds offensive.

Therefore, there is no question whatsoever as to whether the Court is denying Mr. Chartier the right to freely practice his religion. There is also no question that the government must regulate even those actions that fall under religious conviction in certain circumstances. Instead, the question is solely whether or not the government is right to burden Mr. Chartier's religion in the specific issue before it.

The law gives a clear instruction for resolving this question, in the RFRA. According to Sec. 3(b):

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[2] "While the use of the mark was certainly knowing, there is no evidence that the Defendant intended to confuse the public into believing that his church was one of the Plaintiffs'. Rather, the proof supports the conclusion that they chose the name based on a divine revelation." (ORDER GRANTING IN PART AND DENYING IN PART THE PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, p.22)

"So far, no one has questioned the sincerity of McGill's belief that God requires him to continue his infringing use of the plaintiffs' marks. Being compelled to stop could substantially burden his religious practice." (Opinion on Appeal to the Sixth Circuit No. 09-5723, p.10)

This belief may rightly be extended to Mr. Chartier for the purposes of the instant objection.

(b) Exception: Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

It is Mr. Chartier's contention that the recommended sanctions and order of contempt cannot meet either of the criteria set forth above.

b.1 **Compelling Interest**

As Judge Bryant delineates, the importance of Federal trademark law is the protection of the original, so that the user of a trademarked service or product may know it is the real thing. The law rightly protects businesses and corporations from the misuse of their property and identities, and the government rightly protects its people from being deceived into receiving an inferior product, believing it to be something else.

While there may be a compelling interest in enforcing commercial trademark law, the issue at hand is not commercial in scope, nor does trademark law present a reasonable or appropriate resolution to questions of religious identity. The "product" under question is not a tangible item such as a pair of shoes or other physical product, but rather, as the Plaintiffs have registered it, "conducting religious observances and missionary services." As Judge Breen has previously noted, it is entirely unlikely for someone to join the Creation Seventh Day Adventist Church under the false belief that it is associated with the Plaintiffs.

What must be demonstrated, then, is not that the Court has a compelling interest in enforcing trademark law in general, but this particular trademark. The "product" under dispute is religious doctrine and dogma. This fact is tacitly acknowledged by Judge Bryant, who hypothesizes that "If Plaintiff Church did not have its name protected with a trademark, anyone could use the Plaintiffs name regardless of beliefs." He further proposes the question of differing theologies causing dilution of the Plaintiff's name, demonstrating once more that the material issue under discussion is one of doctrine, belief, and theology.

That the Court, or any government, has a compelling interest in protecting its people from religious and spiritual deception is not only absurd, but undeniably dangerous. It is this concept - that the government is

responsible for the religious integrity of its citizens - that has been the justification for every instance of organized persecution in the long history of religious intolerance. It was this concept that caused men and women to flee their countries, and as a direct consequence lead to the First Amendment of our Constitution forbidding such a view of the role of government from ever being espoused in the United States.

In order for any government to enforce its supposed compelling interest in protecting its citizens from being misled in matters of theology or belief, it must of necessity do exactly that which it is expressly forbidden to do – judge a doctrinal controversy over what, or who, is the true and the false in regards to beliefs and theology. To protect the people from being deceived, it must make a ruling as to who the deceivers are. To protect the true from being diluted, it must make a ruling as to what constitutes the true. What is essentially pending before this Court is a matter of not only "What constitutes the Seventh-day Adventist Church" (or, more accurately, the Creation Seventh Day Adventist Church), but further, "Who is and is not a Seventh-day Adventist."

While in a commercial setting this would be an entirely absurd contention, the unique nature of a religious organization as distinct from a secular one raises certain peculiarities. In a secular and commercial organization the corporation predates and supersedes both the name and the products thereof. McDonald's was McDonald's before they offered the "Big Mac" sandwich, and will continue to be such should they discontinue it. Thus, the identity of the organization is in no way dependent upon its goods and services, but rather the opposite.

A religious organization, and a church in particular, runs entirely opposite of this principle. Whereas the forming of a commercial organization begins with the organization and leads to the individual products, the forming of a religious organization begins with the "products," if such a term can be used, and leads to the organization. As has been demonstrated beyond question to this Court in earlier proceedings, the formation of the Seventh-day Adventist church consisted of men and women of a similar faith coming together, and identifying that faith as "Seventh-day Adventism" for years before any organization was conceived. As a result, its adherents were called "Seventh-day Adventists," and the places where groups of these individuals gathered for worship were entitled "Seventh-day Adventist Churches." That the church itself is defined by and named after the beliefs of the membership is beyond question. The Baptist church is composed of Baptists, who adhere to the Baptist faith. The same is true of the Lutheran church, the Anglican church, the Catholic church, the Presbyterian church, the Methodist church, and any literally other church that may be called to mind. It would be absurd to conceive of a

Baptist church composed of Pentecostals, or a Catholic church composed of Unitarians.

As a result, a governmental affirmation of one organization's exclusive rights to a church name amounts to a governmental establishment of that organization as the only possible church of that faith, with the implication that it is the true and only exemplar of that faith. An order forbidding a church or its members from identifying themselves by a religious name amounts to an order that they cease to acknowledge themselves as practitioners of that faith on a corporate level. A Baptist church that ceases to call itself a Baptist church ceases, in function, to be composed of "Baptists" and instead become composed of whatever other name is chosen to represent the faith of the individuals therein. It is this requirement—that he deny the name and character of his faith—that Mr. Chartier acts in disobedience of, and cites the protection of the RFRA against.

The Courts have a relatively short history of allowing secular trademark law to be a medium for such religious identity disputes, yet the flaws in such a solution are readily apparent. The ruling in *Maktab Tarighe Oveyssi Shah Maghsoudi, Inc. v. Kianfar*, which is the primary 9th Circuit decision permitting religio-commercial trademark law, attempted to bypass the issue of who the actual religious teachers were in favor of applying the neutral law of who actually registered the trademark as property.

The inescapable conclusion of this manner of resolution is that trademark law – which is based upon protecting identity – is decided on something other than actual identity, because deciding actual identity would require the Court to engage in doctrinal exegesis—as this is what religious identity consists of. Deciding the rights of entitlement to the name "Seventh-day Adventist" or, more accurately, "Creation Seventh Day Adventist," between two entities which each claim Divine revelation as the basis of their usage inevitably entangles the Court in a doctrinal issue. Ignoring the relevant doctrinal arguments and choosing an entirely secular means to resolve the dispute does nothing to alleviate the fact that a doctrinal issue has, in fact, been decided – the Court has ruled that the Plaintiffs are the only ones entitled to that or any similar name, in the midst of and directly in consequence of a religious controversy to that end. Whether the Court agrees to hear the doctrinal underpinnings of the case, flips a coin, or merely applies a neutral law intended for commercial organizations, the fact remains that a ruling has been made in favor of one party over another as having the rights to identify themselves by the name of their faith, and limiting the ability of one party to claim to be what they believe they are—effectively deciding which group

adheres to the faith that the church is inevitably named after.

As a result, not only can a compelling governmental interest for religious trademarks such as this one not be demonstrated, but the exact opposite. The government has a compelling interest in **not** involving itself in religious disputes, and particularly so when those disputes inevitably lead to the loss of freedom and liberty and the assessment of fines and sanctions against men and women acting from religious conviction. There can be no demonstrated danger as the consequence of men and women becoming initially confused as to the source of a religious belief or teaching, even were such confusion agreed to be likely in this case (which it is decidedly not).

It is not the place of the government to prevent, as Judge Bryant hypothesizes, "making Presbyterians or Buddhists of congregants." Non-profit religious organizations teaching the gospel of Jesus Christ are not businesses, not commercial organizations, and are not distributing "products to consumers" by teaching religious doctrine in any possible sense. To claim that it not only is, but to extend the interest a government has in protecting its people from commercial deception to religious deception – and that at the cost of the religious freedom of law-abiding citizens – is absurd, preposterous, and unsupportable. It is therefore Mr. Chartier's contention that this Court should find that the proposed Report and Recommendation by Judge Bryant be rejected on these grounds.

b.2 **Least Restrictive Means**

In the alternative, should the Court find that it does indeed have a compelling interest in the matter at hand, it is Mr. Chartier's contention that the Court should find that the proposed means are by no means the least restrictive available to it, and thus fail to meet the second requirement.

If the least restrictive means available to prevent confusion are to force an individual or group of individuals to deny their faith or face jail and fines as the consequence, there is a serious problem. While the Court has decided that confusion is possible, it has not stated that it exists. The lack of any evidence of actual confusion lends itself, rather, to the supposition that by self-regulation, Mr. Chartier is fulfilling the interest of the law in preventing confusion between the two entities. A browsing of the websites and materials submitted to the Court as evidence will further reveal that featured prominently is a statement of non-association with the Plaintiff organization, and/or a clear explanation of the differences in the two organizations and the reason for separation. In

short, not only is there no actual confusion, but Mr. Chartier takes active measures to ensure that it does not arise.

That such measures on Mr. Chartier's part constitute a reasonable distinction is evident from past settlements of the Plaintiffs in similar cases. In *General Conference Corp. of Seventh-day Adventists v. Rafael Perez* (Case 98-2940), the Plaintiffs agreed to settlement terms with the Defendant which included the use of the words "Founded in (1990 or any later year) by Seventh-day Adventist believers". The usage of Mr. Chartier is considerably more distinct than that conceded by the Plaintiffs to be acceptable to prevent confusion. Unlike the aforementioned settlement, Mr. Chartier does not make use of the same spelling, punctuation, or capitalization as the Plaintiff's church, uses the additional word "Creation," and further explicitly states his non-affiliation with the Plaintiffs.

It is apparent that Mr. Chartier has no desire to be confused with the Plaintiffs whatsoever, and in fact the opposite. It would be absurd to wish to be misconstrued with an organization that presents itself as a defender of religious freedom, yet seeks to deny that freedom to others due to an imaginary threat of losses and confusion not realized after two decades. Mr. Chartier uses the name Creation Seventh Day Adventist because his religion requires such usage. To outright deny his ability to do this in any form and further add penalties for it can by no means be justified as the least restrictive means possible of preventing confusion.

In *Wisconsin v. Yoder,* 406 U.S. 205 (1972), the Supreme Court ruled in favor of the appellee on the basis that the Amish community fulfilled the compelling interest of educating their youth for service in their future livelihood. As a result, despite violating the mandatory public school attendance laws of the State, they were allowed to continue with private education rather than required to comply at the cost of their free exercise. Similarly, the interest of preventing confusion is adequately fulfilled in the long-standing practices of Mr. Chartier and other Creation Seventh Day Adventists of clearly explaining their faith and origins, using a name, logo, and spelling that is distinctly different from the Plaintiffs, and prominently featuring statements of non-affiliation either explicitly or unmistakably implied in the content itself. To require him to violate his religion at the cost of his

freedom and finances merely to prevent an imaginary and non-existent potential confusion is an entirely unnecessary and extreme measure, and imposes the most restrictive means possible in place of the least.

2. **Inappropriate Procedure for Order of Criminal Contempt**

In the alternative, should the Court find that it indeed has both the compelling interest in enforcing religious trademark law in the instant case, and further that the proposed sanctions are the least compelling means of furthering that interest, it is Mr. Chartier's contention that the sanctions be denied based upon improper execution of Federal Rule 42 of Criminal Procedure.

a. Criminal Nature of Proposed Contempt

That the sanctions proposed by Judge Bryant are criminal, rather than civil, in nature is self-evident from a cursory review of Court rulings regarding their respective natures. As the Supreme Court ruled in *Gompers v. Bucks Stove & Range Co.,* 221 U.S. 418:

> Punishment for doing an act forbidden by the injunction is entirely different from punishment as a means of coercion to compel the doing of something commanded. The latter proceeding is properly speaking one for a civil contempt, the former one for a criminal contempt. The nature of the proceeding can readily be determined by an examination of the charge made. If it is for the doing of an act forbidden it is clearly a criminal proceeding, and not one for a civil contempt.

It is clear from Judge Bryant's report and recommendation that the sanctions recommended are entirely punitive in nature, relating to actions committed in violation of a Court order, and not intended to coerce Mr. Chartier to perform any affirmative action. The proposed sanction recommends a set period of incarceration, and thus is a recommendation for criminal contempt. As the Supreme Court further explained:

> But imprisonment for civil contempt is ordered where the defendant has refused to do an affirmative act required by the provisions of an order which, either in form or substance, was mandatory in its character.

> Imprisonment in such cases is not inflicted as a punishment, but is intended to be remedial by coercing the defendant to do what he had refused to do. The decree in such cases is that the defendant stand committed unless and until he performs the affirmative act required by the court's order.
>
> For example: If a defendant should refuse to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance required by a decree for specific performance, he could be committed until he complied with the order. Unless these were special elements of contumacy, the refusal to pay or to comply with the order is treated as being rather in resistance to the opposite party than in contempt of the court. The order for imprisonment in this class of cases, therefore, is not to vindicate the authority of the law, but is remedial and is intended to coerce the defendant to do the thing required by the order for the benefit of the complainant. If imprisoned, as aptly said in In re Nevitt, 117 Fed. Rep. 451, "he carries the keys of his prison in his own pocket." He can end the sentence and discharge himself at any moment by doing what he had previously refused to do.
>
> On the other hand, if the defendant does that which he has been commanded not to do, the disobedience is a thing accomplished. Imprisonment cannot undo or remedy what has been done nor afford any compensation for the pecuniary injury caused by the disobedience. If the sentence is limited to imprisonment for a definite period, the defendant is furnished no key, and he cannot shorten the term by promising not to repeat the offense. Such imprisonment operates, not as a remedy coercive in its nature, but solely as punishment for the completed act of disobedience. […] If then, as the Court of Appeals correctly held, the sentence was wholly punitive, it could have been properly imposed only in a proceeding instituted and tried as for criminal contempt. [*Ibid.*]

Case law in West Tennessee further enforces this principle, noting in *United States of America vs. Anderson Ivie* (No. 05-2314MaV) as follows:

> Whether civil contempt or criminal contempt is implicated depends on the purpose of the charge. If the purpose is coercive or remedial (to secure compliance with the court's order) or compensatory (to make

> the injured party whole), then "civil contempt" is implicated. If the purpose is punitive (to vindicate the court's authority), then "criminal contempt" is implicated.

This principle was similarly noted in another West Tennessee case involving contempt and the IRS, *United States of America v. Larry Dye* (09-2097-STA):

> Although there is no bright-line separating the two, contempt proceedings may be either in the nature of criminal contempt or civil contempt. Criminal contempt exemplified by a fixed fine or sentence has as its principle purpose the vindication of judicial authority. Civil contempt is remedial and intended "to benefit the complainant either by coercing the defendant to comply with the Court's order via a conditional fine or sentence or by compensating the complainant for any injury caused by the defendant's disobedience." The conditional nature of a sanction renders an action one for civil contempt.

Clearly, the sanctions proposed by Judge Bryant fall within the punitive category of criminal contempt.

b. Procedural Violations

i. Despite the recommendation of criminal contempt sanctions, Mr. Chartier was never served with any notice pursuant to Federal Rule of Criminal Procedure 42(a)(1). He was neither afforded a trial, given proper notification of the charges and time to prepare, or made aware of his right to representation as a Defendant. Rather, Mr. Chartier was served with a copy of the Plaintiff's motion for an order setting an evidentiary show cause hearing. Mr. Chartier never received such an order setting a hearing, however was served with a subpoena, not as a party, but as a witness to a proceeding that took place before Magistrate Judge Bryant on December 16th, 2010.

ii. Rather than a criminal hearing in which the Department of Justice prosecuted Mr. Chartier as a defendant, pursuant to Rule 42(a)(2), the entire hearing took place with the Plaintiffs in a private suit against Walter McGill acting as the prosecuting agents. Mr. Chartier has never at any point been given opportunity to show cause why his actions ought not to be held in contempt, despite having been called as a witness, ostensibly against himself. This further cements the proceeding as solely civil in nature:

> In another most important particular the parties clearly indicated that they regarded this as a civil proceeding. The complainant made each of the defendants a witness for the company, and, as such, each was required to testify against himself -- a thing that most likely would not have been done, or suffered, if either party had regarded this as a proceeding at law for criminal contempt -- because the provision of the Constitution that "no person shall be compelled in any criminal case to be a witness against himself" is applicable, not only to crimes, but also to quasi-criminal and penal proceedings. Boyd v. United States, 116 U.S. 616. (*Gompers v. Bucks Stove & Range Co,* 221 U.S. 418)

iii. That Mr. Chartier was queried by Judge Bryant on multiple occasions regarding his religious beliefs and the basis thereof does in no way constitute a "reasonable time to prepare a defense," or an opportunity to show cause. Aside from the almost exclusively religious nature of the Judge's inquiries, the lack of prior notice does not meet the requirement of "a reasonable time." The 6th Circuit case of *In re: M. Dianne Smothers* (322 F.3d 438, 2003) provides a clear precedent regarding this. Ms. Smothers was an attorney who, upon late arrival to a Court proceeding, was asked by the presiding Judge as to her reasons. Upon finding them insufficient, the Judge entered an order of criminal contempt against her. The 6th Circuit reversed the decision, saying in overview:

> The district court's decision to hear the reason why petitioner was late was not sufficient notice under Rule 42(b).

Similarly, Magistrate Judge Bryant's decision to hear Mr. Chartier's religious reasons for his defiance of the Court Order in question cannot be construed to constitute sufficient notice. As a result, it is Mr. Chartier's request that the Report and Recommendation requesting criminal sanctions in response to his witness testimony at a civil hearing be rejected on these grounds.

Summary

Mr. Chartier's actions in civil disobedience to the orders of the Court are not intended to be in any way flagrant, or directed at the authority of the Court, but rather the supposed authority of the Court to intrude upon

matters of faith and religion. Mr. Chartier holds the Court in deepest respect, and his lack of any criminal or civil record whatsoever demonstrates this point succinctly. Yet he cannot concede to honor the Court above his God in matters of religious faith, nor to deny a name that his religion teaches was mandated by God via divine revelation. Mr. Chartier cannot cease to identify himself and the Church he belongs to as Creation Seventh Day Adventist any more than he could cease to identify himself, and thus the church of which he is a member, as being Christian.

That Mr. Chartier's convictions on this point are sincere is beyond question. That the Court's orders require him to violate this conviction is also beyond question. While there are circumstances in which the public interest must override the individual's actions – even faith-based ones – for the sake of society, this is not such a case. Mr. Chartier has neither intentionally nor unintentionally deceived any member of the public as to his affiliation, or the affiliation of his Church as a whole, with the Plaintiffs or any other organization.

Further, the RFRA provides not only protection against such violations of religious freedom, but the means for ascertaining whether such a circumstance exists that the government must act to intervene in to prevent or rectify an action that is destructive and harmful. The instant R&R before the Court fulfills none of the requirements set forth for this test. To place Mr. Chartier under contempt and sanctions would be not only to deny his right to practice his religion freely, but to do so at unnecessary cost to the State itself in providing him with food, water, and shelter while he is incarcerated. Unless the Court is prepared to give Mr. Chartier repeated sentences for his continued behavior that will amount to nothing other than a life sentence for his faith, placing him in jail will merely delay the continuation of his religious practice upon release.

Such a course of action is entirely incongruous with not only the reputation and Constitution of the United States as a haven of religious liberty, but thoroughly shameful to be initiated at the behest of an organization such as the Plaintiffs that prides itself on being a defender and protector of religious liberty at home and abroad. That it is not only willing to allow, but to eagerly and vehemently pursue the incarceration of a fellow Christian over an imaginary threat that has not materialized over the course of nearly 20 years is a gross indictment of its motives and character as a professedly Christian and liberty-defending organization. While Mr. Chartier is ready to obey the Court in all matters pertaining to life and citizenship, he—as did Daniel when he was forbidden to pray—

respectfully refuses to allow the Court or any earthly authority to come between himself and his duty and worship to God.

Further, Mr. Chartier has not been afforded either the right to counsel, a trial, or a reasonable opportunity to show cause as to why he should not be held in contempt. He has heretofore filed nothing with the Court, nor been named as a Defendant in any civil or criminal trial, for contempt or otherwise. As a result, the Court should find that the proposed sanctions and order of contempt are inappropriate, and that they be rejected. In the alternative, the Court should find that Mr. Chartier was not afforded the rights pursuant to Rule 42(a), and that a proper criminal investigation be requested before criminal contempt orders or sanctions may be imposed against him.

Respectfully submitted,

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